

Neutral Citation Number: [2026] EWHC 1942 (Comm)

Case No: FL-2026-000015

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
KING'S BENCH DIVISION
COMMERCIAL COURT
FINANCIAL LIST

Royal Courts of Justice, Rolls Building
Fetter Lane, London, EC4A 1NL

Date: 23 July 2026

Before:

Mr Justice Andrew Baker

Between:

Mercuria Energy Trading S.A.	<u>Claimant</u>
- and -	
Baltic Exchange Information Services Limited	<u>Defendant</u>

Chintan Chandrachud and Vanshaj Jain (instructed by **Quinn Emanuel Urquhart & Sullivan UK LLP**) for the **Claimant**
Natasha Bennett and Alastair Richardson (instructed by **Holman Fenwick Willan LLP**) for the **Defendant**

Hearing date: **23 July 2026**

JUDGMENT
(Approved Transcript)

Mr Justice Andrew Baker:

1. As the parties have been doing, I shall refer to the claimant as “Mercuria” and to the defendant as “the Baltic”.
2. This claim concerns the continued setting and publishing by the Baltic of its very important TD3C benchmark freight rate since the onset of active and destructive US/Israeli military operations against Iran at the end of February.
3. The TD3C benchmark voyage is for a VLCC to carry a full cargo of crude oil loading at Ras Tanura, Saudi Arabia, discharging at Ningbo, China, which of course entails at least a laden voyage, and no doubt typically also a ballast voyage to the load port, through the Strait of Hormuz.
4. It suffices for today’s purposes to say that Mercuria’s essential complaint is that the Baltic has not been complying with what are said to be its statutory and/or contractual duties in its continued publication of TD3C rates. Mercuria says that the Baltic’s published TD3C rates since February 2026 have not represented accurately, reliably or at all any market or economic reality and that the Baltic should have determined the TD3C benchmark rate by reference to economically comparable routes not so affected by current hostilities, such as its TD15 or TD34 routes, or suspended the TD3C benchmark.
5. Mercuria seeks declaratory relief, including that the Baltic should restate, or withdraw and retrospectively suspend, the TD3C benchmark. The Baltic denies any breach of duty and disputes Mercuria’s entitlement to seek relief. There is to be an expedited trial later this year.

6. As one item of business at a CMC in this claim, on 3 July 2026, I made a confidentiality ring order (“the CRO”). The CRO was in terms agreed between the parties except as regards the membership of the confidentiality ring it created. The members of the confidentiality ring are listed in Part A of the schedule to the CRO. As issued, dated 3 July 2026, Part A listed: François Sornay and Drewry Cooper, Mercuria’s in-house instructing counsel; Lord Wolfson KC and the rest of the counsel team retained by Mercuria; Richard East and relevant colleagues of his at Quinn Emanuel, Mercuria’s solicitors; and three prospective expert witnesses who may be asked by Mercuria to provide expert evidence for trial. The membership of the confidentiality ring on the Baltic’s side remained to be confirmed. It has since been confirmed and no dispute about it remains live for today.
7. There was a dispute between the parties, not resolved at the CMC, whether Larry Johnson and Ojas Joshi of Mercuria should be members of the confidentiality ring. Mr Johnson is Mercuria’s global head of marine business, Mr Joshi is Mercuria’s head of freight analysis. The evidence in support of the application that they be included in the confidentiality ring created by the CRO states that, in Mr Johnson’s case, while he oversees the activities of Mercuria’s oil and freight traders, including those in relation to VLCCs, he is not himself directly involved in the claimant’s day-to-day oil or freight trading activities given the seniority of his position; and in the case of Mr Joshi, likewise that he is not involved in day-to-day oil or freight trading activities, his role being to provide, as it is described, “*data-driven shipping analysis, [to] assess vessel supply and demand and [to] model ship availability and expected movements*”, all as part of Mercuria’s wider freight trading strategy.

8. In the days following the CMC, Mercuria made an initial application for that dispute to be resolved on paper by a direction admitting Mr Johnson and Mr Joshi to the confidentiality ring. I refused that application, considering it speculative at that stage whether, as Mercuria submitted, Mr Johnson and/or Mr Joshi need to see Confidential Information Documents, or be privy to Confidential Information, each as defined in the CRO, in order for Mercuria to give sufficient instructions to its legal representatives and/or otherwise to be able to participate fairly in these proceedings.
9. I granted Mercuria liberty to pursue the admission of Mr Johnson and Mr Joshi to the confidentiality ring afresh at the restored hearing of the CMC which I had directed for today. In the event, Mercuria has indeed renewed its request for them to become confidentiality ring members. As now formalised by an application notice dated 20 July 2026, that request remains contentious, and no other case management rulings were required today. That application notice has therefore been the only item of active business at this hearing.
10. The parties are agreed about the applicable principles. Both sides referred me to and relied on the judgment of Hamblen J, as he was then, in *Libyan Investment Authority v Societe Generale SA* [2015] EWHC 550 (QB) for its confirmation, at [20], that the starting point is that “*each party should be allowed unrestricted access to inspect the other parties’ disclosure subject to the implied undertaking that the disclosure will not be used for a collateral purpose ...*”, and for its identification, at [34], of the principal factors likely to require to be considered, namely, and in summary: (a) the degree of the identified risk and the threat posed by the inclusion of particular individuals within the confidentiality ring; (b) the inherent desirability of including at least one appointed representative of each party within the ring; (c) the importance of the information to

the issues in the case; (d) whether the information is technical and needs to be considered by people with access to technical or expert knowledge; (e) the degree of disruption that would be caused if only part of a legal team is entitled to review certain information.

11. Given the starting point, the consideration overall should be that exclusion from a confidentiality ring of an individual who would ordinarily reasonably expect to be given sight of all the case materials needs to be justified as part of ensuring that the derogation from the default rule of openness is as limited as it fairly can be. Mercuria also relied on an observation by Marcus Smith J in *Anan Kasei Co v Neo Chemicals* [2020] EWHC 2503 (Pat), at [16], that a court should be slow to second guess the contention of a party that a particular person should be admitted to the confidentiality ring. I agree with that comment, and with the explanation that Marcus Smith J added, namely that it: “... *does not mean a party can, by bare assertion, dictate the terms of a confidentiality ring: there will always [be] court scrutiny, and the touchstone for that scrutiny is fairness.*”

12. The premise of the CRO as regards confidential information designated as such by the Baltic, subject to the control mechanisms built into the order, is that the input data received by the Baltic, together with the sources of or underlying that data and dialogue between the Baltic’s assessors and submitting panellists about or in connection with that data, is highly confidential and market sensitive. The current application does not seek to question or revisit that premise.

13. One aspect of the development of the submissions in support of the application required examination of confidential information covered by the CRO as now

disclosed by the Baltic. To consider that information and hear that part of the argument, we sat in private today.

14. Having considered carefully the open and private submissions, and the evidence exchanged on the application, I have reached the following conclusions as to the principal discretionary factors identified by Hamblen J, which I take in a different order as I find that more convenient in this case:

- (i) There is no need to include Mr Johnson or Mr Joshi to ensure that Mercuria has an appropriate appointed representative within the ring and not just its external counsel or expert witnesses.
- (ii) The Baltic's confidential information, to which Mercuria proposes that Mr Johnson and Mr Joshi should have access within the proceedings, is of central relevance to the disputed issues in the case. The Baltic indeed accepted as much.
- (iii) That information is not technical and does not need to be considered by people with access to technical or expert knowledge in order to understand it and identify from it the factual or expert evidence that Mercuria may wish to obtain for trial. In saying that, I should be clear, without trespassing beyond what can be said in public, that I do not mean to suggest that any ordinary layperson would be able to understand it without assistance; but the litigation professionals with appropriate expertise retained by Mercuria and Mercuria's in-house counsel should have no difficulty. The high-water mark of Mr Chandrachud's submissions was that, according to Mr Gailani's second witness statement served in support of the application, Mr Cooper has

reviewed some of the confidential information and has told Mr Gailani that it addresses technical matters beyond his and Mr Sornay's expertise. That is said in Mr Gailani's open evidence in the witness statement. It is not particularised or illustrated by Mr Gailani there or otherwise. Within the proper approach of being slow to second guess the resulting contention by Mercuria that therefore Mr Johnson and Mr Joshi need to be admitted to the confidentiality ring, that is close to bare assertion, and in any event I am entitled to apply a degree of fair scrutiny. That led to the private part of today's hearing, in relation to which I consider I am entitled to proceed on the basis that Mr Chandrachud took me to the strongest examples available to Mercuria to make good the asserted need for Mr Johnson and/or Mr Joshi to be brought within the ring. I was wholly unpersuaded.

- (iv) In my judgment, there will be no substantial disruption to Mercuria, in participating in the proceedings, through Mr Johnson and Mr Joshi being outside the confidentiality ring. Mercuria's entire legal team, in-house and external, and its expert witnesses, to whatever extent the confidential information may be relevant to their task, are within the ring. There will be a need for particular care when proofing Mr Johnson or Mr Joshi, if either of them is to be a witness of fact for trial. However, by definition, the Baltic's Confidential Information Documents will not be documents that either of them saw at the time. I was not persuaded that if Mr Johnson and Mr Joshi remain outside the confidentiality ring anything beyond careful adherence to good practice in the proofing of factual witnesses should be needed for them to be appropriately proofed, though the proofing will be done by lawyers who are

within the confidentiality ring. Mercuria will, in short, have a fair and sufficient opportunity to obtain and adduce factual evidence at trial.

- (v) I agree with the Baltic that its confidential information is, by nature, such as would give a market participant a competitive advantage to have it. It is also not sensibly unlearned by Mr Johnson or Mr Joshi after having access to it, if they were given such access. I agree with Mercuria that there is no evidence to suggest that Mr Johnson or Mr Joshi would deliberately take advantage, thinking of themselves as doing so. The risk, however, is more subtle, but that does not make it unreal or insignificant. Their senior and strategic roles make them just the kind of professionals who will provide direction in respect of Mercuria's trading activity that is liable to be influenced materially, but subconsciously, by the knowledge they would have, but Mercuria's competitors would not, of the internal workings of the TD3C benchmark. The position might be different, of course, if the case concerned only substantially historic data and market circumstances and trends, but the whole point of this litigation is to explore what the Baltic has been doing in the last few months, and is doing now, in the face of some startlingly dramatic world events.

15. Balancing those factors, in my view, they provide no strong support for the proposition that Mr Johnson and Mr Joshi ought to be within the ring of confidence, and very powerful support for the proposition that they should stay outside it. As Marcus Smith J noted in the *Neo Chemicals* case, the ultimate touchstone is fairness. Overall, I have come to the conclusion that in substance here Mercuria is able to say that the starting point favours openness, so that Mr Johnson's and Mr Joshi's exclusion has to be justified, and that the confidential information is important to the

case, not in any way peripheral. But in my view, that importance duly acknowledged, their exclusion is amply justified, and it is and will be fair to Mercuria to proceed on the basis of it. This application is therefore dismissed
