

**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.

**JOINT MOTION FOR ENTRY OF CONFIDENTIALITY STIPULATION
AND PROPOSED PROTECTIVE ORDER**

Complainant OJ Commerce, LLC (“OJC”) and Respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Süd North America, Inc. (together “HS” and, collectively with OJC, the “Parties”) hereby move the Commission to enter the Confidentiality Stipulation and Proposed Protective Order executed by the Parties and attached hereto as Attachment A. The Parties have jointly drafted the attached and agree to be bound by all the terms contained therein.

WHEREFORE, the Parties request that the Commission grant this motion for entry of the submitted Confidentiality Stipulation and Proposed Order of Confidentiality.

Respectfully submitted,

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A/S & CO KG and HAMBURG SUD NORTH
AMERICA, INC.

DATED: April 25, 2022

ATTACHMENT A

BEFORE THE
FEDERAL MARITIME COMMISSION

OJ COMMERCE, LLC,

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HAMBURG SÜDAMERIKANISCHE
DAMPFSCHIFFFAHRTS-GESELLSCHAFT A/S & CO KG

and

HAMBURG SUD NORTH AMERICA, INC.,

Respondents.

CONFIDENTIALITY STIPULATION AND PROPOSED PROTECTIVE ORDER

WHEREAS, the above-captioned Federal Maritime Commission (the “Commission”) proceeding (the “Proceeding”) is likely to involve production of trade secrets, valuable commercial information, personal information, business and financial proprietary information, disclosure of which and use for any purpose other than in this Proceeding would cause specific prejudice or harm, such as annoyance, embarrassment, oppression, or undue burden or expense;

IT IS HEREBY STIPULATED AND AGREED, in good faith, by the respective undersigned counsel for Complainant OJ Commerce, LLC (“OJC”) and Respondents Hamburg Südamerikanische Dampfschiffahrts-Gesellschaft A/S & Co KG and Hamburg Süd North America, Inc. (together “HS” and, collectively with OJC, the “Parties”) that this Confidentiality Stipulation and Proposed Protective Order shall be applicable to this

Proceeding and shall govern all hard copy and electronic information, documents, and materials produced or disclosed in relation to this Proceeding that include “Confidential Information” (defined below), including any information copied or extracted therefrom; all copies, excerpts, summaries, or compilations thereof; and testimony, conversations, or presentations by Parties or their counsel that include Confidential Information. These materials shall be referred to hereinafter as “Proceeding Material.” A person (including a Party or any person that is not a Party) that produces or discloses such information, documents, or materials in this Proceeding shall be referred to hereinafter as a “Producing Party.” Any Party to this Proceeding who receives Proceeding Material shall be referred to hereinafter as “Receiving Party.”

Definition of Confidential Information

1. Each Producing Party shall have the right to designate information or Proceeding Material it produces as “Confidential” when such information or Proceeding Material reveals or reflects:
 - a. unpublished business, financial, research, or marketing data, methods or plans, internal emails, memos, trade secrets, customer information, customer negotiations or operational or technical information;
 - b. private or confidential personal information;
 - c. other information of a nonpublic nature that the Producing Party reasonably and in good faith believes to be commercially, competitively, or personally sensitive, proprietary in nature, or otherwise entitled to protection under 46 C.F.R. § 502.141(j)(1) of the Commission’s Rules

of Practice and Procedure, or

- d. information that is not publicly known, that is not in the public domain, or that was previously disclosed to the Receiving Party in violation of a known obligation to maintain confidentiality or restrict disclosure.

2. Information or Proceeding Material designated as “Confidential” shall be referred to hereinafter as “Confidential Information.”

General Provisions

3. All Producing Parties designating Proceeding Material as Confidential shall have a bona fide need for confidential treatment of information including trade secret or other confidential research, development, or commercial information pursuant to 46 C.F.R. § 502.141(j)(1)(vii).

4. Proceeding Material, including Confidential Information disclosed by a Producing Party, shall be used solely in this Proceeding, and shall not be used by the Receiving Party for any business, commercial, competitive, personal, or other purpose.

5. The distribution and dissemination of any information or Proceeding Material designated as Confidential is limited to the following persons:

- a. outside counsel of record for any Party in this Proceeding including necessary paralegal, secretarial, and clerical personnel assisting counsel;
- b. any officer, manager, Board Member, or employee (including an in-house attorney) of either Party who may be consulted regarding this Proceeding;
- c. consultants or experts who are not employed by, or otherwise affiliated with, a Party in this Proceeding, and who are retained by a Party or its

- counsel to assist in the preparation of discovery, and/or this Proceeding;
- d. vendors retained by any of the Parties for the purpose of assisting with discovery, litigation support personnel, videographers, stenographers, and clerical employees whose duties and responsibilities require access to such materials;
 - e. Chief Administrative Law Judge Wirth (the “ALJ”), the Commission, and Commission staff and personnel; and
 - f. any person who created or previously received that Proceeding Material based on the face of that Proceeding Material if necessary to allow deposition of that person.

