

**ORIGINAL**

S E R V E D

January 19, 2010

FEDERAL MARITIME COMMISSION

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 09-03**

**NAVEENA EXPORTS, LTD.**

**v.**

**GO-TRANS, INC.**

---

**INITIAL DECISION APPROVING SETTLEMENT AGREEMENT AND RELEASE  
AND GRANTING REQUEST TO DISMISS COMPLAINT<sup>1</sup>**

---

**BACKGROUND**

On June 26, 2009, complainant Naveena Exports, Ltd. (Naveena) commenced this proceeding by filing a complaint alleging that respondent Go-Trans, Inc. (Go-Trans), an ocean transportation intermediary, violated the Shipping Act of 1984 (the Act) by releasing four containers of goods to a buyer without being presented an original bill of lading and without Naveena's consent. Naveena contends that Go-Trans violated the Act by "fail[ing] to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property." 46 U.S.C. § 41102(c)).

On September 4, 2009, the parties filed a Formal Notice of Dismissal stating:

1. On or about July 27, 2009, [Naveena] and [Go-Trans] reached a settlement. Pursuant to the settlement terms reached between [Naveena] and [Go-Trans] and the Mutual Release Agreement entered between the parties, [Naveena] agreed to release [Go-Trans] from any and all claims and liabilities arising out of the transaction made the basis of [Naveena's] complaint if [Go-Trans] fully funded the settlement.

---

<sup>1</sup> The dismissal will become the decision of the Commission in the absence of review by the Commission. Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227.

2. On or about September 2, 2009, [Go-Trans] funded the settlement in full.
3. **WHEREFORE**, based on the foregoing and pursuant to the Federal Maritime Commission Rule 12 and the Federal Rule of Civil Procedure 41(a)(1)(i), Claimant Naveena Exports, Ltd., asks the Federal Maritime Commission to dismiss this proceeding against Claimant [*sic*] Go-Trans, Inc.

(Formal Notice of Dismissal at 2.) The parties did not submit a copy of the Settlement Agreement with the Notice.

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 Service, Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), quoting *Old Ben Coal Co. v. Sea-Land Service, 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). 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).

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.*

---

<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).

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.

*Id.* at 1093.

Generally, when examining settlements, the Commission looks to see if the settlement has a reasonable basis and reflects the careful consideration by the parties of such factors as the relative strengths of their positions weighed against the risks and costs of continued litigation. Furthermore, if 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 Conference and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted). *See also Norland Industries, Inc., et al. v. Reliable Logistics, LLC and Washington International Ins. Co.*, F.M.C. No. 07-04 (ALJ June 9, 2009) (Memorandum and Order on Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice of Claims Against Washington International Insurance Company and Motion for Approval of Dismissal Without Prejudice Against Reliable Logistics, LLC); *Nathan Freeman v. Mediterranean Shipping Co. S.A. and Shipco Transport, Inc.*, F.M.C. No. 08-01 (ALJ Apr. 24, 2008) (Memorandum and Order on Joint Motion for Approval of Settlement Agreement and Dismissal with Prejudice).

The parties' Formal Notice of Dismissal did not provide sufficient information to examine the settlement as required by Commission case law. Therefore, I ordered the parties to file a joint memorandum addressing the factors that the Commission requires be considered before approving a settlement. *Naveena Exports, Ltd. v. Go-Trans, Inc.*, FMC No. 09-03 (ALJ Sept. 10, 2009) (Order Requiring Additional Briefing by Parties).

Neither party responded to the September 10, 2009, Order. Therefore, I issued an order requiring the parties to file a Joint Status Report stating why they had not filed the joint memorandum addressing the factors that the Commission requires be considered before approving a settlement as required by the Order, or in the alternative, the joint memorandum. *Naveena Exports, Ltd. v. Go-Trans, Inc.*, FMC No. 09-03 (ALJ Nov. 25, 2009) (Order to File Joint Status Report or Additional Briefing). Neither party responded to the November 25 Order. Therefore, I issued an order requiring the parties to appear for a telephone conference on December 21, 2009, or in the alternative, file the joint memorandum required by the September 10, 2009, Order. *Naveena Exports, Ltd. v. Go-Trans, Inc.*, FMC No. 09-03 (ALJ Dec. 15, 2009) (Order Scheduling Telephone Conference on Joint Memorandum).

Neither party appeared for the telephone conference. On December 21, 2009, at 6:06 PM, Aamer Ravji, Esquire, counsel for Naveena, sent an email to my Office Assistant stating:

I sincerely apologize for missing this mornings teleconference call with Honorable Guthridge. Unfortunately, this morning my wife hurt her back seriously and I had to take her to the doctor . . . in Plano Texas. I am requesting to reschedule the teleconference call with Honorable Guthridge so I can explain the status of this case.

(Email dated December 21, 2009, from Aamer Ravji ([arr@ravjipc.com](mailto:arr@ravjipc.com)) to Juanita Hutchins.) I granted counsel's request and rescheduled the conference for December 29, 2009.

Neither party appeared for the December 29 telephone conference. Later that day, counsel for Naveena telephoned to say that he had been confused about the time of the conference. I rescheduled the conference for that afternoon.

