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FEDERAL MARITIME COMMISSION
WASHINGTON, DC

OFFICE OF THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 07-10

KAWASAKI KISEN KAISHA, LTD. ("K" LINE)

v.

**FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC.;
AND GEMINI SHIPPERS ASSOCIATION, INC.**

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AGREEMENT
AND DISMISSAL OF COMPLAINT WITH PREJUDICE**

Pursuant to Rules 73 and 91 of the Federal Maritime Commission ("FMC") Rules of Practice and Procedure, 46 C.F.R. §§ 502.73 and 502.91, Complainant Kawasaki Kisen Kaisha, Ltd. ("K" Line) and Respondents Fashion Accessories Shippers Association, Inc. ("FASA") and Gemini Shippers Association, Inc. ("Gemini") (hereinafter, "K" Line, FASA and Gemini shall be collectively referred to as the "Parties") hereby jointly move for approval of the attached settlement agreement executed by the Parties and dismissal of the Complaint with prejudice.

I. INTRODUCTION

"K" Line commenced this proceeding by filing its Complaint in November 2007, and subsequently filed an Amended Complaint on January 7, 2008. FASA and Gemini filed their Answer on March 7, 2008, denying the allegations of the Amended Complaint.

The parties conducted substantial document and deposition discovery, but did not complete discovery as a result of a number of unresolved discovery disputes between the Parties. On July 24, 2008, further discovery was stayed by order of the presiding Administrative Law Judge pending briefing and consideration of "K" Line's Motion for Dispositive Ruling and FASA's and Gemini's subsequently filed reply and Motion for

Dispositive Ruling and other relief. Briefing on the motions for summary disposition was completed on November 7, 2008.

While the cross-motions were pending, the Parties engaged in good faith settlement discussions in light of the likely substantial costs of continued litigation, the prevailing adverse economic conditions, and the uncertainties inherent in the outcome of complex litigation such as this proceeding. Specifically, the Parties have concluded and agreed that the costs of further litigation, including the possibility of substantial additional discovery, depositions, briefing of complex issues of law, motions, trial of disputed facts, and appeals, may far exceed the reparations sought or any other tangible or intangible value to the Parties. Consequently, the Parties have entered into the attached settlement agreement, after good faith negotiation and with the benefit of legal counsel, settling their disputes with no payment by any party, mutual releases of claims, and dismissal of the proceedings in this docket.

The Parties submit that the attached settlement agreement was reached in good faith, and is free of fraud, duress, undue influence, mistake or any other defect that would bar its approval. Moreover, as set forth more fully below, approval of the proposed settlement would be consistent with the Commission's longstanding policy of encouraging settlement. Accordingly, the Parties respectfully request that this motion for approval of the settlement and dismissal of this proceeding be granted.

II. THE MOTION TO APPROVE THE SETTLEMENT AND DISMISS THE COMPLAINT WITH PREJUDICE SHOULD BE GRANTED

The Commission has a strong and longstanding policy of encouraging the resolution of disputes under the Shipping Act through compromise and voluntary settlements. *See, e.g.*, 46 C.F.R. § 502.91 (setting forth Commission procedures for alternative dispute resolution and settlement). Indeed, it is “well settled that the law and Commission policy encourage settlements and engage in every presumption which favors a finding that they are fair, correct, and valid.” *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978); Administratively Final November 29, 1978. *See also K.E.I. Enterprise d/b/a KEI Logix v. Greenwest Activewear, Inc.*, 31 S.R.R. 497, 501 (ALJ 2008); Administratively Final December 5, 2008; *Inlet Fish Producers, Inc. v. Sea-Land Service, Inc.*, 29 S.R.R. 975, 978 (ALJ 2002); *Ellenville Handle Works, Inc. v. Far Eastern Shipping Co.*, 20 S.R.R. 761, 762 (ALJ 1981); Administratively Final February 25, 1981.

As the Commission recently noted in *K.E.I. Enterprise*, there are a number of compelling reasons to encourage voluntary settlements of disputes under the Shipping Act:

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.

K.E.I. Enterprise d/b/a KEI Logix v. Greenwest Activewear, Inc., 31 S.R.R. 497, 501-02 (ALJ 2008), quoting *Old Ben Coal*, 18 S.R.R. at 1092. Accordingly, the Commission will generally approve a settlement if it is not inconsistent with the applicable law and not infected by fraud, duress or other such defects:

If a proffered settlement does not 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.

K.E.I. Enterprise, quoting *Old Ben Coal*, 18 S.R.R. at 1093.

In deciding whether to approve a settlement, the Commission also considers whether the parties have determined that the benefits of further litigation are outweighed by the likely costs of obtaining a decision:

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 position 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).