6. All persons authorized to receive and view Confidential Information shall take reasonable steps to secure any Confidential Information against unauthorized or inadvertent disclosure, and shall limit access to Confidential Information to those persons identified above in Paragraph 5.

7. Persons identified in Paragraphs 5(c) and 5(d) shall read and agree to the terms of this Confidentiality Stipulation and Proposed Protective Order, and sign a Certification form annexed at Appendix A, before receiving or viewing any information or Proceeding Material designated Confidential by any Producing Party other than the Party that retained such person.

8. A Party which learns that, by inadvertence or otherwise, it has disclosed Confidential Information in breach of this Confidentiality Stipulation and Proposed Protective Order, shall promptly: (a) notify the ALJ and the Producing Party of such Confidential Information of the unauthorized disclosures, (b) use its best efforts to retrieve all copies of the

disclosed Confidential Information, (c) inform those to whom unauthorized disclosures were made of all of the terms of this Confidentiality Stipulation and Proposed Protective Order, and (d) request such person or persons to execute the Certification form annexed at Appendix A. Thereafter, that Party shall take necessary steps to prevent further disclosures in breach of any of the provisions of this Confidentiality Stipulation and Proposed Protective Order.

9. The Parties shall either destroy all Proceeding Material, including Proceeding Material designated Confidential, received from other Producing Parties or return such Proceeding Material to the original Producing Party at that Producing Party's expense within forty-five (45) days after the final conclusion of this Proceeding, including exhaustion of all appeals.

10. Unless otherwise ordered or agreed to by a Producing Party with respect to that Producing Party's Proceeding Material, this Confidentiality Stipulation and Proposed Protective Order shall remain in force after the final conclusion of this Proceeding not subject to further appeal for a period of two years.

Privileged and Protected Material

11. The Producing Parties preserve any and all privileges and exemptions, including but not limited to the attorney-client privilege and attorney work product doctrine, which apply to any and all Proceeding Material.

12. Inadvertent disclosure shall not be deemed as a waiver of any privilege or exemption in accordance with the provisions on inadvertent disclosure in the Federal Rules of Civil Procedure and Federal Rules of Evidence.

13. Within forty-eight (48) hours of the receipt of a written notice from a Producing Party claiming inadvertent disclosure of privileged or protected Proceeding Material, the

Receiving Party shall return immediately any Proceeding Material deemed privileged by such written notice, and the Receiving Party shall also delete and/or destroy any copies of such privileged or protected Proceeding Material inadvertently produced by the Producing Party identified in such written notice, subject to and without waiving the Receiving Party's rights to challenge the disclosures as inadvertent or the designation as privileged or protected in accordance with the provisions on inadvertent disclosure in the Federal Rules of Civil Procedure and Federal Rules of Evidence.

Use of Confidential Information in Commission Hearings

14. Confidential Information disclosed to the ALJ and/or Commission in papers, including exhibits, shall be labeled in accordance with 46 C.F.R. § 502.5.

15. The provisions of this Confidentiality Stipulation and Proposed Protective Order shall govern the Proceeding, including discovery, and shall not affect the conduct of the ALJ. The ALJ shall order an appropriate procedure for the use of the Confidential Information at or during the course of the Proceeding pursuant to 46 C.F.R. §502.141(j)(1).

Designating Protected Material

16. Documents containing Confidential Information as defined in Paragraphs 1 and 2 shall be marked with the word "CONFIDENTIAL" on each page of that document that contains such information. Parties shall take reasonable steps to ensure that copies of such documents marked "Confidential," and any extracts, summaries, and compilations therefrom, shall also be so marked.

17. Where a Producing Party produces Proceeding Material in electronic form, it may make the confidentiality designation by a letter that identifies the Bates Numbers of the electronic documents or that adequately describes the electronic documents that contain

Confidential Information. Electronic files and documents produced in native format may be marked by using "CONFIDENTIAL" in the file names or on placeholders in the Producing Party's document production.

