

**BEFORE THE
FEDERAL MARITIME COMMISSION**

OJ COMMERCE, LLC,

Complainant,

DOCKET NO. 21-11

v.

HAMBURG SÜDAMERIKANISCHE
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S & CO KG

and

HAMBURG SUD NORTH AMERICA, INC.,

Respondents.

**COMPLAINANT’S SUPPLEMENT TO ITS MOTION FOR CONFIDENTIAL
TREATMENT**

On February 24, 2023, the ALJ issued its Order on Motions for Confidential Treatment (“Order”), wherein the Presiding Officer stated “[t]he parties should supplement their motions for confidential treatment to specifically identify the information in depositions they seek to keep confidential and the basis for the request,” and “should only request confidential treatment for the portions of the deposition pages which include confidential information.” (Order, p. 2.)

Given the enormous public interest in this case, OJC has not only complied with the ALJ’s Order, but gone further and withdrawn wide swaths of its previous confidentiality designations. Specifically, OJC has removed 95% of its deposition designations and the vast majority of its designations on its damages reports. These changed designations reveal that OJC’s requested damages are a mere drop in the ocean for Maersk, amounting to just five working hours of the

company's massive revenue.¹ It's no surprise that Maersk blatantly disregarded the ALJ's orders on four separate occasions, treating this case as nothing more than a minor inconvenience.

To most promptly and efficiently comply with the Order, OJC proposed on the day the Order was issued, February 24, that the parties should exchange their revised confidential designations by February 28. (Ex. A at 3.) Maersk responded that it would not be supplying its revised designations until March 8 or 9. (*Id.* at 1-2.) Those days came and went without Maersk providing anything.² In order to move this proceeding forward expeditiously, OJC hereby provides its revised designations before the Order's deadline.

To that end, here is a list of documents for which OJC is withdrawing its request for confidential treatment, with exceptions noted:

- CX 415-459, Ex. 200 – Expert Report of Richard C. Berning, *except for CX430-432*
- CX 460-465, Ex. 201 – Supplemental Expert Report of Richard C. Berning
- CX 466-477, Declaration of Jacob Weiss
- Ex. 105, Spreadsheet entitled Xeneta Trends Graph 2022-08-23 20_19
- Ex. 106, Spreadsheet entitled Maersk_Financials
- Ex. 107, Spreadsheet entitled Xeneta Surcharge Levels Ocean 2022-08-30 20_52
- RX 966-1028, Deposition of Jacob Weiss,³ *except for RX 1002, 24:14 – 25:22; RX 1003, 26:9-12*

¹ Calculated comparing OJC's requested damages, **including doubling**, to Maersk's publicly-reported revenue of \$22.8 Billion for Q3 2022.

<https://www.maersk.com/news/articles/2022/11/02/maersk-continues-the-record-streak-with-strong-q3-results>.

² OJC provided its revised confidential designations contained in this Supplement to Maersk on March 3. (Ex. A at 1-2.)

³ OJC notes that it has withdrawn its confidentiality designations for RX 1026 and RX 1018, two appendix pages from Jacob Weiss' deposition, which were specifically identified in the Order. (Order, p. 1, ¶ 3.)

- RX 1029-1116, Deposition of Richard C. Berning, *except for RX 1064, 140:21 – 141:25; RX 1065, 142:1 – 144:6; RX 1101, 287:9 – 289:25; RX 1102, 290:1 – 293:20*

Pursuant to the foregoing, OJC supplements its original motion as set forth below, and asserts that the following two categories of OJC’s proprietary, highly sensitive business information contained in the above-described documents should remain designated confidential for the reasons indicated.⁴

1. OJC’s Annual Sales Revenues. This is the sole category of information from Mr. Weiss’ deposition that OJC asserts should remain confidential. OJC is a privately-held company and its overall sales revenues are not public information and constitute proprietary, commercially-sensitive information that are treated as such by OJC. Respondents have not objected to this information receiving confidential treatment.

