

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 14-10

ECONOCARIBE CONSOLIDATORS, INC.

COMPLAINANT

v.

AMOY INTERNATIONAL, LLC.

RESPONDENT

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND
DISMISSAL WITHOUT PREJUDICE**

Complainant, Econocaribe Consolidators, Inc. ("Econocaribe") and Respondent, Amoy International, LLC ("Amoy"), through their respective attorneys, hereby jointly move for approval of the Settlement Agreement and Mutual Release attached hereto as **Exhibit "A"** ("Settlement Agreement"); and upon approval of the Settlement Agreement, Econocaribe and Amoy further move for dismissal without prejudice of Econocaribe's complaint against Amoy in FMC Docket No.14-10. Econocaribe and Amoy submit that the proposed Settlement Agreement meets the Federal Maritime Commission's criteria for approval of settlement agreements and therefore should be approved.

I. INTRODUCTION

On July 25, 2014, ECONOCARIBE filed its complaint against AMOY in the Federal Maritime Commission ("Commission") for violations of the 46 U.S.C. §41104(2)(A); 46 U.S.C. §41102(c); 46 C.F.R. §515.31(e); and Sections 10(a)(1), 10(b)(1), 10(b)(2)(A), 10(b)(4)(A),

10(b)(4) (B), 10(b)(4) (E), 10(b)(10) of the Shipping Act of 1984 as amended. As relief for these alleged violations, Econocaribe sought damages, attorney's fees, and interest.

On December 22, 2014, Econocaribe filed a Motion for Partial Summary Judgment on the violations of 46 U.S.C. §41104(2)(A); 46 U.S.C. §41102(c); 46 C.F.R. §515.31(e); and Sections 10(a)(1), 10(b)(1), and 10(b)(2)(A) of the Shipping Act of 1984 as amended. On January 19, 2015, Amoy filed its Opposition to Econocaribe's Motion for Partial Summary Judgment. On January 26, 2015, Econocaribe filed its reply to Amoy's Opposition. On March 10, 2015, the Honorable Administrative Judge, Erin Wirth, denied Econocaribe's Motion for Partial Summary Judgment.

On April 2, 2015, Econocaribe filed its Proposed Findings of Fact and Brief. On May 4, 2015, Amoy filed its own Proposed Findings of Fact and Reply Brief. On May 18, 2015, Econocaribe filed a Reply Brief and Supplemental Appendix. On June 1, 2015, Amoy filed a Motion to Request Permission to Reply to Econocaribe's Reply Brief and Supplemental Appendix.

On May 1, 2015, Econocaribe filed a civil Complaint against Amoy in the United States District Court for the Southern District of Florida for breach of contract and other claims relating to Amoy's alleged misdeclaration of cargo (the "SDFL Case"). The SDFL Case is entitled *Econocaribe Consolidators, Inc. v. Amoy International, LLC* and bears the Case No. 15-cv-21672.

In both the FMC Proceeding and the SDFL Case, Econocaribe believes that it would prevail on the allegations set forth in its Complaint. Amoy believes that it would defeat the allegations set forth in the Complaint.

Notwithstanding these beliefs, the Parties recognize the potential for the remaining costs of this litigation being extremely high and the inherent uncertainties in heavily disputed litigation, therefore the Parties agreed to conduct discussions to see if the Complaint and the issues involved could be resolved. The Settlement Agreement that accompanies this Motion is the result of these discussions among the Parties and reflects each party's view of the case and is submitted to the Presiding Officer for approval.

II. AUTHORITY FOR SETTLEMENT

The Administrative Procedure Act ("APA"), 5 U.S.C. 554 (c)(1), requires agencies to give interested parties an opportunity to submit offers of settlement "when time, the nature of the proceeding, and the public interest permit." The legislative history of the APA shows that Congress intended this provision to be read broadly so as to encourage the use of settlement in proceedings such as the instant one proposed by Econocaribe and Amoy:

... even when formal hearing and decision procedures are available to parties the agencies and the parties, are authorized to undertake the informal settlement of cases in whole or in part before undertaking the more formal hearing procedure. Even courts through pretrial proceedings dispose of much of their business in that fashion. There is much more reason to do so in the administrative process, for informal procedures constitute the vast bulk of administrative adjudication ... The statutory recognition of such informal methods should strengthen the administrative arm and serve to advise private Parties that they may legitimately attempt to dispose of cases at least in part through conferences, agreement, or stipulations.

