

**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 RESPONSE TO NOTICE OF RESPONDENTS’ INTENT TO
OPPOSE ITS MOTION FOR EXPEDITED RELIEF CONCERNING EXTENSION OF
TIME FOR LIMITED DISCOVERY**

OJC responds to Respondents’ “Notice of Intent to Oppose” that they “hereby provide notice that they do not consent to Complainant’s Motion for Expedited Relief of Time for Limited Discovery [‘Motion’] and that they intend to file an opposition to the motion on or before September 8, 2022.” (Notice at 1.) Nowhere in its Motion did OJC contend that Respondent consented to the Motion, or that the Motion was unopposed. Indeed, OJC stated that:

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.

(Motion at 3.) This statement is consistent with and practically verbatim of the email exchanges between counsel prior to the filing of the Motion (attached as Exhibit A), wherein OJC’s counsel explicitly clarified what the basis for the Motion was, *i.e.*, the prejudice caused to OJC by

Respondents withholding responsive information. (Ex. A at 1.)

As Respondents noted in their response to the above email, they disagreed with the fundamental basis for OJC's Motion, yet they still contended that "[a]s previously advised, we agree in principal to the extension, subject to review of proposed motion." (*Id.*) It is nonsensical to think that had OJC provided a copy of its Motion to Respondents before filing, it would have resulted in their consent, as the basis for the Motion was clearly told to Respondents during the email exchanges and Respondents objected. OJC's Motion, filed the next day, mirrors the substance of its emails to Respondents' counsel.

OJC's Motion was two pages of text. Instead of drafting their misleading two-page "Notice," Respondents could have used that time to file their opposition so the Motion could be decided promptly. Respondents' tactic of contradictorily "agree[ing] in principal to the extension" while simultaneously stating that they do not agree with the basis for the extension smacks of just trying to further delay the filing of OJC's Motion and resolution of the issue. And so does Respondents' stated intent to let another week go by before they intend to respond to OJC's two-page Motion.

Dated: September 1, 2022

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

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

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>

Wed 8/31/2022 2:09 PM

To: Aaron Davis <davis@valhallalegal.com>; david.marston@morganlewis.com <david.marston@morganlewis.com>

Cc: Rachelle M Barstow <rachelle.barstow@maersk.com>; Sam Hecht <sam@hechtlawpa.com>; Sobotta, Kathryn <KSobotta@cozen.com>; jawad.muaddi@morganlewis.com <jawad.muaddi@morganlewis.com>

Counsel: As previously advised, we agree in principle to the extension, subject to review of proposed motion.

We do not agree that Complainant has suffered prejudice, or otherwise. Our point with respect to expert reports is simply that substantive arguments regarding discovery issues can and should be addressed after the motion for an extension has been filed, and that the motion for an extension does not waive any substantive argument that either party may have on any of those issues.

Regards,



Wayne R. Rohde

Member | Cozen O'Connor

1200 19th Street NW | Washington, DC 20036

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From: Aaron Davis <davis@valhallalegal.com>

Sent: Wednesday, August 31, 2022 3:29 PM

To: Rohde, Wayne <WRohde@cozen.com>; david.marston@morganlewis.com

Cc: Rachelle M Barstow <rachelle.barstow@maersk.com>; Sam Hecht <sam@hechtlawpa.com>; Sobotta, Kathryn <KSobotta@cozen.com>; jawad.muaddi@morganlewis.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:



Just to be very clear, Complainant is not looking for a blanket opening of discovery past September 16. Instead, Complainant is looking to extend the discovery deadline -- and the expert disclosure dates -- **only** to undue the prejudice that Complainant has suffered. This extra time will allow for the documents and information that were withheld from Complainant to be received and reviewed by OJC, depositions taken, and reports generated and served that could not have been done before because of Respondents' withholding. In essence, based on your contention below, Respondents object to Complainant not serving an initial expert report when Respondents has, according to the Presiding Officer, wrongfully withheld critical pricing information from Complainant for months. We can't imagine that the Presiding Officer will find that reasoning compelling.

Please let us know Respondents' position with this clarification. Complainant intends to file its motion yet today given the impending deadlines and time sensitive nature of the issues, so please advise ASAP.

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

From: Rohde, Wayne <WRohde@cozen.com>
Sent: Wednesday, August 31, 2022 12:45 PM
To: Aaron Davis <davis@valhallalegal.com>; david.marston@morganlewis.com
<david.marston@morganlewis.com>
Cc: Rachelle M Barstow <rachelle.barstow@maersk.com>; Sam Hecht <sam@hechtlawpa.com>; Sobotta, Kathryn
<KSobotta@cozen.com>; jawad.muaddi@morganlewis.com <jawad.muaddi@morganlewis.com>
Subject: RE: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft
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Counsel: Respondents are agreeable to the proposal in principle, with final agreement subject to review of a draft of the motion seeking the extension.

Please note that we do not agree that OJC can submit a rebuttal expert report from a damages expert given that OJC has the burden of proof on that issue and did not serve an initial expert report by the August 5 deadline. That said, we do not oppose the requested extension, reserving our rights to challenge any expert report OJC may serve that is not a true rebuttal report.

Regards,



Wayne R. Rohde
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From: Aaron Davis <davis@valhallalegal.com>
Sent: Wednesday, August 31, 2022 11:59 AM
To: david.marston@morganlewis.com; Rohde, Wayne <WRohde@cozen.com>
Cc: Rachelle M Barstow <rachelle.barstow@maersk.com>; Sam Hecht <sam@hechtlawpa.com>; Sobotta, Kathryn
<KSobotta@cozen.com>; jawad.muaddi@morganlewis.com
Subject: Fw: Docket No. 21-11 - OJ Commerce, LLC v. Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft
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****EXTERNAL SENDER****

Counsel,

Given today's Order and the timing stated therein for production of documents, including but not limited to the clawed-back documents and those responsive to OJC RFP 26, and pricing witness identities (and then further depositions), Complainant asserts it is necessary to extend the case deadlines, including the discovery deadline 28 days until October 14, 2022, and the deadline for rebuttal reports 14 days until September 16, 2022, along with the other case deadlines. Please advise by 3:00 p.m. today whether Respondents consents to and/or will join in that proposal, or whether they will object. If the latter, please provide the bases.

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

From: Judges <Judges@FMC.gov>

Sent: Wednesday, August 31, 2022 9:20 AM

To: Aaron Davis <davis@valhallalegal.com>; David W. Marston Jr <david.marston@morganlewis.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>; 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 morning,

Please see attached an "Order on Respondents' Motions to Partially Dismiss and for a Protective Order and Complainant's Motion for Expedited Relief," 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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