2. OJC’s Company Valuations. This is the sole category of information from Mr. Berning’s deposition and his expert report that OJC asserts should remain confidential. Again, OJC is a privately-held company and the prior, private valuations done for its business are not public information and constitute proprietary, commercially-sensitive information that are treated as such by OJC. Moreover, OJC did not focus on Mr. Berning’s “market Value of Lost Revenue” method of calculating OJC’s damages in its final briefing, and therefore the only detailed references to this category of information are in Mr. Berning’s report and deposition, not in OJC’s final briefing. Respondents have not objected to this information receiving confidential treatment.

OJC’s revisions to its confidentiality designations will be reflected in the parties’ revised public and confidential versions of their appendices, and the revised tables listing confidential

⁴ OJC otherwise maintains its request for confidential treatment on the remainder of its documents identified as such in its original chart and motion, *i.e.*, Exs. 100-104, 108-110.

requests by bates number for material a party contends is entitled to confidential treatment. These documents will be revised and submitted to the Commission once Maersk provides OJC its revised confidential designations.

Dated: March 10, 2023

Respectfully Submitted,

By: /s/ Shlomo Y. Hecht
Shlomo Y. Hecht
Florida State Bar No.: 127144
Shlomo Y. Hecht, P.A.
4538 NW 85th Ave.
Coral Springs, FL 33065
Phone: (954) 861-0025
Email: sam@hechtlawpa.com
Attorneys for OJ Commerce, LLC

RE: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Sud North America, Inc.

Rohde, Wayne <WRohde@cozen.com>

Fri 3/3/2023 2:35 PM

To: Aaron Davis <davis@valhallalegal.com>; David W. Marston Jr <david.marston@morganlewis.com>; Jawad B. Muaddi <jawad.muaddi@morganlewis.com>; Sobotta, Kathryn <KSobotta@cozen.com>; Rachele M. Barstow <rachele.barstow@maersk.com>

Cc: Jacob Weiss <jacob@ojcommerce.com>; Sam Hecht <sam@hechtlawpa.com>

Aaron: Thank you for your email. As previously advised, we won't be able to get to this until March 8/9.

We will submit our designations as soon as we are able.

Regards,



Wayne R. Rohde

Member | Cozen O'Connor

1200 19th Street NW | Washington, DC 20036

P: 202-463-2507 F: 202-640-5912

[Email](#) | [Bio](#) | [LinkedIn](#) | [Map](#) | [cozen.com](#)

From: Aaron Davis <davis@valhallalegal.com>

Sent: Friday, March 3, 2023 1:18 PM

To: Rohde, Wayne <WRohde@cozen.com>; David W. Marston Jr <david.marston@morganlewis.com>; Jawad B. Muaddi <jawad.muaddi@morganlewis.com>; Sobotta, Kathryn <KSobotta@cozen.com>; Rachele M. Barstow <rachele.barstow@maersk.com>

Cc: Jacob Weiss <jacob@ojcommerce.com>; Sam Hecht <sam@hechtlawpa.com>

Subject: Re: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Sud North America, Inc.

****EXTERNAL SENDER****

Counsel,

I am following up on my request for Respondents' amended confidentiality designations for OJC's revised appendices. OJC has not only done what the ALJ ordered with respect to its deposition transcripts, but it has also reevaluated its other confidentiality designations with an eye towards further transparency given the enormous public interest in this case. Although there exist grounds to maintain the confidentiality of much of its information, OJC will be withdrawing its confidentiality designations on over 95% of its deposition testimony. OJC will also be withdrawing the vast majority of its confidentiality designations in its expert reports and declarations on damages. OJC urges Respondents to take similar action, de-designate the vast majority of its deposition testimony, and other appendix materials as well.

Here is a list of documents for which OJC is withdrawing its request for confidential treatment, with exceptions noted:

- CX 415-459, Ex. 200 – Expert Report of Richard C. Berning, *except for CX430-432*

Ex. A

- CX 460-465, Ex. 201 – Supplemental Expert Report of Richard C. Berning
- CX 466-477, Declaration of Jacob Weiss
- Ex. 105, Spreadsheet entitled Xeneta Trends Graph 2022-08-23 20_19
- Ex. 106, Spreadsheet entitled Maersk_Financials
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- RX 966-1028, Deposition of Jacob Weiss, **except for RX 1002, 24:14 – 25:22; RX 1003, 26:9-12**
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Please provide Respondents' revised confidentiality designations by Monday, March 6, 2023. If not received by then, OJC will move ahead with informing the Presiding Officer of OJC's revised designations.