Senate Committee on the Judiciary, Administrative Procedure Act Legislative History, S. Doc. No. 248, 79th Cong., 2d Sess. 24 (1946).

The Commission has a strong policy in favor of settlements. *See Old Ben Coal Company v. Sea-Land Service, Inc.*, 21 FMC 506, 512 (1978) (It is "well settled that the law and Commission policy encourage settlements and engage in every presumption which favors a finding that they are fair, correct, and valid."). The Commission has long recognized that the resolution of controversy by means of settlement is faster and cheaper than litigation for all parties involved. *Id.* The rule that codified the Commission's strong policy in favor of settlement is Rule 91 of the Commission's Rules of Practice and Procedure. 46 CFR §502.91(b) provides:

Where time the nature of the proceeding and the public interest permit, all interested parties shall have the opportunity for the submission and consideration of facts, argument, offers of settlement, or proposal of adjustment, without prejudice to the rights of the parties.

The standard pursuant to which the Commission routinely approves settlement of disputes between parties was well said by the Presiding Judge in *American Stevedoring, Inc. v The Port Authority Of New York And New Jersey*, 2011 WL 7144009 (FMC 2011):

[I]f "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." "[I]f it is the considered judgment of the parties that whatever benefits might result from vindication of their positions would be outweighed by the costs of continued litigation and if the settlement otherwise complies with law the Commission authorizes the settlement." (Internal citations omitted).

Potential costs and uncertainties of success are also valid factors to be considered, both in negotiations of settlement and in review of a settlement agreement. *Investigation of Unified Agreements - Yangming Marine Transport, Evergreen Marine Corporation and Orient Overseas Container Line, Inc., Order Adopting Initial Decision*, 24 SRR 910 (FMC 1988). *See also Atlantis Line, Ltd. v. Australia New Zealand Direct Line*, 25 SRR 557 (ALJ 1989) (settlement was approved in accordance with general Commission policy of settlement, and due to the concomitant avoidance of undue and unnecessary expenses and expenditure of working time).

III. BASIS FOR SETTLEMENT

In line with the APA and the Commission's standards, the proposed settlement here is to be evaluated against litigative probabilities, litigative and administrative costs, and such other matters as justice may require.

The Parties have litigated facts and issues giving rise to this Complaint in both the FMC and the United States District Court for the Southern District of Florida. As discussed above, there are bona fide disagreements between Complainant and Respondent as to certain facts and legal issues. Although each side is confident it would prevail, the outcome of any litigation is uncertain. In view of the litigative probabilities and the probability that this proceeding will continue to be complicated, time consuming, and costly, the proposed Settlement Agreement, which dismisses all FMC claims without prejudice, would save all Parties time and expense.

The Parties have reviewed the relevant documents, engaged in months of discussions and negotiations, and have determined that the mutual concessions made fairly address the outstanding issues between them. Under the Settlement Agreement, the Parties have made mutual agreements that represent, in their view, a fair and reasonable resolution of the disputes. The Parties are represented by counsel and have engaged in negotiations facilitated by a FMC mediator. In short, there is no evidence of fraud, duress, undue influence, or mistake or harm to

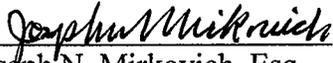
the public. Therefore, as these Parties no longer wish to litigate the issues of the Complaint, the Complainant and Respondent submit that the litigative probabilities, and savings in potential litigative and administrative costs, favor approval of the Settlement Agreement.

IV. CONCLUSION

For the reasons stated above, the Settlement Agreement meets both the Commission's criteria for approval of agreements for settling administrative claims and the general administrative law criteria. Thus, it should be approved.

