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July 22, 2015					
FEDERAL	MARITIME	COMMISSION			

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 1946(F)**

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**SMARTSTONE PRIVATE LIMITED**

**v.**

**GENERAL NOLI USA, INC. and  
SAVINO DEL BENE FREIGHT FORWARDERS (INDIA) PVT LTD**

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**INITIAL DECISION APPROVING PROPOSED SETTLEMENT AGREEMENT<sup>1</sup>**

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**I.**

On July 16, 2015, a joint motion seeking approval of a settlement agreement, dismissal of the complaint, and a stay of the briefing schedule (“settlement motion”) and a confidential settlement agreement were filed by complainant Smartstone Private Limited (“Smartstone”) and respondents General Noli USA, Inc. (“General Noli”) and Savino Del Bene Freight Forwarders (India) Pvt. Ltd. (“Savino”).

**II.**

Complainant Smartstone initiated this proceeding by filing an informal complaint on August 5, 2014. Respondents General Noli and Savino filed an answer and request for oral hearing on September 22, 2014. Respondents objected to informal proceedings under Subpart S and the proceeding was considered a formal complaint adjudicated pursuant to Subpart T.

The complaint alleges that Respondents violated sections 10(d)(1) and 10(d)(4) of the Shipping Act. 46 U.S.C. §§ 41102(c), 41106(2). Smartstone asserts that the Respondents released a shipment of granite slabs shipped from Bangalore, India, to Houston, Texas, without obtaining the original bill of lading. In their Answer, Respondents deny the allegations in the complaint and raise fourteen affirmative defenses.

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

On September 30, 2014, an Initial Order was served requiring the parties to submit supplemental information that would be helpful to deciding the matter. On February 27, 2015, an Order on Request for Oral Hearing, Order to Supplement the Record, and Briefing Schedule was issued. The parties filed the required supplemental information and Complainant filed its opening brief, labeled Tentative Findings of Fact, on March 22, 2015. The parties then filed three requests to extend the time for Respondents to file their opposition brief, indicating in each request progress toward a settlement. *See* Orders dated May 20, 2015; May 29, 2015; and June 24, 2015. A joint status report filed July 8, 2015, indicated that the parties had reached an agreement and were awaiting the deposit of funds into an escrow account, and further indicated that the Claimant would not be agreeable to further extensions of time for settlement. Joint Status Report at 2.

The settlement agreement was entered into by the Director of Smartstone and counsel for General Noli and Savino. The parties state that “the mutual concessions made for good and valuable consideration in connection with the Agreement adequately address the outstanding issues between them in this matter” and that the parties “seek to avoid the time, expense, and uncertainty of litigation and settle all disputes arising from the instant proceeding.” Motion at 3. The parties indicate that the agreement “provides for immediate payment of a certain amount to Smartstone and allows respondents to stop incurring litigation costs associated with this proceeding.” Motion at 4.

The parties state that the settlement agreement is confidential and request that the agreement be filed under seal pursuant to 46 C.F.R. § 502.5. The parties assert that the agreement deals with a payment made to resolve all claims related to the instant proceeding and contains commercially sensitive information that should be protected from public disclosure. Motion at 3 n1. All pages of the agreement are clearly marked as confidential.

The parties contend that the agreement meets the Commission’s criteria for approval, stating that the parties’ “decisions to settle were made independently and based on careful consideration of the merits and the potential litigation costs. The parties entered into this settlement willingly, and the settlement is not the product of fraud, duress, undue influence, collusion, coercion or mistake, and thus is not inconsistent with public policy.” Motion at 4.

### III.

Using language borrowed in part from the Administrative Procedure Act,<sup>2</sup> 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).

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<sup>2</sup> “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 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 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)).

The parties request that the settlement agreement remain confidential under Commission precedent. Motion at 2 n.3. 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.” *American Stevedoring, Inc. v. The Port Authority of New York and New Jersey*, 32 S.R.R. 466, 468 (ALJ 2011). Similarly, federal courts frequently maintain the confidentiality of settlement agreements, although some have questioned whether the public interest is undermined in certain circumstances. *See, e.g., Schoeps v. The Museum of Modern Art*, 603 F. Supp. 2d 673 (S.D.N.Y. 2009); *see also* Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 484-487 (1991). Accordingly, the request will be granted and the settlement agreement will be maintained in the Secretary’s confidential files, although the full text has been reviewed by the undersigned and is available to the Commission.

Based on the representations in the settlement motion, settlement agreement, and other documents filed in this matter, the parties have established that the 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. The parties have been working on the settlement for an extended period of time, as indicated by their joint status reports. The parties have determined that the settlement reasonably resolves the issues raised in the complaint without the need for additional costly litigation. The parties appear to have engaged in arms-length negotiations. There is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the proposed settlement agreement is approved.

#### IV.

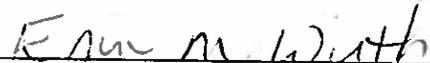
Upon consideration of the settlement motion, the settlement agreement, and the record, and good cause having been stated, it is hereby:

**ORDERED** that the proposed settlement agreement between Smartstone Private Limited, General Noli USA, Inc., and Savino Del Bene Freight Forwarders (India) Pvt. Ltd. be **APPROVED**. It is

**FURTHER ORDERED** that the request to keep the settlement agreement confidential be **GRANTED**. It is

**FURTHER ORDERED** that all other pending motions be **DISMISSED AS MOOT**. It is

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

  
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Erin M. Wirth  
Administrative Law Judge