

ORIGINAL

FILED

AUG 11 2016

BEFORE THE
FEDERAL MARITIME COMMISSION

Federal Maritime Commission
Office of the Secretary

Docket No. 16-03

KSB SHIPPING & LOGISTICS LLC

COMPLAINANT,

v.

DIRECT CONTAINER LINE ALSO KNOWN AS VANGUARD LOGISTICS,

RESPONDENT.

**JOINT SUBMISSION IN SUPPORT OF MOTION FOR SETTLEMENT AND
VOLUNTARY DISMISSAL**

KSB Shipping & Logistics LLC, (“KSB” or “Complainant”) and Direct Container Line, a/k/a Vanguard Logistics (“Direct Container Line” or “Respondent”) (jointly the “Parties”) submit this Submission in Support of their Joint Motion for Settlement and Voluntary Dismissal.¹

The Settlement Should Be Approved

The Commission has a strong and consistent policy of “encouraging settlement and engaging in every presumption which favors a finding that they are fair, correct, and valid.” Order at 1 (citations omitted). The Commission’s policies, its Rules of Practice, and the Administrative Procedures Act all encourage settlements. *Old Ben Coal Co. v. Sea-Land Services, Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978). In *Old Ben*, the Commission recognized:

¹ A confidential copy of the proposed Confidential Settlement Agreement and General Release is attached as Exhibit A.

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.

Id. (citation omitted).

The Commission, nonetheless, reviews settlement agreements to ensure that they do not contravene any law or public policy, and are free of fraud, duress, undue influence, or mistake, or other defects which might make them unapprovable. As Your Honor is aware from prior briefing, the claims at issue relate to assertions that the Respondent released cargo to a consignee without obtaining an original bill of lading. The Respondent disputed the claims and further asserted that the Complainant lacked standing to assert the claims.

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 or 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. In sum, because the settlement is fair, reasonable and adequate, and is the product of prudent and considered judgment on the part of the Parties, it should be approved.

The Terms of the Settlement Should Remain Confidential

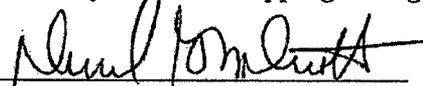
The settlement contains sensitive commercial information that should be protected from public disclosure. The settlement specifically deals with payment made to resolve all claims related to the instant matter, as well as commercially sensitive terms governing the release of these claims. Moreover, the settlement contains an express provision that the Parties will not act, directly or indirectly, to reveal the existence or content of the Agreement. Accordingly, the Parties respectfully request confidential treatment of the settlement agreement.

Respectfully submitted,



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Attorneys for *KSB Shipping & Logistics LLC*



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MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN
Wall Street Plaza
88 Pine Street, 21st Floor
New York, NY 10005
Telephone: 212/376-6400
Facsimile: 212/3766490
Email: dgmcdermott@mdwecg.com

Attorneys for Direct Container Line also
known as Vanguard Logistics

Dated: August 10, 2016

CERTIFICATE OF SERVICE

I do hereby certify that a true and correct copy of the foregoing document was delivered to the following addressees at the addresses stated by depositing same in the United State mail, first class postage prepaid, and/or by electronic transmission, this 10th day of August 2016:

Daniel G. McDermott
MARSHALL, DENNEHEY, WARNER
COLEMAN & GOGGIN
Wall Street Plaza
88 Pine Street, 21st Floor
New York, NY 10005
Telephone: 212/376-6400
Facsimile: 212/3766490
Email: dgmcdermott@mdweg.com

Cameron W. Roberts
ROBERTS & KEHAGIARAS LLC
One World Trade Center, Suite 2350
Long Beach, CA 90831
cwr@tradeandcargo.com
310-642-9800 x 7002



Brendan Collins

PUBLIC VERSION-
Confidential Materials
Excluded

EXHIBIT A

PUBLIC VERSION- Confidential Materials Excluded

CONFIDENTIAL SETTLEMENT AGREEMENT AND GENERAL RELEASE

This Confidential Settlement Agreement and General Release ("Agreement"), is made and entered into by and between KSB Shipping & Logistics LLC ("KSB or "Complainant"), Risona Incorporated ("Risona"), Bracha Export Corporation, d/b/a/ Continental ("Bracha") and R&A International Logistics Incorporated ("R&A") (Risona, Bracha, and R&A collectively are the "Shippers") and Direct Container Line also known as Vanguard Logistics ("Direct Container Line" or "Respondent") and Cargo Partners Austria ("Cargo Partners" or "Delivery Agent") (collectively the Complainant, Shippers, Respondent and Delivery Agent are the "Parties.") This Agreement is effective as of the date on which it is executed by the Parties and, if necessary, approved by the Administrative Law Judge ("ALJ") and/or the Federal Maritime Commission ("FMC") in its entirety, as may be required (the "Effective Date").

WHEREAS, on February 15, 2016, KSB filed a complaint with the FMC, alleging that the Respondent released cargo to a consignee without obtaining an original bill of lading in violation of the Shipping Act of 1984, as amended, at 46 U.S.C. § 41102(c).

