

**( S E R V E D )**  
**( MARCH 7, 1997 )**  
**( FEDERAL MARITIME COMMISSION )**

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D. C.**

March 7, 1997

**DOCKET NO. 86-09**

**A/S IVARANS REDERI**

**v.**

**COMPANHIA DE NAVEGACAO LLOYD BRASILEIRO, ET AL.**

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**COMPLAINANT'S REQUEST TO TERMINATE LITIGATION  
OF ITS REINSTITUTED COMPLAINT GRANTED**

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Complainant A/S Ivarans Rederi (Ivarans), by letter of its counsel dated February 28, 1997, advises that it has reached a commercial settlement with respondent Companhia de Navegacao Maritima Netumar (Netumar) in Brazil and wishes to discontinue the instant litigation, which, previously terminated, was reinstited at Ivarans' request. The instant request, if granted, would terminate a case that originated over ten years ago with the filing of a complaint by Ivarans. Furthermore, Ivarans' instant request, if granted, would also make it unnecessary to expend further time and resources to resolve new troubling issues

that have arisen because of certain events that have occurred since the complaint proceeding was discontinued by the Commission in 1990. As explained below, these new issues concern the question whether the Commission still retains jurisdiction over Netumar, a defunct foreign carrier that some time ago ceased operating in U.S. trades, and whether the Commission could grant any effective relief to Ivarans in view of changed circumstances.

This case, which began as long ago as 1986 when Ivarans filed its complaint with the Commission, apparently came to a conclusion in 1990. In that year, the U.S. Court of Appeals for the D.C. Circuit, reversing the Commission's decision, held that Ivarans could not be required to pay moneys to other carrier parties to a filed pooling agreement after Ivarans had been an over-carrier in 1982 because under the terms of the agreement it had to be suspended for that year.<sup>1</sup> In other words, Ivarans had succeeded in blocking efforts of the other carrier parties to the pooling agreement who had sought to collect moneys from Ivarans and had obtained a favorable arbitral decision supporting their claims against Ivarans. On remand from the Court of Appeals, the Commission terminated the complaint proceeding but permitted Ivarans to request that its complaint case be reinstated if the other carriers attempted to enforce the arbitral decision in Brazil, i.e., to enforce the pooling agreement despite the decision of the Court of Appeals. See this docket, Denial of Petition for Order etc., 25 SRR 1061, 1063, 1065 (FMC 1990). At the time the Commission issued this ruling, there was no indication that any of the other carrier parties to the pooling agreement would attempt to collect moneys from Ivarans under the arbitration award in Brazil that had been, in effect, nullified by the decision of the Court of Appeals. Indeed,

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<sup>1</sup>See *A/S Ivarans Rederi v. United States*, 895 F.2d 1441 (D.C. Cir. 1990).

the indication was to the contrary because all the other carrier parties to the subject pooling agreement either represented that they would take no action to enforce the arbitration award or acknowledged that enforcement of that award would violate the Shipping Act of 1984 or 1916. (*Id.* at 1062.)

Unfortunately, between 1990 and the present, one of the carrier parties to the agreement, Netumar, went bankrupt, ceased its operations in the U.S. trades, and allegedly tried to enforce the arbitration award in Brazil, claiming \$936,587 as its share of the award, including interest. According to Ivarans' counsel, furthermore, subsequent to Ivarans' request that the Commission reopen this complaint proceeding, Netumar arrested an Ivarans ship in Brazil, apparently seeking to enforce the arbitration award in a Brazilian court. According to counsel, this act required Ivarans to post security to release the ship and, considering the cost of the security, the cost of litigating the matter, and the risk that even if Ivarans obtained an order from the Commission it might not be obeyed in Brazil persuaded Ivarans to reach a settlement with Netumar in Brazil and discontinue the instant complaint before the Commission.

When the Commission reopened this complaint proceeding in response to Ivarans' motion, by Order served on January 28, 1997, the Commission recognized that the intervening events described above introduced complications into the proceeding. The Commission expressed concern that it might no longer have jurisdiction over Netumar which had canceled its tariff and ceased operations and questioned whether the Commission could give Ivarans any relief which would be effective considering the foreign locale and the

intervention of the Brazilian court.<sup>2</sup> The Commission also did not know if Ivarans had suffered any actual monetary injury that could support an award of reparations under section 11(g) of the Shipping Act of 1984 nor what Ivarans had been doing in the Brazilian court proceeding. Accordingly, the Commission ordered four issues to be determined in this reopened phase: (1) Commission jurisdiction over Netumar; (2) Ivarans' role in the proceedings in Brazil and the status of those proceedings; (3) Damage to Ivarans resulting from Netumar's action; and (4) What relief the Commission might effectively grant.

Were this proceeding to continue, Ivarans would have to furnish evidence and arguments on these four issues. See Order to Furnish Evidence and to Supplement the Record, January 30, 1997. Ivarans has decided that the cost of litigating these issues is too great compared to the risks and has obtained relief to its satisfaction in Brazil. While the questions as to the Commission's jurisdiction over a defunct foreign carrier and as to how to enforce an order in a foreign country against a foreign company no longer coming to the United States make for interesting law review articles, that is no reason to impose upon Ivarans the cost of developing the law in a case in which Ivarans, the complaining party, has obtained satisfaction. This is, furthermore, no time for the Commission to expend its limited resources on what is essentially a moot case. Cf. *Smoot v. Fox*, 340 F.2d 301, 303 (6th Cir. 1965) (District Court abused its discretion in refusing to grant plaintiff's motion to dismiss his case, the appellate court stating that "[o]ur district judges have no time to conduct useless trials.")

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<sup>2</sup>There has also been an ongoing bankruptcy proceeding in the U.S. bankruptcy court in Newark, New Jersey dealing with U.S. creditors' claims against Netumar. However, the bankruptcy court has declined jurisdiction over any Netumar assets located in Brazil or over any claims arising out of transactions in Brazil. See Commission's Order, January 28, 1997, at 6.

For the reasons stated, Ivarans' request is granted and this proceeding is discontinued.

*Norman D. Kline*  
Norman D. Kline  
Administrative Law Judge