Thank you,
 Aaron W. Davis, Esq.
 VALHALLA LEGAL, PLLC
 Phone: (763) 957-2397
davis@valhallalegal.com

From: Rohde, Wayne <WRohde@cozen.com>
Sent: Monday, February 27, 2023 7:18 AM
To: Aaron Davis <davis@valhallalegal.com>; David W. Marston Jr <david.marston@morganlewis.com>; Jawad B. Muaddi <jawad.muaddi@morganlewis.com>; Sobotta, Kathryn <KSobotta@cozen.com>; Rachelle M. Barstow <rachelle.barstow@maersk.com>
Cc: Jacob Weiss <jacob@ojcommerce.com>; Sam Hecht <sam@hechtlawpa.com>
Subject: RE: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Sud North America, Inc.

Counsel: Thank you for your February 24 email. Due to scheduling conflicts, we will not be in a position to provide you with the requested designations by February 27. We will provide them as soon as we are able, likely on or about March 8 or 9.

Regards,



Wayne R. Rohde
 Member | Cozen O'Connor
 1200 19th Street NW | Washington, DC 20036
 P: 202-463-2507 F: 202-640-5912
[Email](#) | [Bio](#) | [LinkedIn](#) | [Map](#) | cozen.com

From: Aaron Davis <davis@valhallalegal.com>
Sent: Friday, February 24, 2023 5:38 PM
To: David W. Marston Jr <david.marston@morganlewis.com>; Jawad B. Muaddi <jawad.muaddi@morganlewis.com>; Sobotta, Kathryn <KSobotta@cozen.com>; Rachelle M. Barstow

<rachelle.barstow@maersk.com>; Rohde, Wayne <WRohde@cozen.com>

Cc: Jacob Weiss <jacob@ojcommerce.com>; Sam Hecht <sam@hechtlawpa.com>

Subject: Re: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Sud North America, Inc.

****EXTERNAL SENDER****

Counsel,

To most promptly and efficiently comply with the Judge's Order on Motions for Confidentiality Treatment, please provide by Tuesday, February 28, 2023, your list of Appendix page citations, with specific pages and lines from each of Respondents' witness transcripts from Complainant's Appendix and Supplemental Appendix that Respondents contend should remain designated confidential. Complainant will supply a similar list of Appendix page citations, with specific pages and lines from each of Complainant's witness transcripts from Respondents' Appendix on that same day. Please confirm.

Thank you,
Aaron W. Davis, Esq.
VALHALLA LEGAL, PLLC
Phone: (763) 957-2397
davis@valhallalegal.com

From: Judges <Judges@FMC.gov>

Sent: Friday, February 24, 2023 11:10 AM

To: Aaron Davis <davis@valhallalegal.com>; David W. Marston Jr <david.marston@morganlewis.com>; Jacob Weiss <jacob@ojcommerce.com>; Jawad B. Muaddi <jawad.muaddi@morganlewis.com>; Kathryn Sobotta <ksobotta@cozen.com>; Rachelle M. Barstow <rachelle.barstow@maersk.com>; Shlomo Y Hecht <sam@hechtlawpa.com>; Wayne R. Rohde (<wrohde@cozen.com>) <wrohde@cozen.com>

Subject: Re: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Sud North America, Inc.

Good afternoon,

Please see attached an "Order on Motions for Confidential Treatment," issued by the Honorable Erin M. Wirth, being served today in Docket No. 21-11. A brief statement acknowledging receipt of the order would be greatly appreciated.

Sincerely,

Office of Administrative Law Judges
Federal Maritime Commission
800 North Capitol St., NW
Washington, D.C. 20573
Tel: 202-523-5750
Email: judges@fmc.gov

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