

Before the
FEDERAL MARITIME COMMISSION

Docket No. 24-13

ACCESS ONE TRANSPORT, INC.,
Complainant,

v.

COSCO SHIPPING LINES CO. LTD.,
Respondent.

JOINT MOTION FOR ENTRY OF PROTECTIVE ORDER

Respondent COSCO Shipping Lines Co. Ltd. (“COSCO” or “Respondent”) and Complainant Access One Transport, Inc. (“Complainant”), hereby jointly move pursuant to Rule 201(i) of the Commission’s Rules of Practice and Procedure, 46 C.F.R. § 502.141(j), for entry of a protective order in connection with the above-captioned proceeding. Issuance of a protective order is necessary and required to enable the parties to fully respond to discovery requests, which may cover information and documents that are confidential, proprietary, and/or commercially sensitive. A proposed protective order is attached for consideration by the Presiding Officer (“ALJ”). The parties have agreed to the terms of the Protective Order.

Dated: September 17, 2024

Respectfully submitted,

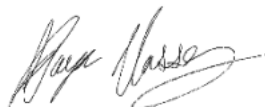
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COSCO SHIPPING LINES CO. LTD.,
Respondent.

PROTECTIVE ORDER

Upon stipulation of Complainant Access One Transport, Inc. (“Complainant”), and Respondent COSCO Shipping Lines Co. Ltd. (“COSCO” or “Respondent”), the Parties, through their respective attorneys, and in order to expedite the exchange of certain confidential information, hereby submit the following proposed Protective Order (the “Order”) to the ALJ for due consideration and issuance:

IT IS HEREBY ORDERED THAT:

1. Except as otherwise ordered by the ALJ, this Order shall apply to all or part of documents, answers to interrogatories, answers to requests for admissions, responses to requests for production of documents, responses to subpoenas, deposition transcripts and exhibits, expert materials, or other writings produced in whole or part as the case may be, given or filed in this action, and all information derived from any of the foregoing, that are

designated as “Confidential” or “Attorneys Eyes Only” in accordance with the terms of this Order.

2. A party (or producing non-party) may designate as “Confidential” any information that is commercially sensitive and is not publicly known, including information provided by third parties to the producing party or non-party with the expectation that the information remain confidential (“Confidential Information”) and not otherwise prevented from being designated Confidential by the Commission’s rules. Confidential Information and Attorneys Eyes Only information shall not include information which is or becomes available in the public domain (other than through unauthorized disclosure by the receiving party); any information previously disclosed to the receiving party without the protection of a confidentiality stipulation or protective order; information, confidential or otherwise not previously kept confidential by the designating party; information disclosed or made available at any time to the receiving party by a third party without restriction and without breach of this Agreement; information independently developed by the receiving party where the receiving party establishes that such development was accomplished without access to the Confidential Information or Attorneys Eyes Only information of the disclosing party; or information which is known at the time of disclosure and was not subject to restriction. Confidential Information subject to this Order shall be used solely for purposes of this litigation in accordance with provisions of this Order. The restrictions on the use of Confidential Information established by this Agreement are applicable only to the use of Confidential Information received during the proceeding from another party or third party. A party is free to do whatever it desires with its own information, confidential or otherwise. Except with the prior written consent of

the producing party or non-party or with prior order of the ALJ, Confidential Information and any information derived therefrom may only be disclosed to:

- a. The parties to the proceeding, now or in the future, including their in-house counsel, directors, officers, managers and employees and contracted workers. The parties, as defined herein, shall be deemed to have been informed of this Order and to have agreed to be bound hereby.
- b. Attorneys of record for the parties to the proceeding, now or in the future, their respective associates, partners, clerks, paralegals, legal assistants, secretaries, associated or contracted attorneys, clerical staff and other support staff who are actively engaged in assisting such attorneys in the prosecution or defense of this proceeding. All such persons are deemed to have been informed as to the contents of this Order and have agreed to be bound hereby;
- c. Service providers, including outside printing, copying, and electronic discovery services, retained by a party's counsel to assist such counsel in connection with this proceeding.
- d. Any officers before whom any deposition in this action is taken, including stenographic reporters, videographers, and any necessary secretarial, clerical, or other personnel of such officers engaged for the preparation of verbatim transcripts and/or recordings in this proceeding;
- e. Any person(s) who created or previously received the Confidential Information;
- f. Employees of the Federal Maritime Commission (the "Commission") who are acting within the scope of their employment;
- g. Deposition witnesses, subject to further protections regarding preserving