Naveena's counsel appeared for the rescheduled conference. He stated that he had advised Mohammed Bhatti, representative for respondent Go-Trans, Inc., of the time, telephone number, and conference ID number for the conference. Mr. Bhatti did not appear. The conference was recorded. Mr. Ravji stated that on or before January 15, 2010, Naveena would file the joint memorandum addressing the factors that the Commission requires be considered before approving a settlement. *Naveena Exports, Ltd. v. Go-Trans, Inc.*, FMC No. 09-03 (ALJ Dec. 30, 2009) (Memorandum and Order Regarding the December 29, 2009, Telephone Conference). On January 14, 2010, the parties filed a Joint Memorandum and Brief in Support seeking approval of the settlement agreement. They attached a copy of the Settlement Agreement and Release to the memorandum.

## DISCUSSION

Naveena, a foreign limited partnership organized under the laws of Pakistan, (Complaint ¶ 1), is a manufacturer engaged in the business of exporting apparel goods into the United States. (*Id.* ¶ 3.) Respondent Go-Trans is a New York corporation. (*Id.* at 5.)

Between April 2008 and July 2008, Naveena shipped goods purchased by Ambition Apparel, Inc., from Pakistan into the United States to be delivered to Ambition Apparel. (*Id.* ¶ 8.) Go-Trans Express Limited issued four bills of lading for the shipment of four containers identifying Naveena as the shipper. Two bills of lading identified "To Order of: Allied Bank, Ltd., Karachi, Pakistan," as the consignee, Ambition Apparel as the "Notify Party/Intermediate Consignee," and respondent Go-Trans as the "forwarding agent." (Complaint Exhibit B (Go-Trans Express bill of lading CSL-KHI-505675-NYK); Exhibit C (Go-Trans Express bill of lading CSL-KHI-505722-NYK).) Two bills of lading identified "To Order of: Wells Fargo Bank N.A." as the consignee, Ambition Apparel as the "Notify Party/Intermediate Consignee," and respondent Go-Trans as the "forwarding agent." (Complaint Exhibit D (Go-Trans Express bill of lading CSL-KHI-505889-LOS); Complaint Exhibit E (Go-Trans Express bill of lading CSL-KHI-505978-LOS).) (*See* Complaint ¶ 12.) Respondent Go-Trans released the four containers to Ambition Apparel "without being presented an original

house bill of lading and without [Naveena's] consent; [Go-Trans] apparently took such action upon [Ambition Apparel's] assurance of indemnity." (Complaint ¶ 10.) Go-Trans "has agreed not to contest this Complaint in order to allow [Naveena] to secure the release of FMC Bond # 18084F, in partial payment of the total damages incurred by [Naveena]." (*Id.* ¶ 18.) Naveena sought reparations in the amount of \$342,070.80 for Go-Trans's "violation of Section 10(d) of the Shipping Act of 1984." (Complaint at 5.)

The parties' Settlement Agreement and Release indicates that Naveena presented its claim in the amount of \$342,070.80 to Washington International Insurance Company, Go-Trans's surety. For the sum of \$45,000.00, "[Naveena] and surety desire to avoid the costs and delay of proceeding and litigation of [Naveena's] claim and have agreed to compromise and settle the claim based upon the terms and conditions set forth herein." (Settlement Agreement and Release at 1.) Naveena released Respondent, Go-Trans Express, Limited, Consolidation Shipping & Logistics (Pvt.) Ltd., Consolidation Shipping and Logistics (USA), Inc., and the surety for liability related to the release of the four containers, (*id.*), and agreed to dismiss this proceeding. (*Id.* at 2.)

Naveena and Go-Trans contend that:

8. Realizing the high cost to litigate, including legal fees associated with this proceeding, not to mention the cost of trans-Atlantic travel for Naveena to maintain this proceeding before the Commission in Washington, D.C. and to pay for its counsel's travel and lodging from Dallas, Texas to Washington, D.C., Naveena and Go-Trans agreed that collectively such cost would be astronomical, especially when taking into consideration the currency exchange rate because Naveena would have to pay for its litigation expenses in dollars.
9. Naveena and Go-Trans carefully considered these factors, in conjunction with the relative strengths of their respective positions, and weighed it against the cost of continued litigation, and concluded that the best possible solution for both parties was to reach an amicable but reasonable settlement.

(Joint Memorandum and Brief in Support at 3.)

I find that the parties have established that complaint on its face presents a genuine dispute and that the facts critical to the resolution of the dispute are not reasonably ascertainable. I also find that the settlement is a bona fide attempt by the parties to terminate their controversy and not a device to obtain transportation at other than the applicable rates and charges or otherwise circumvent the requirements of the Shipping Act. Therefore, I approve the Settlement Agreement and Release.

**ORDER**

Upon consideration of the Formal Notice of Dismissal submitted by complainant Naveena Exports, Ltd., the Joint Memorandum and Brief in Support submitted by complainant Naveena Exports, Ltd. and respondent Go-Trans, Inc., the approval of the Settlement Agreement, and good cause having been stated, it is hereby

**ORDERED** that this proceeding be **DISMISSED** with prejudice.



Clay G. Guthridge  
Administrative Law Judge