DATED: August 20, 2015

Respectfully submitted by:

 Neil B. Mooney, Esq. The Mooney Law Firm, LLC nmooney@customscourt.com 1911 Capital Circle N.E. Tallahassee, FL 32308 Tel. 850-893-0670 Fax. 850-391-4228 Counsel for Complainant Econocaribe Consolidators, Inc.	 Joseph N. Mirkovich, Esq. RUSSELL MIRKOVICH & MORROW jmirkovich@rumlaw.com 1 World Trade Center, Suite 1660 Long Beach, CA 90831-1660 Tel. 562-436-9911 Fax. 562-436-1897 Attorneys for Respondent AMOY INTERNATIONAL LLC.
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IT IS SO ORDERED

Erin M. Wirth
Administrative Law Judge
Date:

CERTIFICATE OF COURIER DELIVERY SERVICE

I hereby certify that a copy of the foregoing **JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT AND DISMISSAL WITHOUT PREJUDICE** was filed via email and sent to UPS for delivery to:

The Federal Maritime Commission
Office of the Secretary
800 North Capital Street NW, Room 1046
Washington DC20573-0001

on this 20th day of August, 2015.

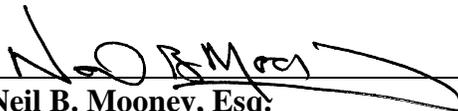

Neil B. Mooney, Esq.

EXHIBIT "A"

SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE

THIS SETTLEMENT AGREEMENT AND MUTUAL GENERAL RELEASE (the "**Agreement**") is entered into as of July 20, 2015 by and between ECONOCARIBE CONSOLIDATORS, INC. ("**ECONOCARIBE**"), on the one hand, and AMOY INTERNATIONAL, LLC ("**AMOY**"), on the other hand. ECONOCARIBE and AMOY are sometimes collectively referred to herein as the "Parties."

I. RECITALS

A. On July 25, 2014, ECONOCARIBE filed a complaint against AMOY in the Federal Maritime Commission for violation of the Shipping Act and reparation award ("FMC Proceeding"). The FMC proceeding was entitled *Econocaribe Consolidators, Inc. v. Amoy International, LLC* and bears the Docket No. 14-10.

B. On May 1, 2015, ECONOCARIBE filed a civil complaint against AMOY in the United States District Court for the Southern District of Florida for breach of contract and other claims relating to AMOY's alleged misdeclaration of cargo (the "SDFL Case"). The SDFL Case is entitled *Econocaribe Consolidators, Inc. v. Amoy International, LLC* and bears the Case No. 15-cv-21672.

C. The events giving rise to the FMC Proceeding and the SDFL Case, as set forth in the FMC Complaint and SDFL Complaint, occurred during and after May 2013. These events are related to Amoy's transportation-related activities as an ocean transportation intermediary.

D. Amoy had a surety bond ("Surety Bond") in effect during the period described in Recital C. The bond guarantees payment of judgments or settlements made pursuant to a claim under 46 CFR §515.23(b) for damages against AMOY from AMOY's transportation-related activities.

E. In exchange for the consideration described below, the Parties desire to compromise and settle (a) all claims, demands, and causes of action that are alleged in the FMC Proceeding and the SDFL Case (collectively "Actions"); and (b) all claims, demands and causes of action which could have been alleged in the Actions; and Parties desire to dismiss the FMC Proceeding without prejudice on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the premises set forth above, and of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties hereby agree as follows:

