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August 24, 2016					
FEDERAL MARITIME COMMISSION					

FEDERAL MARITIME COMMISSION

DOCKET NO. 16-03

KSB SHIPPING & LOGISTICS LLC

v.

DIRECT CONTAINER LINE a/k/a VANGUARD LOGISTICS

**INITIAL DECISION APPROVING CONFIDENTIAL SETTLEMENT
and DISMISSING PROCEEDING WITH PREJUDICE¹**

I.

On August 11, 2016, Complainant KSB Shipping & Logistics (“KSB Shipping”) and Respondent Direct Container Line filed a joint submission in support of motion for settlement and voluntary dismissal (“Settlement Motion”). The parties attached a copy of the Confidential Settlement Agreement and General Release (“Settlement Agreement”). The parties jointly move for approval of the settlement and confidential treatment of the Settlement Agreement.

II.

On February 12, 2016, a Notice of Filing of Complaint and Assignment was issued indicating that KSB Shipping filed a complaint against Direct Container Line. KSB Shipping alleged that Direct Container Line violated 46 U.S.C. § 41102(c) of the Shipping Act of 1984 (“Shipping Act”), in connection with cargo shipped from the United States to Austria allegedly released to the consignee without obtaining the original bill of lading. On March 25, 2016, Respondent filed a motion to dismiss KSB Shipping’s complaint. On April 28, 2016, Respondent’s motion to dismiss was denied. On May 9, 2016, Respondent filed its verified answer and affirmative defenses to the complaint. On August 11, 2016, the parties filed a Joint Submission in Support of Motion for Settlement and Voluntary Dismissal.

¹ This initial Decision will become the decision of the Commission absent review by the Commission. 46 C.F.R. § 502.227.

The parties state that:

Here, the Parties' settlement reflects a fair and considered judgment of the merits of their respective positions, the desire to avoid unnecessary litigation costs and expense, and the desire to avoid the risks inherent in litigation. The settlement is the product of arms-length negotiations, in which counsel for both parties participated, and is free of fraud, duress, or undue influence. The Parties also submit that the settlement is free of mistake or other defects which might make it unapprovable.

Further, the settlement does not contravene law or public policy. It is not an unjust or discriminatory device, has no adverse effect on any third parties for the market for transportation services, and does not run afoul of the Shipping Act. Instead, it constitutes a prudent decision to settle costly litigation in which the ultimate outcome was uncertain.

Settlement Motion at 2.

In addition, the parties maintain that the settlement contains "sensitive commercial information that should be protected from public disclosure" and "commercially sensitive terms" governing the release of the claims in this case. "Moreover, the settlement contains an express provision that the parties will not act, directly or indirectly, to reveal the existence or content of the Agreement." Settlement Motion at 3.

III.

Using language borrowed in part from the Administrative Procedure Act,² 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 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*). See also *Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981).

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

² "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).

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 representations in the Settlement Motion, the Settlement Agreement, and other documents filed in this matter, the parties have established that the Settlement Agreement does not appear to violate any law or policy or contain other defects which might make it unapprovable. The parties are represented by counsel and engaged in arms-length negotiations. The parties have determined that the settlement reasonably resolves the issues raised in the complaint without the need for costly and uncertain litigation. There is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the Settlement Agreement is approved.

The parties request that the Settlement Agreement be kept confidential. Motion for Confidentiality. Pursuant to Commission Rule 119, parties may request confidentiality. 46 C.F.R. § 502.119. “If parties wish to keep the terms of their settlement agreements confidential, the

Commission, as well as the courts, have honored such requests.” *Al Kogan v. World Express Shipping, Transportation and Forwarding Services, Inc.*, 29 S.R.R. 68, 70 n.7 (ALJ Sept. 15, 2000) (citations omitted); *Marine Dynamics v. RTMLine, Ltd.*, 27 S.R.R. 503, 504 (ALJ 1996); *Int’l Assoc. of NVOCCs v. Atlantic Container Line*, 25 S.R.R. 1607, 1609 (ALJ 1991). Similarly, federal courts frequently maintain the confidentiality of settlement agreements, although some have questioned whether the public interest is undermined in certain circumstances. *See, Streak Products, Inc., and SYX Distribution, Inc. v. UTi, United States, Inc.*, 33 S.R.R. 641, 644-45 (ALJ 2014); *see also, Schoeps v. The Museum of Modern Art*, 603 F. Supp. 2d 673 (S.D.N.Y. 2009); Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 484-487 (1991).

The parties properly provided both a confidential and public version of the Settlement Agreement. The full text of the Settlement Agreement has been reviewed by the undersigned and is available to the Commission. Given the parties’ request for confidentiality, commercially sensitive terms included in the Settlement Agreement, and the Commission’s history of permitting agreements settling private complaints to remain confidential, the parties’ request that the settlement terms be held confidential is granted. The Settlement Agreement will be maintained in the Secretary’s confidential files.

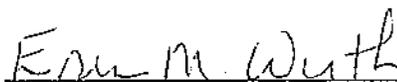
IV.

Upon consideration of the Settlement Motion, the confidential Settlement Agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the motion to approve the confidential Settlement Agreement between KSB Shipping and Direct Container Line be **GRANTED**. It is

FURTHER ORDERED that the request that the terms of the settlement remain confidential be **GRANTED**. It is

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



Erin M. Wirth
Administrative Law Judge