Confidential treatment of documents and testimony;

- h. Any person acting by agreement of the parties as a private mediator in or for the proceeding and his or her staff;
 - i. Experts retained by a party and their respective personnel;
 - j. Any federal court of appeals in which review of a decision in this proceeding may be sought; and
 - k. Any other person the parties have agreed to in advance in writing.
3. A party (or producing non-party) may designate as Attorneys Eyes Only (“AEO”) any information or material whose disclosure to anyone other than outside counsel has a substantial probability of jeopardizing the producing party or non-party’s competitive business interests or the competitive or privacy interests of the producing party or non-party’s suppliers, service providers, customers or clients, or of an individual party in this proceeding. AEO material subject to this Order shall be used solely for purposes of this litigation in accordance with provisions of this Order. Except with the prior written consent of the producing party or non-party or with prior order of the ALJ, AEO material and any information derived therefrom may only be disclosed to:
- a. Outside Attorneys of record for the parties to the proceeding, now or in the future, their respective associates, partners, clerks, paralegals, legal assistants, secretaries, associated or contracted attorneys, and other support staff who are actively engaged in assisting such attorneys in the prosecution or defense of this proceeding. All such persons are deemed to have been informed as to the contents of this Order and is deemed be bound by its terms;
 - b. Service providers, including outside copying services, retained by a party’s

counsel to assist such counsel in connection with this proceeding, provided that any such person is informed as to the contents of this Order;

- c. Any officers before whom any deposition in this action is taken, including stenographic reporters, videographers, and any necessary secretarial, clerical, or other personnel of such officers engaged for the preparation of verbatim transcripts and/or recordings in this proceeding;
- d. Any person(s) who created or previously received the AEO material;
- e. Any person acting by agreement of the parties as a private mediator in or for the proceeding and his or her staff;
- f. Employees of the Federal Maritime Commission (the "Commission") who are acting within the scope of their employment;
- g. Any federal court of appeals in which review of a decision in this proceeding may be sought; and
- h. Any other person the parties have agreed to in advance in writing or, if such person is an expert retained by one of the parties in this action who has read and agreed in writing to abide by the terms of this Order in the form of Exhibit A hereto, and the parties are unable to agree on the disclosure of such AEO material to such expert after meeting and conferring in good faith on the issue, upon an Order from the ALJ in the above-captioned matter. The process for resolving such a dispute concerning the disclosure of AEO material to a party's expert shall be as follows:
 - i. Counsel for the parties shall confer in a good faith effort to resolve any differences within 10 days of notice of the intent to disclose information to an expert witness.

- ii. Failing agreement of the parties, the party objecting to the disclosure of the AEO material to the expert shall file an appropriate motion within 15 days of the expiration of the 10 day period as contemplated in paragraph 3(g)(i) above, with the ALJ and shall (1) certify that s/he has sought in good faith to confer with opposing counsel and has been unable to resolve the dispute by agreement; and (2) identify by specific reasons why disclosure of the particular information to the expert should be denied.
- iii. Within five business days of receiving such a motion, the opposing party shall respond to the motion by showing with particularity the reasons why the AEO material should be disclosed to the expert.
- iv. The burden of establishing that the AEO material should not be shared with the expert shall be on the party seeking to prevent such disclosure.
- v. If a motion is timely made as provided in subparagraph (ii) above, until the motion is ruled upon by the ALJ, the AEO material shall not be disclosed to the expert. Failure to make a timely motion shall be deemed a waiver of the objection and the material may be provided to the expert.
- vi. If an expert's analysis, report, or testimony in the above-captioned action is delayed or rendered incomplete due to a dispute concerning the disclosure to such expert of AEO material relevant to such expert's analysis, report, or testimony, the party objecting to the disclosure of the AEO material to such expert shall not seek to exclude, disqualify, or strike such expert's analysis, report, or testimony on the basis of its untimeliness or incompleteness.

4. Information shall be designated by the producing party or non-party as Confidential Information or AEO in the following manner:
- a. In the case of information contained in a document, answer to interrogatory, answer to request for admission, response to request for production of documents, response to subpoena, expert report, or other writing, by stamping or otherwise marking, in such a manner as not to interfere with the legibility of the documents, the label “Confidential” or “Attorneys Eyes Only” / “AEO” on the face thereof at the time of production or copying; To the extent the entire document is not confidential or AEO, where practical the designating party shall mark the document to show which portions of the document are deemed to be Confidential or AEO.
 - b. In the case of information contained or revealed in a deposition, whether in a question, answer or exhibit, by noting the designation on the record at the time of the deposition, or within ten business days after receipt of the deposition transcript. The transcript pages and any associated documents containing confidential information shall be bound separately and shall contain on each page, including the cover page, an appropriate notation identifying it as “Confidential” or “Attorneys Eyes Only” / “AEO”;
 - c. In the case of information contained or referenced in legal documents filed with the Commission, including, but not limited to, motions and legal memoranda or evidence in support, the parties shall seek to reach agreement regarding the release of information, failing such an agreement or if such agreement is not practical prior to the filing of any memoranda or evidence, by filing such documents with

the Commission in accordance with 46 CFR §502.5. If the document containing the Confidential Information or AEO information was produced by the party offering it as an exhibit or attachment, that party may redact the Confidential Information or AEO information instead of filing it under seal. Notwithstanding any of the forgoing, motions, briefs, memoranda, declarations, or other papers may paraphrase or summarize Confidential Information or AEO information without being filed under seal, so long as such paraphrasing is done in such a manner as to maintain the confidential nature of the information.

5. It is the responsibility of all persons designating materials containing Confidential Information or AEO material that is properly marked. It will be the responsibility of the receiving persons to maintain such materials in a secure and appropriately identified manner. All Parties shall file documents containing Confidential Information or AEO in accordance with 46 C.F.R. 502.5(a.)
6. It is the responsibility of counsel for each party to this action to ensure that those receiving Confidential Information or AEO have knowledge of the terms of this Order and agree to be bound by it. Prior to any such disclosure, recipients who are eligible to receive confidential hereunder pursuant to paragraphs 2 (c)(d)(g)(h)(i)(j) or 3(b)(c)(e)(g) must read and agree in writing to abide by the terms of this Order in the form of Exhibit A hereto or its equivalent. A copy of each recipient's written acknowledgment shall be kept by the party divulging the Confidential Information or AEO material.
7. When serving any discovery request or subpoena upon a non-party, it shall be the obligation of the party requesting such discovery from a non-party to include a copy of this Order when said discovery request or subpoena is served upon the non-party.

8. Any producing party or non-party may designate any discovery material containing Confidential Information or AEO material that it inadvertently produced without the appropriate confidentiality designation by providing written notice to counsel for all parties identifying the particular discovery material that should have been designated as “Confidential” or “Attorneys Eyes Only” / “AEO” and to provide substitute copies with proper designation. Such notice must be provided within a reasonable time following the producing party or non-party’s discovery that it produced the discovery material subject to such notice without the appropriate confidentiality designation(s).
9. The designation of information as Confidential or AEO by the producing party or non-party shall not waive or affect in any way the right of the receiving party to contest the designation of confidentiality. The designation of confidentiality may be contested as follows:
 - a. Counsel for the parties shall confer in a good faith effort to resolve any differences. Any party may object to the designation of information as Confidential Information or AEO by serving a written objection upon the designating party. The designating party shall notify the objecting party in writing of the basis for the asserted designation within ten (10) calendar days after receiving any written objection. The parties shall confer in good faith as to the validity of the designation within ten (10) calendar days after the objecting party has received the notice of the basis for the asserted designation.
 - b. Failing agreement of the parties, the party objecting to the designation of information as Confidential or AEO may file an appropriate motion with the ALJ within 15 calendar days after conferring with the designating party as required by

section 9(a) and shall (1) certify that s/he has sought in good faith to confer with opposing counsel and has been unable to resolve the dispute by agreement; and (2) identify by specific category or document number the information for which relief is sought.

