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March 14, 2016					
FEDERAL	MARITIME	COMMISSION			

FEDERAL MARITIME COMMISSION

DOCKET NO. 15-02

COMBUSTION STORE LIMITED

v.

UNIGROUP WORLDWIDE – UTS

**INITIAL DECISION APPROVING
RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT and
DISMISSING PROCEEDING WITH PREJUDICE¹**

On March 10, 2016, complainant Combustion Store Limited (Combustion) and respondent UniGroup Worldwide – UTS (UniGroup) filed a Release of All Claims and Indemnity Agreement (Settlement Agreement) and a Joint Submission in Support of Consent Motion to Dismiss with Prejudice and Joint Motion to Maintain Confidentiality of Settlement Agreement. The Settlement Agreement is approved and the request to keep it confidential is granted.

BACKGROUND

Combustion is engaged in the business of buying and selling used airplane parts. UniGroup is licensed by the Commission as a non-vessel-operating common carrier (NVOCC) and as an ocean freight forwarder. On May 1, 2015, Combustion filed a Complaint alleging that UniGroup violated section 41102(c) of the Shipping Act of 1984 (Shipping Act or Act), 46 U.S.C. § 41102(c), when it transported a Combustion shipment from Newnan, Georgia, to London, England.

On March 7, 2016, Combustion filed Complainant's Consent Motion to Dismiss with Prejudice. The Motion stated: "Pursuant to the parties' Joint Status Report filed February 16, 2016,

¹ This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

the parties have resolved the above-captioned action. Accordingly, Complainant respectfully requests that this matter be dismissed with prejudice immediately.” Because Commission Rules require that the presiding officer approve dismissals based on settlements, 46 C.F.R. § 502.72(a), the parties were ordered to file a joint memorandum and a copy of any settlement agreement as required by Rule 72. *Combustion Store Ltd. v. UniGroup Worldwide, Inc.*, FMC No. 15-02 (ALJ Mar. 8, 2016) (Order to Supplement the Record).

On March 10, 2016, the parties filed public and confidential versions of their papers,² including the Release of All Claims and Indemnity Agreement signed by the parties on March 4, 2016. The parties state that each party has had the opportunity to consult with counsel and contend that the agreement is consistent with the factors outlined in *Old Ben Coal Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978) (*Old Ben Coal*). The parties contend that the Settlement Agreement is the result of each party’s desire to avoid unnecessary litigation costs and expenses and desire to avoid the risks inherent to litigation generally, does not contravene law or public policy, is neither an unjust nor discriminatory device, has no adverse effect on any third parties or on the market for transportation services, is consistent with the Shipping Act, and is not the result 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 parties contend that the Settlement Agreement reflects confidential business information the disclosure of which could be detrimental to the parties and that no person will be harmed by maintaining that confidentiality.

DISCUSSION

I. THE SETTLEMENT AGREEMENT IS APPROVED.

Using language borrowed in part from the Administrative Procedure Act,³ Rule 91 of the Commission’s Rules of Practice and Procedure gives interested parties an opportunity, *inter alia*, to submit offers of settlement “where time, the nature of the proceeding, and the public interest permit.” 46 C.F.R. § 502.91(b). The Commission has consistently adhered to a 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*). See also *Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

² The clarity with which the parties marked their confidential and public versions is noted favorably.

³ “The agency shall give all interested parties opportunity for – (1) the submission and consideration of facts, arguments, offers of settlement, or proposals of adjustment when time, the nature of the proceeding, and the public interest permit.” 5 U.S.C. § 554(c).

The law favors the resolution of controversies and uncertainties through compromise and settlement rather than through litigation, and it is the policy of the law to uphold and enforce such contracts if they are fairly made and are not in contravention of some law or public policy. . . . The courts have considered it their duty to encourage rather than to discourage parties in resorting to compromise as a mode of adjusting conflicting claims. . . . The desire to uphold compromises and settlements is based upon various advantages which they have over litigation. The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in a saving of time for the parties, the lawyers, and the courts, and it is thus advantageous to judicial administration, and, in turn, to government as a whole. Moreover, the use of compromise and settlement is conducive to amicable and peaceful relations between the parties to a controversy.

Old Ben Coal, 18 S.R.R. at 1092 (quoting 15A American Jurisprudence, 2d Edition, pp. 777-778 (1976)).

“While following these general principles, the Commission does not merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation.” *Id.* However, 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.” *Old Ben Coal*, 18 S.R.R. at 1093. “[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.” *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia – New Zealand Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

“Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation.” *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

Based on the Release of All Claims and Indemnity Agreement, which was signed by the parties after the opportunity to consult their attorneys, and the verified Amended Complaint, the Answer, and the record in this proceeding, and engaging in every presumption which favors a finding that the Settlement Agreement is fair, correct, and valid, I find that the Release of All Claims and Indemnity Agreement 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. Therefore, the Release of All Claims and Indemnity Agreement is approved.

II. THE REQUEST FOR CONFIDENTIALITY IS GRANTED.

Pursuant to Commission Rule 119, parties may request confidentiality of documents filed with the Commission. 46 C.F.R. § 502.119. The parties ask that the Release of All Claims and Indemnity Agreement be kept confidential.

The Commission has a history of permitting agreements that settle private complaints brought pursuant to 46 U.S.C. § 41301 to remain confidential. *Streak Products, Inc. v. UTi, United States, Inc.*, FMC No. 13-04 (ALJ Sept. 10, 2014) (Initial Decision Approving Confidential Settlement Agreement and General Release and Dismissing Proceeding with Prejudice), Notice Not to Review, Oct. 15, 2014. The full text of the Release of All Claims and Indemnity Agreement has been reviewed by the undersigned and is available to the Commission. Given the parties' request for confidentiality and the Commission's history of permitting agreements settling private complaints to remain confidential, the parties' motion for confidential treatment of the Release of All Claims and Indemnity Agreement is granted. The Release of All Claims and Indemnity Agreement will be maintained in the Secretary's confidential files.

ORDER

In consideration of the foregoing, it is hereby

ORDERED that the Release of All Claims and Indemnity Agreement between complainant Combustion Store Limited and respondent UniGroup Worldwide – UTS be **APPROVED**. It is

FURTHER ORDERED that the Joint Motion to Maintain Confidentiality of Settlement Agreement and General Release be **GRANTED**. The Secretary is asked to keep the Release of All Claims and Indemnity Agreement in the Secretary's confidential files. It is

FURTHER ORDERED that this proceeding be **DISMISSED WITH PREJUDICE**.



Clay G. Guthridge
Administrative Law Judge