SERVED: JUN 3 - 2016

BEFORE THE FEDERAL MARITIME COMMISSION

DOCKET NO.:16:02

D.F. YOUNG, INC.,

COMPLAINANT

V.

NYK LINE (NORTH AMERICA) INC.,

RESPONDENT

STIPULATION & ORDER OF CONFIDENTIALITY

WHEREAS, certain information and documents relating to matters believed by the Parties to the above-captioned Federal Maritime Commission proceeding (the "Proceeding"), and certain non-parties concerned with this Proceeding, to be confidential and/or sensitive commercial, financial, business, and/or personal information, have been and may be requested, sought, produced and/or exhibited in relation to this Proceeding;

IT IS HEREBY STIPULATED AND AGREED by and between the undersigned counsel for the respective Parties hereto, their affiliates, subsidiaries, and agents that the following Confidentiality Order shall be applicable to this Proceeding.

IT IS HEREBY ORDERED THAT:

1. This Stipulation & Order of Confidentiality ("Confidentiality Order") shall govern all hard copy and electronic information, documents, and materials produced or disclosed in relation to this Proceeding by any Party and/or its counsel or by a non-party (all hereinafter "Producing Party"), to any other Party counsel or non-party (all hereinafter "Receiving Party"), including without limitation, any such information, documents, or material produced or disclosed during any appeal from the Proceeding. These materials shall be referred to hereinafter as "Proceeding Material."

2. Each Producing Party shall have the right to designate all or any portion of any Proceeding Material as "Confidential" in accordance with the procedures set forth herein, provided the information so-designated contains, reveals or reflects

(a) unpublished business, financial, research or marketing data, methods or plans, internal emails, memos, or communications of any kind, trade secrets, customer information, customer negotiations or operational or technical information; or

(b) private or confidential personal information, or such information received

from third parties; or

(c) other information of a nonpublic nature that a Party reasonably and in good faith believes to be commercially, competitively, or personally sensitive, or proprietary in nature entitled to protection under Rule 201(j) of the Federal Maritime Commission Rules of Practice and Procedure.

This information shall be referred to hereinafter as "Confidential Information."

Designation of Confidential Information

3. Each Party may designate as Confidential Information all or any portion of any Proceeding Material.

(a) Proceeding Material may be designated as Confidential Information at any time by (i) stamping or otherwise marking at least the first page of the Proceeding Material that contains Confidential Information with the word "CONFIDENTIAL" at or before the time of production; or (ii) notifying all other Parties in writing of the Producing Party's claim of confidentiality at any time subsequent to the time of production. All Proceeding Material shall be deemed Confidential Information whether or not stamped or marked appropriately, for the period of thirty (30) days following production.

(b) Where a party produces Proceeding Material on a CD or in electronic form, it may make the confidentiality designation by a letter which identifies the Bates Nos. on the CD or of the electronic documents which comprise Confidential Information.

(c) Oral negotiations, depositions, or other testimony 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 thirty (30) days after receipt of the official deposition transcript or copy thereof, or (iii) designating oral discussion or negotiations as

Confidential Information at the time disclosure of same is requested. All testimony shall be deemed Confidential Information whether or not designated appropriately, for a period of thirty (30) days following receipt of the transcript except to the extent that a ruling is made pursuant to Paragraph 14. The cover of all copies of the deposition transcript that contains Confidential Information shall be stamped or otherwise marked with the word 'CONFIDENTIAL."

(c) Where only parts of Proceeding Material qualify as Confidential Information, the Producing Party shall designate the parts of the Proceeding Material for which confidentiality is claimed, and only those parts shall be subject to this Confidentiality Order.

(d) When designating Confidential Information, the marking shall not obscure the contents of the Proceeding Material.

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

Treatment of Confidential Information

5. Confidential Information (including copies, notes, abstracts or summaries thereof) shall be maintained in confidence by the Receiving Party and shall not be disclosed to any person except:

(a) employees of the Federal Maritime Commission;

(b) vendors retained by or for the parties to assist in preparing for pretrial discovery, trial, and/or hearings including, but not limited to, court reporters, litigation support personnel, jury consultants, individuals to prepare demonstrative and audiovisual aids for use in the courtroom, in depositions, or in mock jury sessions, as well as their staff, stenographers, and clerical

employees whose duties and responsibilities require access to such materials;

(c) counsel and co-counsel of record, and the legal associates, paralegals, clerical or other support staff employed by such counsel and actually involved in assisting with this Proceeding;

(d) the experts or consultants retained by the Parties or their counsel to assist with this Proceeding;

(e) anticipated or actual deposition or trial witnesses to whose testimony the Proceeding Material is relevant;

(f) any officer, manager, or employee of either Party who may be consulted in regard to the Proceeding;

(g) any other person, upon written agreement of the Producing Party (which written agreement may be recorded on a deposition or other transcript) or pursuant to court order.

