

**ORIGINAL**

S E R V E D

October 9, 2009

FEDERAL MARITIME COMMISSION

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

**DOCKET NO. 06-06**

**EUROUSA SHIPPING, INC., TOBER GROUP, INC., AND CONTAINER  
INNOVATIONS, INC. -- POSSIBLE VIOLATIONS OF SECTION 10 OF THE  
SHIPPING ACT OF 1984 AND THE COMMISSION'S REGULATIONS  
AT 46 C.F. R. § 515.27**

**MEMORANDUM AND INITIAL DECISION ON SETTLEMENT AGREEMENT AND  
JOINT MEMORANDUM IN SUPPORT OF PROPOSED SETTLEMENT FILED BY  
BUREAU OF ENFORCEMENT AND EUROUSA SHIPPING, INC.**

**BACKGROUND**

By Order of Investigation and Hearing dated May 11, 2006, the Commission commenced an investigation into the activities of respondents EuroUSA Shipping, Inc. (EuroUSA), Tober Group, Inc., and Container Innovations, Inc., for possible violations of section 10 of the Shipping Act of 1984 (now codified at 46 U.S.C. § 41104) and the Commission's Regulations at 46 C.F.R. § 515.27. The Bureau of Enforcement (BOE) and EuroUSA have submitted for approval a proposed Settlement Agreement resolving the claims against EuroUSA. For the reasons stated herein, the Settlement Agreement is approved.

The Order of Investigation and Hearing states that:

Euroamerica Group, Inc. ("Euroamerica") was incorporated in the State of Maryland on May 23, 1994. The President and Qualifying Individual ("QI") of Euroamerica was Mr. Mark Nash. Euroamerica operated as a licensed non-vessel-operating common carrier ("NVOCC") until December 2005 when it merged with Deliver USA, Inc. The surviving corporation, [EuroUSA], continues to operate as a licensed and tariffed NVOCC. EuroUSA maintains an NVOCC bond in the amount of \$75,000. The company's principal place of business is located at 10610 Iron Bridge Road, Unit 6, Jessup, Maryland 20794. Mr. Nash continues to serve as the President and QI of EuroUSA.

Based on evidence available to the Commission, it appears that between February 2004 and December 2005, EuroUSA knowingly and willfully accepted cargo from or transported cargo for the account of several ocean transportation intermediaries (“OTIs”) that did not have tariffs and bonds as required by sections 8 and 19 of the Shipping Act of 1984 (“the Act”) and the Commission’s regulations at 46 C.F.R. § 515.27.

*EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations, Inc.*, FMC No. 06-06, Order of Investigation and Hearing at 1-2 (May 11, 2006). The Commission ordered the investigation to determine:

(1) Whether [EuroUSA] violated section 10(b)(11) of the Shipping Act of 1984 and the Commission’s regulations at 46 C.F.R. § 515.27 by knowingly and willfully accepting cargo from or transporting cargo for the account of an OTI that did not have a tariff and a bond as required by sections 8 and 19 of the Act;

\* \* \*

(3) Whether, in the event one or more violations of section 10 of the Act and/or 46 C.F.R. § 515.27 are found, civil penalties should be assessed and, if so, the amount of the penalties to be assessed;

(4) Whether, in the event violations are found, appropriate cease and desist orders should be issued; and

(5) Whether, in the event violations are found, such violations constitute grounds for the revocation of [EuroUSA’s] OTI license pursuant to 46 C.F.R. § 515.16.

(*Id.* at 4.) Section 10(b)(11) provides:

A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not . . . (11) knowingly and willfully accept cargo from or transport cargo for the account of an ocean transportation intermediary that does not have a tariff as required by section 40501 of this title and a bond, insurance, or other surety as required by section 40902 of this title.

46 U.S.C. § 41104. Under the Commission’s regulation, “[n]o common carrier may transport cargo for the account of a shipper known by the carrier to be an NVOCC unless the carrier has determined that the NVOCC has a tariff and financial responsibility as required by sections 8 and 19 of the Act.” 46 C.F.R. § 515.27(a). The Commission designated the BOE as a party to the proceeding. (*Id.* at 5.) The Secretary served the Order of Investigation and Hearing on Respondents by certified mail, return receipt requested, and BOE commenced the investigation authorized by the Order.