18. Depositions may be designated as Confidential Information by (i) stating orally on the record that the information is Confidential Information on the day the testimony is given, or (ii) sending written notice designating testimony as Confidential Information within ten (10) days after receipt of the official deposition transcript or deposition copy. Unless otherwise agreed by the Producing Party, a transcript shall be treated as Confidential until the expiration of the ten-day period. Where the Producing Party is not present at a deposition, any party using Confidential Information at the deposition shall provide the deposition transcript to the Producing Party as soon as it is available, and that Producing Party will be afforded the same ten-day period after receipt to provide notice of designating the testimony as Confidential Information.

19. Any Producing Party that designates information or Proceeding Material for protection under this Confidentiality Stipulation and Proposed Protective Order must take care to limit any such designation to specific material that qualifies for such protection.

20. Once the Receiving Party has notice that the Producing Party has designated information or Proceeding Material as Confidential Information, the Receiving Party shall treat the designated information or Proceeding Material as Confidential Information in accordance with this Confidentiality Stipulation and Proposed Protective Order regardless of how much time has passed since the Confidential Information was first disclosed or produced.

Challenging Confidential Designations

21. Any Party may challenge a designation information or Proceeding Material as “Confidential” at any time that is consistent with the then-operative Scheduling Order in the Proceeding.

22. The Party challenging the designation must object with particularity and give a complete explanation by letter to the Producing Party’s counsel of record in the Proceeding.

23. If the challenging Party and the Producing Party are unable to resolve the challenge, then the Producing Party may move the ALJ for a protective order or the objecting Party’s counsel may move the ALJ to challenge the designation. The Proceeding Material, however, shall continue to be deemed Confidential Information until the ALJ rules on any such motion. In the event that a Producing Party’s Confidential designation is overruled by the ALJ, the Receiving Party shall be entitled to their attorney’s fees and costs related to obtaining an order de-designating the Confidential designation.

Reservation of Rights

24. The ALJ shall retain jurisdiction over the Parties, even after termination of this Proceeding, regarding any dispute between them on the improper use of Confidential Information disclosed under protection of this Confidentiality Stipulation and Proposed Protective Order.

25. Disclosure of Confidential Information Pursuant to Legal Process. If Confidential Information in the possession of the Receiving Party is subpoenaed or sought pursuant to discovery or other legal process, or is ordered to be disclosed by the Commission, the Party to whom the request has been made or an order directed shall promptly give written

notice of such event to the Producing Party. No Party shall disclose another Producing Party's Confidential Information pursuant to such process without first giving that Producing Party notice for an opportunity to seek an order governing disclosure of the requested Confidential Information. The Producing Party shall have the sole burden of defending against such request.

26. The Parties agree that in the event either Party is ordered or agrees to produce Confidential Information that it considers in good faith to be particularly sensitive and/or to require a greater degree of protection than afforded under the version of this Confidentiality Stipulation and Proposed Protective Order then in effect, they shall consult in good faith regarding the addition of an "Attorneys' Eyes Only" level of confidentiality to this Confidentiality Stipulation and Proposed Protective Order prior to the production of such Confidential Information. If the Parties have a dispute as to whether an "Attorneys' Eyes Only" level of confidentiality is appropriate, the Party seeking the "Attorneys' Eyes Only" level of confidentiality shall file a motion with the ALJ seeking that level of protection and shall bear the burden of showing that such a level of confidentiality is appropriate.

[SIGNATURE PAGE FOLLOWS]

DATED: _____, 2022

STIPULATED AND AGREED:

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A/S & CO KG and HAMBURG SUD NORTH
AMERICA, INC.*

SO ORDERED

Erin M. Wirth
Chief Administrative Law Judge

APPENDIX A

BEFORE THE
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**CERTIFICATION AND AGREEMENT TO BE BOUND BY
CONFIDENTIALITY STIPULATION AND PROPOSED PROTECTIVE ORDER**

I, _____ state as follows:

1. My current business address is: _____
2. My present occupation and/or job description is: _____
3. My present employer is: _____
4. The principal address of my employer is: _____

5. I have carefully read and understand the provisions of the Confidentiality Stipulation and Proposed Protective Order executed by the Parties in the above-referenced Proceeding, and I will comply with all provisions of the Confidentiality Stipulation and Proposed Protective Order.

6. I will hold in confidence and not disclose to anyone not qualified under

Paragraph 5 of the Confidentiality Stipulation and Proposed Protective Order any documents and/or information designated Confidential Information.

7. I will limit use of Confidential Information disclosed to me solely for the purposes of this Proceeding.

8. At the conclusion of the above-referenced Proceeding, I will return all Confidential Information, including any summaries, abstracts, and indices thereof, that come into my possession, or destroy all such Confidential Information.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on _____

Signature

Printed Name: