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August 22, 2014					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 13-04

STREAK PRODUCTS, INC., and SYX DISTRIBUTION, INC.

v.

UTi, UNITED STATES, INC.

**ORDER STAYING BRIEFING SCHEDULE AND
REQUIRING SUPPLEMENTS TO RECORD**

The Procedural Order currently in effect required complainants Streak Products, Inc., and SYX Distribution, Inc., to file their proposed finding of fact, appendix, and brief on August 20, 2014. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ July 28, 2014) (July 28, 2014, Procedural Order). On August 20, the parties submitted a Joint Motion of Settlement and Voluntary Dismissal.

Pursuant to . . . Commission Rules of Practice § 502.72(a)(1), Complainants . . . and Respondent . . . hereby notify the Administrative Law Judge . . . that the parties have entered into a settlement agreement We hereby enclose a copy of the Agreement

We further provide notice that the Complainants will move to voluntarily dismiss the Complaint in the above-captioned proceeding with prejudice, the parties to bear their own costs and attorneys' fees, within thirty (30) days of this notice. We request that all activity in this docket be stayed for thirty (30) days so that the Parties may finalize settlement.

(Joint Motion of Settlement and Voluntary Dismissal.)

The parties set forth good cause for staying the briefing schedule set forth in the July 28, 2014, Procedural Order. Therefore, the schedule will be stayed until September 19, 2014.

The Commission has a strong and consistent policy of "encourag[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid." *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), quoting *Old Ben Coal*

Co. v. Sea-Land Serv., Inc., 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). “While following these general principles [encouraging settlements], the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation.” *Old Ben Coal*, 18 S.R.R. at 1092. If “a proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unapprovable despite the strong policy of the law encouraging approval of settlements, the settlement will probably pass muster and receive approval.” *Id.* at 1093.

Commission Rule 72(a)(1) to which the parties refer states: “The complainant may dismiss an action without an order from the presiding officer by filing . . . a stipulation of dismissal signed by all parties who have appeared. Unless the notice or stipulation states otherwise, the dismissal is without prejudice.” 46 C.F.R. § 502.72(a)(1) (effective Nov. 12, 2012). In two proceedings since promulgating this rule, when parties have submitted settlements, the Commission has issued orders for the parties to supplement the record, referring to its long-standing history of reviewing settlement agreements and stating that “it ‘did not intend to eliminate the requirement for review of settlement when it proposed the new rule and is not changing its long-standing policy at this time.’” Docket No. 11-05, Rules of Practice and Procedure, Final Rule, 77 FR 61519 (Oct. 10, 2012).” *SSA Terminals, LLC and SSA Terminals (Oakland), LLC v. the City of Oakland, Acting by and Through Its Board of Port Commissioners*, FMC No. 09-08 (FMC Sept. 3, 2013) (Order to Supplement the Record). See also *Seagull Maritime Agencies Private Ltd. v. Gren Automotive, Inc.; Centrus Automotive Distributors Inc.; and Liu Shao, Individually*, FMC No. 13-03 (FMC Aug. 16, 2013) (Order to Supplement the Record) (same). Therefore, the settlement agreement will be reviewed pursuant to Commission policy. The parties are ordered to file a joint memorandum addressing the factors set forth in *Old Ben Coal*.

The parties ask that the settlement agreement be kept “confidential in its entirety.” Counsel for Respondent submitted the Joint Notice and attached Settlement Agreement to this Office by email. The email states:

In accordance with Your Honor’s order of April 22, 2013 setting forth the requirements for the submission of confidential materials, we respectfully submit, on behalf of the Parties, the confidential version of the Parties’ Joint Notice of Settlement and Voluntary Dismissal, to be filed in the matter captioned *Streak Products, Inc. and SYX Distribution, Inc. v. UTi, United States, Inc.*, FMC Docket No. 13-04. The public version of this filing was submitted to the Secretary’s Office today. The attached electronic copies are true and correct copies of the paper originals.

(Email dated August 20, 2014, from counsel for Respondent to judges@fmc.gov.)

The Initial Order set forth requirements for the submission of confidential material in the proceeding:

18. *Use in the proceeding* – If confidential information is filed in a memorandum or as an exhibit to a dispositive motion or as part of briefing on the merits, it must be accompanied by a

motion justifying confidential treatment. This motion must identify each item for which protection is sought and show good cause by demonstrating that the information is a trade secret or other confidential research, development, or commercial information. 46 C.F.R. § 502.201(j)(1)(vii). The burden is on the party that wants to protect the information to show good cause for its protection.

19. *Filing* – Parties should file two versions of confidential filings marked as the “confidential version” and the “public version.” The confidential version may be provided to the Presiding Officer by email but should not be filed with the Office of the Secretary by email pursuant to Commission Rule 5. 46 C.F.R. § 502.5.
20. *Marking confidential material* – When submitting a document with confidential material, the parties must mark only the material that a party contends is confidential. The filing party must mark the confidential material in the confidential version of their submission with **{bold font and braces}**. For example, the confidential filing may read: “On January 1, 2005, complainant entered into a {25} year lease with respondent for a monthly rent of {\$1000}.” The public version would read: “On January 1, 2005, Complainant entered into a { } year lease with Respondent for a monthly rent of { }.”

Streak Products, Inc. v. UTi, United States, Inc., FMC No. 13-04 (ALJ April 22, 2013) (Initial Order).

The parties complied with the form requirements of paragraphs 19 and 20. They did not file a motion justifying confidential treatment of the settlement agreement as required by paragraph 18, however. Therefore, they are ordered to file a joint motion justifying confidential treatment of the settlement agreement.

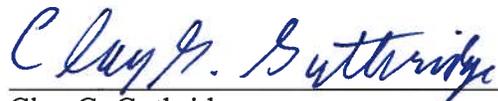
O R D E R

In consideration of the foregoing, it is hereby

ORDERED that the briefing schedule imposed by the July 28, 2014, Procedural Order be **STAYED** until September 19, 2014. It is

FURTHER ORDERED that on or before September 5, 2014, the parties file a joint memorandum addressing the factors set forth in *Old Ben Coal*. It is

FURTHER ORDERED that on or before September 5, 2014, the parties file a joint motion justifying confidential treatment of the settlement agreement. This motion may be included in the memorandum addressing the *Old Ben Coal* factors.



Clay G. Guthridge
Administrative Law Judge