

**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 OJ COMMERCE, LLC'S MOTION FOR EXPEDITED RELIEF
CONCERNING EXTENSION OF TIME FOR LIMITED DISCOVERY TO ADDRESS
MATTERS RULED ON IN THE PRESIDING OFFICER'S AUGUST 31, 2022 ORDER**

This Honorable Court issued its Order on August 31, 2022, ordering within seven calendar days the:

1. production of additional documents responsive to OJC RFP 26 about pricing that have been withheld by Respondents since April 7, 2022 – when their original response to OJC RFP 26 was due – and again since June 29, 2022, when the Court first ordered their production;
2. removal of attorney work product protection from the emails clawed back by Respondents and the reproduction of those emails to OJC; and
3. identification of Maersk management who would have information regarding pricing decisions.

As it stands, the discovery deadline is set for September 16, 2022, which is just seven business

days from the deadline for Respondents to produce 1-3 above, not to mention the other discovery that is still outstanding from them. And on at least two of those days, there are already depositions scheduled to be taken.

Respondents' withholding of pricing information and documents for months has prevented OJC from not only possessing and studying the information, but also from deposing any witnesses about it. Likewise, OJC and its damages expert have also been prevented from being able to complete their analyses. Indeed, OJC has not had the critical pricing data from the beginning of its Service Contract period (June 23, 2020) through the present – which is the time frame most relevant to OJC's damages concerning retaliation, unreasonable practices, and refusal to deal – because Respondents have withheld it. The Court has acknowledged that “this information is ... highly relevant to the claims in this proceeding, including the damages calculation, and the client would benefit from being able to discuss this information with its attorney.” (Order dated August 31, 2022, p. 8.)

OJC has also been prevented by Respondents from deposing any witnesses about the content of the emails that they wrongly labeled work product. Therefore, in order to alleviate the prejudice that OJC has suffered because of Respondents' discovery deficiencies, and to allow OJC and its damage experts to finalize their analyses and reports with the “highly relevant” information, OJC respectfully requests that the Court grant the following relief on an expedited basis:

- extend the discovery deadline 28 days until October 14, 2022 for OJC to conduct discovery limited to topics related to pricing, damages, and other information and documents withheld from OJC;
- extend the deadline for OJC's damage report until September 16, 2022, with allowance for OJC to supplement its report based on additional information produced by and testimony

taken from Respondents and their witnesses; and

- extend the briefing deadlines 28 days so that OJC has the benefit of including all pertinent information.

OJC also requests that if the Court cannot rule on this matter by September 8, 2022, that the Court lengthen the extension accordingly to allow for additional days to complete the limited discovery.

CERTIFICATION OF CONFERRING WITH OPPOSING COUNSEL

Prior to filing this Motion, OJC conferred with Respondents' counsel about the extension sought in this Motion. Respondents stated that they were agreeable to the proposal in principle, but that they do not waive any argument about substantive discovery issues and that they do not agree that OJC has suffered prejudice.

Dated: September 1, 2022

Respectfully Submitted,

By: /s/ Shlomo Y. Hecht
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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon all of Respondents' counsel of record by emailing a copy to each such person.

Dated: September 1, 2022

By: /s/ Shlomo Y. Hecht
Shlomo Y. Hecht