II. AGREEMENT

1. Payment by AMOY. The settlement sum is in the total amount of One Hundred and Ten Thousand Dollars (\$110,000.00)("Settlement Sum"). Within five (5) days of the execution of this Agreement, AMOY shall pay ECONOCARIBE Fifty Thousand Dollars (\$50,000.00), by wiring said amount to ECONOCARIBE. The remaining balance of the settlement sum, being equal to Sixty Thousand Dollars (\$60,000.00)("Total Remaining Balance"), shall be paid by Amoy in twenty-four (24) installment payments in accordance with the Payment Schedule attached hereto as Exhibit A. Each installment payment shall be paid in the amount of Two Thousand Five Hundred Dollars (\$2,500.00), received by ECONOCARIBE by direct payment from Amoy's bank, by wire or by ACH payment on or before the first day of each month, with the first payment due on August 1, 2015.
2. Interest. Interest, which is calculated based on 24 regular monthly payments amortizing a \$60,000.00 loan at the Florida Statutory interest rate of 4.75% per annum. ("Interest"), begins to accrue on the Total Remaining Balance upon the date of this Agreement. As long as AMOY makes each installment payment on time and in accordance with the Payment Schedule, then ECONOCARIBE shall waive its right to collect any Interest on the Total Remaining Balance and installment payments, subject to Section 4 of this Agreement.
3. Events of Breach. The following events constitute breach of this Agreement:
 - a. If, upon passage of five business days opportunity to cure upon notice from ECONOCARIBE, AMOY fails to pay any installment in accordance with the Payment Schedule.
 - b. AMOY fails to notify ECONOCARIBE of any claim, cause of action or suit brought against it or its Surety bond within fifteen (15) days of having notice thereof.
 - c. The filing by or with regard to Amoy of any petition or application for relief, extension, moratorium or reorganization under any bankruptcy, insolvency or debtor's relief law(s).
 - d. The indictment or conviction of any felony by Amoy or any member or officer thereof.
 - e. The accrual of \$35,000.00 or more in legal claims, causes of action, or suits against Amoy or its Surety bond, excluding any such brought by ECONOCARIBE. This event of breach will not apply if the remaining unpaid installment payments total less than \$25,000.
4. Default. Upon the breach of any term in Paragraph 3, ECONOCARIBE shall declare the sum of the remaining unpaid installment payments ("Remaining Installments") immediately due and payable by AMOY. AMOY shall have the option to pay the

remaining unpaid installment seven business days after ECONOCARIBE declares a default, by wiring said amount to ECONOCARIBE. If said amount is not wired to ECONOCARIBE within that time, interest shall accrue on the Remaining Installments at the rate of 4.75% per annum. AMOY also shall be liable for the Costs of Collection of the remaining debt, including ECONOCARIBE's reasonable attorneys' fees and expenses and paralegals' fees (whether for services incurred in collection, litigation, bankruptcy proceedings, appeals or otherwise), and all other costs incurred in connection therewith, which shall be set forth in a declaration to the Court. Amoy reserves the right to challenge the reasonableness of the claimed fees and costs and the correctness of the balance due on the remaining debt, after the filing and service of the declaration on AMOY and its counsel. The Remaining Installments, the interest accruing on the Remaining Installments, attorney's fees and Costs of Collection are collectively called the "Breach Balance."

5. Consent to the Invocation of Surety Bond. Upon the occurrence of default as described in Section 4, and AMOY's failure to wire the remaining unpaid installment to ECONOCARIBE within the agreed time, ECONOCARIBE shall execute the final judgment issued by the United States District Court for the Southern District of Florida. The amount of the final judgment executed shall be the amount of the Breach Balance. ECONOCARIBE may invoke its claim against the Surety Bond(s) in effect during the period described in Recital C. AMOY hereby consents to payment to ECONOCARIBE by the Surety. However, AMOY acknowledges and agrees that the payment of the Surety Bond is not the exclusive remedy available to ECONOCARIBE for the collection of the Breach Balance. To the extent the Surety Bond falls short of the Breach Balance due, ECONOCARIBE shall be entitled to collect directly from AMOY.
6. Joint Stipulation for Entry of Judgment. Within ten (10) days after the execution of this Agreement, the Parties shall file for Entry of Judgment with the United States District Court for the Southern District of Florida. A copy of the Joint Stipulation is attached hereto as Exhibit B.
7. Joint Request for Dismissal. Within ten (10) days of the issuance of a Judgment on the Joint Stipulation for Entry of Judgment by the United States District Court for the Southern District of Florida, the Parties shall jointly request that the Federal Maritime Commission dismiss the FMC Proceeding *without prejudice*.