- c. Within ten business days of receiving such a motion, the opposing party or non-party shall respond to the motion.
 - d. The burden of establishing that information is Confidential or AEO shall be on the party or non-party designating it as such.
 - e. Until the motion is ruled upon by the ALJ, the designation of confidentiality shall remain in full force and effect and the information shall continue to be accorded the treatment required by this Order.
10. The production or disclosure of Confidential Information or AEO material shall in no way constitute a waiver of any sort, including of: (a) any producing party or non-party's right to object to the production or disclosure of information in this proceeding or in any other proceeding; (b) any objections to discovery or admissibility that any producing party or non-party or receiving party may assert; or (c) the parties' ability to use their own documents, communications, information, or testimony.
11. Nothing herein shall be deemed to waive any attorney-client privilege, attorney work product protection, or similar protection recognized by applicable law, or be deemed an admission as to the admissibility in evidence of any facts, documents, communications, information, or testimony revealed in the course of discovery in this proceeding. In particular, any inadvertent production of attorney-client privileged, attorney work product, or similarly protected discovery material does not constitute a waiver of any

claim of privilege, work product, or other similar protection. Nothing in this Confidentiality Agreement and Protective Order shall be deemed to preclude the parties from refusing to produce confidential documents on any other grounds. A receiving party shall not argue that such a production constitutes a waiver of privilege, work product, or other similar protection and shall promptly return any such inadvertently produced privileged, work product, or similarly protected discovery material upon notification or discovery of the inadvertent production and shall not use the privileged, work product, or other similarly protected information contained therein for any purpose other than to challenge whether such material is protected by the attorney-client privilege, the attorney work product doctrine, or other similar protection, in which case the discovery material being challenged shall be treated as if designated “Attorneys Eyes Only” / “AEO” until such time as the ALJ rules on the privilege protection. Further nothing herein shall prevent the disclosing party from removing the Confidential or AEO designation for any document or information upon notice to the receiving party.

12. If Confidential Information or AEO material in the possession of the receiving party is subpoenaed by any court, administrative or legislative body, or any other person purporting to have authority to subpoena such information, the party to whom the subpoena is directed shall give written notice of the subpoena (including the delivery of a copy thereof) to counsel for the party or non-party that produced the information or documents promptly after the receipt of the subpoena. In the event that the subpoena purports to require production of such Confidential or AEO information on less than 7 days’ notice, the party to whom the subpoena is directed shall give immediate email notice of the receipt of such subpoena, and forthwith deliver a copy thereof, to the attorney for

the producing party or non-party.

13. Within thirty (30) days after the conclusion of this proceeding, including any appellate proceedings, all Confidential and AEO information (including copies and documents containing information derived therefrom) shall be destroyed or returned to the producing party or non-party, at the election of the receiving party, provided that documents previously filed with the Commission containing such information may either be destroyed or retained under seal and preserved as confidential in accordance with the terms of this Order or as otherwise provided for by the procedural rules of the Commission or order by the ALJ. Notwithstanding this provision, Counsel are entitled to retain an archival copy of its file for this litigation subject to its ordinary document retention policies but will maintain all such information and documents confidential during that time.
14. The parties may provide for exceptions to this Order, to be memorialized in writing, and any party may seek an order of this tribunal modifying this Order upon a showing of good cause. The parties agree that they will confer in good faith and attempt to resolve the issue of any such modification amongst themselves before seeking judicial intervention.
15. The parties agree to be bound by this Order from the date of submission pending approval by the ALJ. The provisions of this Order shall survive and remain in full force and effect after the conclusion of this proceeding, including any appellate proceedings.

SO ORDERED,

Dated: September _____, 2024

EXHIBIT A

AGREEMENT TO ABIDE BY THE TERMS OF THE PROTECTIVE ORDER

I acknowledge that I have read the foregoing Protective Order and understand its contents,
and I hereby agree to abide by its terms and conditions.

NAME: _____

DATE: _____