On October 1, 2007, BOE and EuroUSA submitted a Settlement Agreement resolving the claims against EuroUSA and a Joint Memorandum in Support of the Proposed Settlement (Joint Memorandum). The Settlement Agreement recites the following:

- EuroUSA agrees not to accept cargo from or transport cargo for the account of unlicensed NVOCCs;
- EuroUSA will undertake measures designed to eliminate the practice of accepting cargo from or transporting cargo for the account of unlicensed NVOCCs;
- Without admitting any violations, EuroUSA represents that it cooperated fully in the investigation and disclosed to the Commission information, facts, and documents relevant to its transportation activities and practices;
- BOE and EuroUSA believe it is in the best interests of the parties and the shipping public to resolve the proceeding rather than engage in costly litigation.

(Settlement Agreement at 2.) In consideration of the above, BOE and EuroUSA agreed to settle on the following terms:

1. EuroUSA agrees to pay a civil penalty of \$120,000.00;
2. EuroUSA agrees to implement and follow the best practices set forth in the attachment to the Settlement Agreement;
3. Upon approval, the Agreement will forever bar the commencement or institution by the Commission of any civil penalty proceeding or other claim for recovery of civil penalties against EuroUSA for alleged violations of the Shipping Act and the Commission's regulations as set forth in FMC Docket No. 06-06;
4. EuroUSA agrees to cooperate in the investigation and enforcement conducted by the Commission in FMC Dockets No. 06-06, 06-01, or any related actions;
5. The Settlement Agreement is not, and is not to be construed as, an admission by EuroUSA of the violations alleged in FMC Docket No. 06-06;
6. The Agreement is subject to approval by the Commission in accordance with 46 C.F.R. § 502.603.

(*Id.* at 2-3.)

### **THE PROPOSED SETTLEMENT IS CONSISTENT WITH COMMISSION POLICY**

The Administrative Procedure Act, 5 U.S.C. § 554(c)(1) and the Rule 91 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.91, permit offers of settlement "when time, the nature of the proceeding, and the public interest permit." Among the factors to be considered in deciding the appropriateness of a proposed settlement agreement are the Commission's

enforcement policy, litigative probabilities, and litigative and administrative costs. *Far Eastern Shipping Co. - Possible Violations of Sections 16, Second Paragraph, 18(b)(3) and 18(c), Shipping Act, 1916*, 21 S.R.R. 743, 759 (1982). 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 (2002), quoting *Old Ben Coal Co v. Sea-Land Service, Inc.*, 21 F.M.C. 506, 512, 18 S.R.R. 1085, 1091 (ALJ 1978). In *Old Ben Coal*, it was stated that “[i]f 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.” 21 F.M.C. at 513; 18 S.R.R. at 1093.

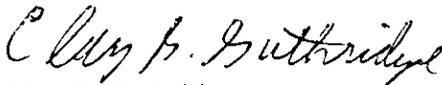
The proposed Settlement Agreement will save the parties the time and expense required to litigate the action to a conclusion. In addition, the risks of litigation are controlled for the parties by their settlement. The proposed Settlement Agreement advances the enforcement policy of the Commission. EuroUSA has agreed not to accept cargo from or transport cargo for the account of unlicensed, untariffed, and unbonded NVOCCs and has agreed to abide by the “best practices” outlined in the attachment to the Settlement Agreement. Aside from saving the time and expense that a hearing on the merits would require, the Agreement and the best practices will help ensure against future violations and protect the shipping public by reducing the possibility of unlicensed operators receiving NVOCC service, thereby reducing the risk of financial loss to the shipping public.

There are no unresolved or outstanding shipper complaints against EuroUSA. (Joint Motion at 7.) EuroUSA has agreed: (1) to pay a significant civil penalty that will have a deterrent effect on the industry as a whole and EuroUSA in particular; (2) to implement the “best practices;” and (3) to continue to cooperate with the Commission in this and other proceedings resulting in additional protection of the shipping public. Therefore, I approve the proposed settlement agreements.

## ORDER

Upon consideration of the proposed Settlement Agreement, the Joint Memorandum in Support of the Proposed Settlement, the record herein, and for the reasons stated above, it is hereby

**ORDERED** that Settlement Agreement between the Bureau of Enforcement and respondent EuroUSA Shipping, Inc., be **APPROVED**. In accordance with Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227, this Initial Decision on Settlement Agreement will become final unless it is reviewed by the Commission.

  
Clay G. Guthridge  
Administrative Law Judge