III. RELEASE

8. Mutual General Release of All Claims in the FMC Proceeding. Except as to the obligations and rights arising out of this Agreement, ECONOCARIBE, on the one hand, and AMOY, on the other hand, for themselves and their respective agents, employees,

members, shareholders, partners, officers, directors, parents, subsidiaries, affiliates, attorneys, successors, and assigns, hereby forever generally release and discharge each other, and each of the other's respective past or present agents, employees, officers, directors, shareholders, parents, subsidiaries, affiliates, and attorneys from any and all causes of action, claims, losses, promises, damages, costs, expenses, liabilities and demands of whatsoever character, nature and kind, known or unknown, suspected or unsuspected, fixed or contingent that are alleged in the Action or could have been alleged in the FMC Proceeding.

IV. MISCELLANEOUS

9. All Parties to Bear Own Costs and Attorney's Fees. All Parties shall bear their own attorneys' fees and costs incurred in connection with this Agreement and the transactions contemplated hereby.
10. Attorney's Fees to Prevailing Party. In the event of future litigation in which this Agreement is asserted as the basis for a claim or a defense, including claims for breach of this Agreement and/or actions to enforce the terms of the Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with the litigation.
11. Warranty of Claim Ownership and No Transfer. The Parties hereto each hereby represent and warrant to the other that they own the entirety of the rights and claims being released hereby and that they have not sold, assigned, transferred, conveyed or otherwise disposed of any right or claim covered or released by this Agreement.
12. Binding Upon Successors. This Agreement and the related documents and agreements referenced herein shall be binding upon and inure to the benefit of the Parties hereto and their respective representatives, successors and assigns.
13. Entire Agreement. This Agreement represents and contains the entire agreement and understanding between the Parties with respect to the subject matter of this Agreement, and supersedes any and all prior or contemporaneous oral and written negotiations, agreements and understandings. No representation, warranty, condition, understanding or agreement of any kind with respect to the subject matter hereof shall be relied on by the Parties except those expressly contained herein.
14. Amendments Only in Writing. This Agreement may not be amended or modified except by a written agreement signed by all Parties. No breach of any provision of this Agreement can be waived unless in writing. Waiver of any one breach shall not be

deemed to be a waiver of any other breach of this Agreement or any other provision hereof.

15. Partial Invalidity. In the event that any condition or covenant herein is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement, and shall in no way affect any other covenant or condition contained herein. If any condition or covenant is deemed invalid or void due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.
16. Choice of Law. This Agreement is made pursuant to, and shall be governed by, the laws of the State of Florida.
17. Choice of Forum. The Parties hereto expressly agree that any action to enforce the terms of this Agreement shall be brought in the United States District Court for the Southern District of Florida.
18. No Reliance on Others. The Parties hereto represent and declare that, in executing this Agreement, they have relied solely upon their own judgment, belief and knowledge, as well as the advice and recommendations of their own independently selected counsel, concerning the nature, extent and duration of their rights and claims, and they have not been influenced to any extent whatsoever in executing the same by any representations or statements made or omitted to be made by the other parties hereto or by any person representing another party.
19. Joint Drafting. The Parties hereto hereby agree and acknowledge that this Agreement shall be deemed to have been jointly drafted by all the Parties hereto.
20. No Admission. The Parties hereto acknowledge and agree that this Agreement is not to be deemed an admission of liability by any Party.
21. Counterparts. The Parties agree that this Agreement may be executed in multiple counterparts, each of which shall be considered an original but all of which constitute one agreement. Where an original signature is not available, facsimile signatures shall be as good as originals.
22. Warranty of Authority. The signatories hereto warrant and represent to one another that they are authorized to execute this Agreement in the capacity or capacities indicated below and on behalf of each Party for whom or which such signature is provided and that such warranty and representation is a material inducement to the mutual execution of the

Agreement. This warranty and representation shall survive full execution of and performance pursuant to this Agreement.

