

BEFORE THE
FEDERAL MARITIME COMMISSION

OJ COMMERCE, LLC,)	
)	
Complainant,)	
)	
v.)	
)	
HAMBURG SÜDAMERIKANISCHE)	DOCKET NO. 21-11
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S)	
& CO. KG)	
)	
and)	
)	
HAMBURG SUD NORTH AMERICA, INC.)	
)	
Respondents.)	
)	

**RESPONDENTS' MOTION FOR
CONFIDENTIAL TREATMENT OF CERTAIN MATERIALS**

Pursuant to 46 C.F.R. §§502.141(j)(1) and 502.5(b), respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co. KG (“HSDG”) and Hamburg Sud North America, Inc. (“HSNA” and, together with HSDG, “Respondents”) hereby move for confidential treatment of certain materials included with or referred to in Respondents’ Brief, Proposed Findings of Fact, Response to Complainant OJ Commerce’s Proposed Findings of Fact, and Appendix.

On April 26, 2022, the Presiding Officer issued an Order Entering Confidentiality Stipulation and Proposed Protective Order, which Order was amended by the June 22, 2022 Order Entering Amended Confidentiality Stipulation and Protective Order (“Confidentiality Order”). The Confidentiality Order provides for the confidential treatment of certain materials produced in discovery in this proceeding (“Confidential Information”). The Confidentiality Order

contemplates the use of Confidential Information in connection with briefing on the merits and requires that Confidential Information disclosed to the Commission and the Administrative Law Judge in papers, including exhibits, shall be labeled in accordance with 46 CFR §502.5 and that “(t)he ALJ shall order an appropriate procedure for the use of the Confidential Information at or during the course of the Proceeding pursuant to 46 CFR §502.141(j)(1).”

Pursuant to the foregoing, the Respondents move for the continued confidential treatment of the categories of evidence set forth below, for the reasons indicated.

1. Respondents produced several witnesses that testified regarding non-public financial, marketing, and business activities of the Respondents. These witnesses include Juergen Pump, Kevin Li, Michael Gast, and Andrea Casanova. Some or all of their testimony and/or documents about which they were questioned were designated as “Confidential” or “Confidential – Attorneys’ Eyes Only” (“AEO”) pursuant to the Confidentiality Order.

2. Complainant OJ Commerce produced several witnesses. One of those witnesses, Jacob Weiss, testified regarding non-public financial, marketing, and business activities of Complainant. Although Complainant did not designate any portion of the Weiss Transcript or exhibits thereto as confidential at the time of the deposition or thereafter, Complainant appears to have treated certain testimony and documents as confidential in filing its brief (despite the lack of a motion for confidential treatment). Respondents do not object to such treatment, and consider that Complainant has in effect designated portions of the Weiss Transcript and certain exhibits thereto were designated as “Confidential” or “AEO.”

3. Complainant’s expert witness, Mr. Richard Berning, testified regarding non-public financial and business activities of Complainant. Complainant has designated the entirety of the

transcript of Mr. Berning's deposition as Confidential. Several of the exhibits thereto have also been designated as "Confidential" or "AEO." Respondents do not object to such treatment.

4. Certain documents produced by Respondents contain non-public, commercially sensitive information about prices, pricing policies and strategies, marketing strategy, and customer relations. These documents were designated as "Confidential" or "AEO."

Pursuant to Rule 502.5(b), Respondents have filed with this motion a Confidential-Restricted version of their Brief, Proposed Findings of Fact, Response to Complainant OJ Commerce's Proposed Findings of Fact, and Appendix. The Brief, Proposed Findings of Fact, Response to Complainant's Proposed Findings of Fact are designated as Confidential in their entirety, pending filing of the public version of those documents. Confidential information is referenced throughout these documents, making designation of individual pages burdensome.

Documents in the Appendix which were produced in discovery and designated as Confidential or AEO at the time of production bear the designation assigned at the time of production. Other documents and deposition transcripts included in Respondents' Appendix that contain material designated as Confidential, AEO, or both have been labelled as "Confidential" in the Appendix.

A public version of the Brief, Proposed Findings of Fact, Response to Complainant OJ Commerce's Proposed Findings of Fact, and Appendix from which Confidential Information will be redacted will be filed within three (3) business days as required by Rule 502.5.

For the foregoing reasons, Respondents request that the material so designated in the Respondents' Reply Brief, Proposed Findings of Fact, Response to Complainant OJ Commerce's

Proposed Findings of Fact, and Appendix, be kept confidential.

Respectfully submitted,

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December 8, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 8th day of December, 2022, the foregoing Motion was served via email on:

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/s/Wayne R. Rohde

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