6. All persons authorized to receive Confidential Information shall take all reasonable and necessary steps to secure any Confidential Information, and shall limit access to Confidential Information to those persons identified in Paragraph 5.

7. Prior to disclosure of any Confidential Information to a person identified in Paragraph 5, subparagraphs (d) and (g), the person shall be presented with, read and agree to be bound by the terms of this Confidentiality Order by signing a Certification in the form annexed at Appendix A. The Receiving Party shall retain the Certification and make it available to the Producing Party's counsel upon a showing of good cause. Persons to whom Confidential Information is disclosed solely for the clerical or administrative purposes, and who do not retain a copy of the extract thereof, shall not be required to execute a Certification.

8. If Confidential Information, advertently or inadvertently, is disclosed to a person not authorized to receive Confidential Information, or if a person authorized to receive Confidential

Information breaches any obligation under this Confidentiality Order, the Receiving Party shall immediately give notice of the unauthorized disclosure or breach to the ALJ and the Producing Party Counsel. Without prejudice to other rights and remedies of the Producing Party, the person making the unauthorized disclosure shall make every effort to prevent further disclosure. Breach of the provisions of this Confidentiality Order shall be subject to sanctions, as authorized by statute, rule or inherent power of the ALJ.

Use of Confidential Information in Commission Hearings

9. If Confidential Information, or references thereto, are included in papers filed with or otherwise disclosed to the Federal Maritime Commission, such papers shall be labeled and filed in accordance with Rule 5 of the Federal Maritime Commission Rules of Practice and Procedure.

10. The provisions of this Confidentiality Order shall govern the Proceeding, including discovery, and shall not affect the conduct of the ALJ, subject to the right of any Party to seek an order of protection. The ALJ shall order an appropriate procedure for the use of Confidential Information at or during the course of the Proceeding.

11. A witness may be shown Confidential Information pursuant to Paragraphs 5(d)-(g). Disclosure by a Producing Party of Confidential Information to a witness during depositions and trial will not result in waiver of its "Confidential" status, provided:

(a) the witness is identified as a signatory, author, addressee or recipient of the Confidential Information; or

(b) the witness signs a copy of this Confidentiality Agreement.

12. The parties retain the right to apply to the ALJ for relief from the provisions of Paragraph 11 in the event that a witness refuses to certify that he or she will abide by the terms of this

Confidentiality Order.

13. All Proceeding Material shall be used solely in relation to this Proceeding and shall not be used in connection with any other proceeding or potential proceeding, nor for any business, commercial or competitive purposes. The Parties expressly reserve their rights to object to the use and admissibility of any Confidential Information in any other proceeding.

Objections

14. Any Receiving Party Counsel may object to a designation of Proceeding Material as Confidential Information by stating the objection with particularity and giving a complete explanation by letter to the Producing Party Counsel within thirty (30) days after receipt of the Producing Party's confidentiality designation, (or within thirty (30) days of entry of this Order, whichever comes later). The Counsel for all of the Parties shall thereafter meet and confer to attempt to resolve the objection. If the Counsel are unable to resolve the objection, the Producing Party Counsel may move the ALJ for a protective order or an objecting party Counsel may move the ALJ to challenge the designation. This Confidentiality Order has no affect on the burden of proof. Until the ALJ rules on any such motion, the Proceeding Material shall continue to be deemed Confidential Information.

15. Unless otherwise ordered by the ALJ, if on the face of an objection to its designation of Proceeding Material as Confidential Information, a Producing Party fails to seek a protective order upholding its designation, any designation as Confidential Information will be removed thirty (30) days after the date of the letter referred to in Paragraph 14.

16. A Party who fails to object to another Party's claim of confidentiality within the thirty

(30) day period set forth in Paragraph 14 (or within thirty (30) days of entry of this Order, whichever come later) shall be estopped from later objecting to the confidentiality designation.

Privileged and Protected Litigation Material

17. The Parties expressly assert and preserve any and all privileges and exemptions, including without limitation the attorney-client privilege and work product immunity, which apply to any and all Proceeding Material ("Protected Material"). Inadvertent disclosure or production of the Protected Material shall not be deemed a waiver of any privilege or exemption. Upon written request, the Receiving Party Counsel shall return, immediately and in no event later than forty-eight (48) hours of the receipt of written notice, the Protected Material and any copies or reproductions thereof. The Receiving Party Counsel shall also return or destroy any work product materials derived from the inadvertently produced Protected Material.

18. The return of purported Protected Material shall not in any way waive the Receiving Party's right to challenge the claim of privilege and/or exemption, but such challenge shall not (i) be based in any way on the fact of the inadvertent production or disclosure of such material; or (ii) divulge the contents of the Protected Material except to the ALJ under seal as provided herein.

General Provisions

19. A Receiving Party served with a subpoena or other notice of another proceeding by a party not signatory to this Confidentiality Order, which seeks production or disclosure of Confidential Information, shall give immediate written notice to the original Producing Party, enclosing a copy of the subpoena. Where possible, the Receiving Party Counsel shall give at least ten (10) days notice to the Producing Party Counsel before producing or otherwise disclosing the

Confidential Information; however in no event shall the Receiving Party Counsel produce or disclose the Confidential Information before notice is received by the Producing Party, unless required by law. Upon receipt of such written notice, the original Producing Party shall bear the burden, if it deems appropriate, of opposing the subpoena or other notice.

20. Within forty-five (45) days of the final conclusion of this Proceeding, and all substantially related proceedings, by settlement or final judgment, including exhaustion of all appeals, the Counsel for the Parties shall use all best efforts to assemble and seek return of Confidential Information (and all copies and notes, abstracts or summaries thereof) from all persons to whom such materials were disclosed, and shall, at the option of the Producing Party, either destroy all such materials or return them to the original Producing Party at the Producing Party's expense. Counsel may retain work product, copies of Proceeding filings and official transcripts and exhibits, provided any or all retained documents are kept confidential and continue to be treated as provided herein. The Producing Party to whom the Confidential Information is returned shall retain those materials for a period of six (6) years from the date of their return.

21. This Confidentiality Order may be amended or modified at any time by (i) stipulation of the Parties, approved by order of the ALJ. The Parties consent to an expedited hearing upon any such application.

Reservation of Rights

22. Nothing in this Confidentiality Order shall prevent any Party from disclosing its own Confidential Information to any person as it deems appropriate, and any such disclosure shall not be

deemed a waiver of any Party's rights or obligations under this Confidentiality Order.

23. Entering into, agreeing to, producing or receiving materials, and/or otherwise complying with this Confidentiality Order shall not in any way.

(a) constitute an agreement by the Parties to produce any documents or supply any information or testimony in discovery not otherwise agreed upon or required by law or order of the ALJ;

(b) constitute a waiver by any person or party of any right to object to or seek a further order from the ALJ with respect to any discovery request in this Proceeding or any other proceeding;

(c) constitute a waiver of any claim or privilege or exemption with regard to any testimony, documents or other information;

(d) operate as an admission by any Party that any particular Proceeding Material contains or reflects sensitive or confidential proprietary, commercial, business, or personal information; and/or

(e) be construed to affect the admissibility of any documents, testimony or other evidence at trial.

24. Evidence of the existence or non-existence of a designation under this Confidentiality Order shall not be admissible for any purpose.

25. This ALJ shall retain jurisdiction of the Parties hereto indefinitely, even after termination of this action, regarding any dispute between them respecting improper use of information disclosed under protection of this Confidentiality Order.

Dated: White Plains, New York
May 31, 2016

CICHANOWICZ, CALLAN, KEANE,
& DE MAY, LLP
Attorneys for NYK Line (NA), Inc.

By: /s/ Paul M. Keane, Esquire
Paul M. Keane
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Dated: Philadelphia, Pennsylvania
May 31, 2016

LAW OFFICES OF THOMAS J. WAGNER, LLC
Attorneys for D.F. Young, Inc.

By: /s/ Thomas J. Wagner, Esquire
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8 Penn Center
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Phila., PA 19013

Dated:
June 3, 2016

By: Clay G. Guthridge
Clay G. Guthridge
Administrative Law Judge

APPENDIX A

BEFORE THE FEDERAL MARITIME COMMISSION

DOCKET NO.:16:02

D.F. YOUNG, INC.,

COMPLAINANT

V.

NYK LINE (NORTH AMERICA) INC.,

RESPONDENT

CERTIFICATION TO BE BOUND BY
STIPULATION & ORDER OF CONFIDENTIALITY

I, _____, state that:

1. My current home 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 Stipulation & Order of Confidentiality executed by the Parties in the above-referenced case signed by the Commission, and I will comply with all provisions of the Stipulation & Order of Confidentiality;
6. I will hold in confidence and not disclose to anyone not qualified under the Stipulation & Order of Confidentiality to receive such documents and/or information any Confidential material and any words, summaries, abstracts, or indices of Confidential material disclosed to me;

7. I will limit use of Confidential material disclosed to me solely for the purposes of this action;
8. No later than the final conclusion of the above-captioned case, I will return all Confidential material and summaries, abstracts, and indices thereof which come into my possession, and documents or things which I have prepared relating thereto, to counsel for the party for whom I was employed or retained, or, at their instruction, destroy all such Confidential material.

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

Date: _____

_____
Printed Name: