

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

OJ COMMERCE, LLC, *Complainant*

v.

HAMBURG SÜDAMERIKANISCHE DAMPFSCIFFFAHRTS-
GESELLSCHAFT A/S & CO. KG AND HAMBURG SUD NORTH
AMERICA, INC., *Respondents*.

DOCKET NO. 21-11

Served: January 31, 2023

ORDER OF: Erin M. WIRTH, *Chief Administrative Law Judge*.

ORDER TO CORRECT FILINGS

The parties filed briefs in this proceeding, however, the briefs must be corrected as they do not mark confidential material in the confidential versions and therefore do not comply with the initial order. The filings at issue are: (1) Complainant’s brief and proposed findings of fact, filed November 9, 2022; (2) Respondents’ brief, proposed findings of fact, and reply to Complainant’s proposed findings of fact, filed December 8, 2022; and (3) Complainant’s reply brief and responses to Respondents’ filings of facts, filed December 23, 2022. The appendices accompanying these filings require clarification, however they do not have to be refiled in their entirety at this time.

On December 14, 2021, an initial order was issued which provided detailed information about filing confidential material. If confidential information was filed, a “motion justifying confidential treatment” was required which showed “good cause by demonstrating that the information is a trade secret or other confidential research, development, or commercial information.” Initial Order at 5 (citing 46 C.F.R. § 502.141(j)(1)). Regarding marking confidential information, the initial order stated:

Marking confidential material – In the confidential version, confidential information must be conspicuously and clearly marked on each page, for example by highlighting or braces. The public version must indicate on the cover page and on each affected page “Public version – confidential materials excluded.” The public version must clearly indicate any omissions, for example with blackout or braces, and its pagination and depiction of text on each page must be identical to that of the confidential version. For example, the confidential filing may read: “On January 1, 2010, Complainant entered into a {25} year lease with respondent for a monthly rent of {\$1000}.” The public version would read: “On January 1, 2010, Complainant entered into a {█} year lease with Respondent for a monthly rent of {█}.”

Initial Order at 5. Also, as described in Commission Rule 502.5, the first page of the confidential version of a filing must be marked “Confidential-Restricted.” This includes appendices. Public versions should clearly be marked on the first page as “Public.”

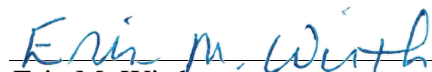
The parties consistently failed to conspicuously and clearly mark confidential information in the confidential versions of their briefs and proposed findings of fact. This creates delays in preparing an initial decision and risks the inadvertent disclosure of confidential information. To ensure that the material is properly marked, the parties must resubmit the confidential versions of the briefs, proposed findings of facts, and responses to proposed findings of facts with confidential material clearly marked, for example by highlighting in a color not otherwise used in the filings. No changes to the content may be made and the pagination must remain the same. The confidential versions should be identical to the public versions, except for (1) highlighting or marking text in the confidential version showing the text redacted in the public version and (2) the cover page indicating whether it is a confidential or public version.

Regarding the appendices, while these do not need to be resubmitted, a list identifying confidential pages requested is required to ensure clarity regarding the material for which confidential treatment is sought. Complainant and Respondents are each required to submit a list, ordered by bates number, that includes the bates ranges of all documents in their respective appendices for which confidential treatment is being requested. Additional columns should indicate: (1) the document’s description, (2) whether confidential treatment is being requested for the entirety of the bates range or only for certain redacted material as indicated in the public version provided, and (3) whether the relevant pages in the confidential version of the appendix are currently marked as confidential. If a particular bates range in an appendix does not include any confidential information, it does not need to be listed.

Example: [Party Name] Appendix - Confidential Request Bates List

<i>Bates Range</i>	<i>Description</i>	<i>Classification Requested for</i>	<i>Current Confidential Version Marking</i>
B001-B098	Depo. Transcript of [Name]	Redacted material indicated	Pages marked as Confidential
B120-B123	[Company] Invoice dated [dd/mm/yy]	Entire page range	No Confidential markings

The parties must file properly marked confidential versions of the briefs, proposed findings of facts, and responses to proposed findings of facts, as well as the appendix confidential request list by February 15, 2023. No changes will be permitted to the public versions of filings – only the confidential versions and the list may be submitted.


Erin M. Wirth
Chief Administrative Law Judge