IN WITNESS WHEREOF, ECONOCARIBE CONSOLIDATORS, INC., AMOY INTERNATIONAL, LLC, have executed this Release on the dates set forth below.

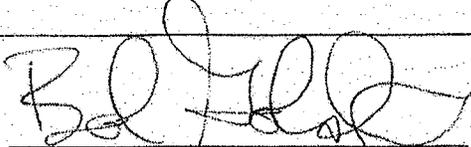
 ECONOCARIBE CONSOLIDATORS, INC.	 AMOY INTERNATIONAL, LLC
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EXHIBIT A - PAYMENT SCHEDULE

		Enter Values				
	Loan Amount		\$60,000.00			
	Annual Interest Rate		4.75%			
	Loan Period in Years		2.333333333			
	Start Date of Loan		7/1/2015			
	Monthly Payment		\$2,500.00			
	Number of Payments		24			
	Total Interest if no default		\$0.00			
	Total Cost of Loan if no default		\$60,000.00			
Payment No.	Payment Date	Beginning Balance	Non-Default Payment	Ending Balance	Amortized Interest	Accrued and Waived Interest
1	8/1/2015	\$60,000	\$2,500.00	\$57,500.00	\$237.50	\$237.50
2	9/1/2015	\$57,500.00	\$2,500.00	\$55,000.00	\$228.05	\$465.55
3	10/1/2015	\$55,000.00	\$2,500.00	\$52,500.00	\$218.56	\$684.10
4	11/1/2015	\$52,500.00	\$2,500.00	\$50,000.00	\$209.03	\$893.13
5	12/1/2015	\$50,000.00	\$2,500.00	\$47,500.00	\$199.46	\$1,092.60
6	1/1/2016	\$47,500.00	\$2,500.00	\$45,000.00	\$189.86	\$1,282.46
7	2/1/2016	\$45,000.00	\$2,500.00	\$42,500.00	\$180.22	\$1,462.68
8	3/1/2016	\$42,500.00	\$2,500.00	\$40,000.00	\$170.54	\$1,633.22
9	4/1/2016	\$40,000.00	\$2,500.00	\$37,500.00	\$160.82	\$1,794.04
10	5/1/2016	\$37,500.00	\$2,500.00	\$35,000.00	\$151.07	\$1,945.10
11	6/1/2016	\$35,000.00	\$2,500.00	\$32,500.00	\$141.27	\$2,086.37
12	7/1/2016	\$32,500.00	\$2,500.00	\$30,000.00	\$131.44	\$2,217.81
13	8/1/2016	\$30,000.00	\$2,500.00	\$27,500.00	\$121.56	\$2,339.38
14	9/1/2016	\$27,500.00	\$2,500.00	\$25,000.00	\$111.65	\$2,451.03
15	10/1/2016	\$25,000.00	\$2,500.00	\$22,500.00	\$101.70	\$2,552.73
16	11/1/2016	\$22,500.00	\$2,500.00	\$20,000.00	\$91.71	\$2,644.44
17	12/1/2016	\$20,000.00	\$2,500.00	\$17,500.00	\$81.68	\$2,726.12
18	1/1/2017	\$17,500.00	\$2,500.00	\$15,000.00	\$71.61	\$2,797.73
19	2/1/2017	\$15,000.00	\$2,500.00	\$12,500.00	\$61.50	\$2,859.24
20	3/1/2017	\$12,500.00	\$2,500.00	\$10,000.00	\$51.35	\$2,910.59
21	4/1/2017	\$10,000.00	\$2,500.00	\$7,500.00	\$41.16	\$2,951.75
22	5/1/2017	\$7,500.00	\$2,500.00	\$5,000.00	\$30.93	\$2,982.69
23	6/1/2017	\$5,000.00	\$2,500.00	\$2,500.00	\$20.66	\$3,003.35
24	7/1/2017	\$2,500.00	\$2,500.00	\$0.00	\$10.35	\$3,013.70