

**BEFORE THE
FEDERAL MARITIME COMMISSION**

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

**Respondents’ Opposition to Complainant’s
Motion for Expedited Relief Concerning Extension of Time for Limited Discovery**

Respondents Hamburg Sudamerikanische Dampfschiffahrts-Gesellschaft A/S & CO KG and Hamburg Sud North America, Inc. hereby oppose the Motion for Expedited Relief Concerning Extension of Time for Limited Discovery filed by Complainant OJ Commerce, LLC (“OJC”) on September 1, 2022 (the “Motion”).

Introduction

The current procedural schedule calls for discovery in this case to be completed on September 16, 2022. Respondents agree with OJC that the parties will not be able to complete discovery by September 16 and that an extension of time is necessary. However, Respondents do not agree with OJC’s characterization of the reasons an extension is necessary or with the nature of the extension being sought by OJC.

Respondents Do Not Oppose an Extension, With Certain Modifications

Whereas the Motion focuses solely on alleged deficiencies/disputes relating to Respondents' production of documents, there are also disputes with respect to the adequacy of OJC's response to Respondents' discovery requests, as evidenced by Respondents' September 1, 2022 Motion to Compel production of documents. If production is compelled, and depending on the content of the documents produced, Respondents may need to take one or more additional depositions. Thus, Respondents do not oppose an extension of the deadline for the completion of discovery to October 14, 2022, provided that (i) either party may conduct additional depositions during this period; and (ii) this extension applies only to depositions, and does not permit the service of any further requests for production of documents, interrogatories, or requests for admissions.

Respondents also do not oppose an extension of the briefing deadlines proportionate with the extension of the deadline for the completion of discovery.

Respondents Oppose an Extension of Time for OJC to Submit an Expert Report

The Motion requests an extension until September 16, 2022 of the deadline for OJC's damage report. On September 2, 2022 – the day *after* OJC submitted its Motion – OJC served a damages report. Thus, OJC's request to extend the expert report deadline until September 16 appears to be moot. To be clear, Respondents oppose any extension of time for OJC to submit an expert report. Pursuant to the June 29, 2022 Revised Scheduling Order, initial expert reports were due August 5, 2022, and rebuttal reports were due September 2, 2022. OJC did not previously seek an extension of those deadlines. OJC's September 2 expert report – which relies almost entirely on documents from OJC – appears to be primarily, if not exclusively, an affirmative expert report relating to OJC's alleged damages that should have been submitted on August 5, 2022.

Respondents reserve their right to seek to exclude OJC's expert due to its untimely disclosure, or for any other reason, at the appropriate time after depositions have concluded.

Conclusion

Respondents do not oppose an extension of the deadline for the parties to complete discovery in this matter, provided the extension (i) permits both sides to take additional depositions (including but not limited to the deposition of OJC's expert); (ii) does not permit the service of any further discovery requests; and (iii) allows a reasonable time for Respondents' expert to prepare and serve a rebuttal report. Respondents also do not oppose a proportionate extension of the briefing deadlines.

Respondents oppose any extension of time for OJC to submit an expert report and reserve their right to seek to exclude OJC's expert due to its untimely disclosure, or for any other reason, at the appropriate time after depositions have concluded.

Respectfully submitted,

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Dated: September 7, 2022

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 7th day of September, 2022, the foregoing was served via electronic mail on:

Shlomo Y. Hecht
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and

Aaron Davis, Esq.
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A handwritten signature in black ink, appearing to read "Wayne R. Rohde". The signature is written in a cursive style with a horizontal line underneath it.

Wayne R. Rohde