

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: February 24, 2023

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

ORDER ON MOTIONS FOR CONFIDENTIAL TREATMENT

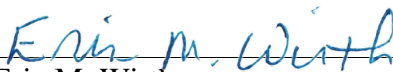
On December 8, 2022, Respondents filed a motion for confidential treatment of certain materials included or referred to in Respondents' brief, proposed findings of fact, responses to Complainant's findings of fact, and appendix. On February 6, 2023, Complainant filed a motion justifying confidential treatment of certain material included or referred to in Complainant's brief, reply brief, proposed findings of fact, responses to Respondents' proposed findings of fact, appendix, and appendix-supplement.

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 4-5 (citing 46 C.F.R. § 502.141(j)(1)). In addition, Commission Rule 5 states that: "Confidential information in exhibits should be marked as specified above. If marking within the text is not feasible, individual pages may be replaced in the public version with a page indicating that confidential material is excluded. *Entire exhibits should not be excluded, only those pages containing confidential material.*" 46 C.F.R. § 502.5(a)(2)(iii) (emphasis added).

The parties submitted over 1700 pages of exhibits in appendices and request confidentiality for certain pages in these appendices. While many of these requests appear reasonable, the parties requested confidentiality for significant portions of the depositions submitted. Reviewing these depositions, it is not always clear what material within them qualifies for confidential treatment. For example, there appears to be no confidential information contained in CX 95-96, RX 992-995, RX 1026, and RX 1018. The parties will, therefore, be required to review the requests for confidentiality for all of the deposition transcripts included in their respective appendices. The parties do not need to review other portions of their appendices, briefs, or proposed findings of fact and responses thereto.

The parties should supplement their motions for confidential treatment to specifically identify the information in depositions which they seek to keep confidential and the basis for that request. The parties should only request confidential treatment for the portions of the deposition pages which include confidential material. If the parties are able to narrow their requests, they should file (1) a revised table listing confidential requests by bates number for material they contend are entitled to confidential treatment and (2) revised public versions of the appendices. Both the revised confidential request table and the revised public appendices must be resubmitted in whole, and these new versions will replace the previous versions submitted. The parties are also encouraged to file revised confidential appendices that clearly mark the material in the depositions that they contend are entitled to confidential treatment.

No changes to the content of the appendices may be made and the pagination must remain the same. The parties should submit their supplemental motions and revised filings by March 14, 2023. These additional filings will help ensure that no material that should be entitled to confidential treatment is inadvertently released.



Erin M. Wirth
Chief Administrative Law Judge