WHEREAS, on March 25, 2016, the Respondent moved to dismiss the Complaint which motion was denied on April 28, 2016.

WHEREAS, the Respondent has denied and continues to deny any wrongdoing or liability as to KSB's claims.

WHEREAS, in order to avoid the uncertainty and inconvenience of litigation, the Parties wish to settle KSB's claims on the terms set forth in this Agreement, without any admission of wrongdoing or liability by Direct Container Line or Cargo Partners.

NOW, THEREFORE, in consideration of the promises and undertakings set forth below, for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereby agree as follows:

1. Settlement Payment to KSB

1.1. Within ten (10) business days of the Effective Date, Direct Container Line and/or Cargo Partners {
} in full settlement of all of the Complainant and Shippers' claims and related attorneys' fees and costs (the "Settlement Payment").

2. Dismissal and Release

2.1. Upon the Effective Date, KSB on behalf of itself and the Shippers and any and all of their affiliates and subsidiaries, and all of their agents, attorneys, employees, representatives, heirs, successors, licensees and assigns, hereby fully, forever and irrevocably release and discharge Direct

PUBLIC VERSION

Container Line and Cargo Partners, their equity holders, parents, affiliates, subsidiaries, and each and all of their present or former shareholders, members, directors, officers, consultants, affiliated entities or corporations, subsidiaries, divisions, franchisees, partners, joint venturers, agents, investors, creditors, insurers, attorneys, employees, representatives, successors, licensees, customers, and assigns of any of the foregoing (collectively, the "Released Parties") from any and all claims that KSB and Shippers have against Direct Container Line and Cargo Partners related to the shipment at issue in the Complaint asserted by KSB.

3. Confidentiality

3.1. The Parties agree that this Agreement shall be kept confidential between the Parties.

4. Additional Terms

4.1. Severability. In the event that any provision or portion of this Agreement shall be determined by the Commission to be invalid, illegal, or unenforceable, the remaining provisions or portions of this Agreement shall continue in full force and effect, unless such severability would frustrate the purpose of this Agreement.

4.2. Integration. This Agreement represents the only agreement between the Parties regarding the subject matter hereof, and supersedes all prior agreements, proposals, representations, arrangements or understandings, written or oral, with respect thereto.

4.3. No Admission of Liability. The Parties hereby acknowledge and agree that this is a compromise settlement that is not in any respect, nor for any purpose, to be deemed or construed to be or used as evidence of, an admission of any fact, legal conclusion, proposition, or liability whatsoever on the part of any person or entity.

4.4. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. An electronic, facsimile, or photocopy copy shall be as effective as a signed original.

4.5. Construction. This Agreement shall be deemed to have been jointly drafted by the Parties hereto and shall be construed in accordance with its fair meaning, and not strictly against any Party.

PUBLIC VERSION

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates written below.

KSB Shipping & Logistics LLC

KSB SHIPPING & LOGISTICS LLC.
50 CRAGWOOD ROAD, SUITE 123
SOUTH PLAINFIELD NJ, 07080
PH: 908-834-2438 FAX: 908-834-2439

Date: 8/5/16

R. Sridhar
SRIDHAR RAJAGOPALAN (DIRECTOR)

Risona Incorporated

Date: _____

Bracha Export Corporation d/b/a Continental

Date: _____

R&A International Logistics Incorporated

Date: _____

Direct Container Line also known as Vanguard Logistics

Date: _____

Cargo Partners Austria

Date: _____

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates written below.

KSB Shipping & Logistics LLC

Date: _____

Risona Incorporated

Date: 8/9/2016 _____
[Signature]

Bracha Export Corporation d/b/a Continental

Date: _____

R&A International Logistics Incorporated

Date: _____

Direct Container Line also known as Vanguard Logistics

Date: _____

Cargo Partners Austria

Date: _____

PUBLIC VERSION

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates written below.

KSB Shipping & Logistics LLC

Date: _____

Risona Incorporated

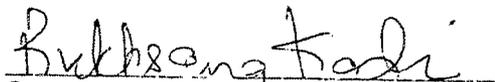
Date: _____

Bracha Export Corporation d/b/a Continental

Date: 8/4/2016


MRS HEDY Friedman Vice President,
R&A International Logistics Incorporated

Date: 8/8/2016


RUKHSANA KADRI (President)
Direct Container Line also known as Vanguard Logistics

Date: _____

Cargo Partners Austria

Date: _____

PUBLIC VERSION

IN WITNESS WHEREOF, the undersigned have executed this Agreement on the dates written below.

KSB Shipping & Logistics LLC

Date: _____

Risona Incorporated

Date: _____

Bracha Export Corporation d/b/a Continental

Date: _____

R&A International Logistics Incorporated

Date: _____

Direct Container Line also known as Vanguard Logistics

Date: August 9, 2016

Jayel Newman CLAIMS MANAGER

Cargo Partners Austria

Date: August 1, 2018

Daniel G. McDermott
DANIEL G. McDERMOTT
as ATTORNEY-IN-FACT