The settlement proposed by the Parties is reasonable and not inconsistent with any laws. The Parties to the proposed settlement have carefully considered the costs and benefits of further litigation and concluded that settlement is in their mutual interests. Similarly, the proposed settlement is not tainted by fraud, duress or other disqualifying defects. In fact, as stated in the settlement agreement, all Parties to the settlement have had the benefit of being represented by legal counsel and the opportunity to consider the

settlement terms carefully. Consequently, the Parties to the settlement respectfully request that the settlement be approved and this proceeding dismissed with prejudice.

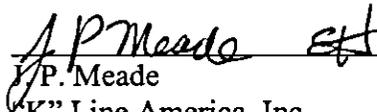
Respectfully submitted,



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DATE: August 31, 2009

Attorneys for *FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC. and GEMINI SHIPPERS ASSOCIATION, INC.*



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DATE: August 31, 2009

Attorney for *KAWASAKI KISEN KAISHA, LTD.*

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drose@mdslaw.com

BEFORE THE FEDERAL MARITIME COMMISSION

KAWASAKI KISEN KAISHA, LTD.,)	
)	
Complainant,)	
v.)	
)	
FASHION ACCESSORIES SHIPPERS)	Docket No. 07-10
ASSOCIATION, INC. AND GEMINI)	
SHIPPERS ASSOCIATION, INC.)	
)	
Respondents.)	
)	

SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (the "Agreement") is entered into this _____ day of August 2009 by and between Fashion Accessories Shippers Association, Inc., and Gemini Shippers Association, Inc. (together referred to herein as "FASA"), on the one hand, and Kawasaki Kisen Kaisha, Ltd. ("K" Line") by and through its General Agent "K" Line America, Inc., on the other hand. Together, FASA and "K" Line hereinafter will be referred to as the "Parties" (including those persons and entities included in Clause 3, hereinbelow, as coming within the definition of "Parties" for purposes of obligations and benefits hereunder).

WHEREAS, "K" Line commenced a proceeding before the Federal Maritime Commission ("FMC" or "Commission") entitled Kawasaki Kisen Kaisha, Ltd. v. Fashion Accessories Shippers Association, Inc. and Gemini Shippers Association, Inc., FMC Docket No. 07-10 (the "Proceeding"), by filing a complaint on or about November 8, 2007; and

WHEREAS, "K" Line filed an amended complaint on or about January 7, 2008, in the Proceeding; and

WHEREAS, FASA filed an answer to the amended complaint on or about March 7, 2008; and

WHEREAS, the Parties to this Agreement desire to fully and finally settle, resolve and release all claims or potential claims that arose out of or are related to all claims, allegations or inferences raised in the Proceeding whether asserted or unasserted, or whether in law, equity or otherwise, and any and all claims that were or could have been asserted or raised by either of the Parties in the Proceeding or any other forum, without any admissions of liability or wrongdoing on the part of or on behalf of either of

the Parties hereto, on the terms and conditions contained herein.

WHEREAS, the Parties have engaged in extensive litigation in connection with the issues set forth in "K" Line's amended complaint and FASA's answer, in discovery requests and motions, and in motions to dismiss and for dispositive rulings and replies thereto, and in procedural matters;

WHEREAS, the Parties recognize that they have differing contentions concerning the issues raised in this proceeding and any related or other potential issues;

WHEREAS, the Parties have engaged in good faith efforts and negotiations to achieve a mutually acceptable settlement of the issues in the Proceeding and all related issues, and to avoid the expense, lengthy duration, delay and uncertainty, likely to occur in continued litigation over these issues;

WHEREAS, FASA denies the allegations and claims set forth in "K" Line's amended complaint and further denies any liability arising from said allegations and claims; and

WHEREAS, "K" Line denies any bases whatsoever and any liability to FASA for any actual or potential claims or counterclaims against "K" Line arising from or in connection with the issues in the Proceeding and/or arising under the Shipping Act of 1984, as amended, and Commission regulations;

NOW, THEREFORE, and in consideration of the mutual promises and agreements made herein, and for good and valuable consideration, the receipt of which is hereby acknowledged, the Parties agree as follows:

1. Dismissal of the Proceeding. Upon the execution of this Agreement, counsel for FASA shall prepare, and the Parties shall file, a Joint Motion for Approval of Settlement and Dismissal with Prejudice of the Proceeding in FMC Docket No. 07-10. Such dismissal "With Prejudice" is founded upon the releases and promises of the Parties, breach of which is stipulated to be a valid basis to reopen such Proceeding.

2. Settlement of Claims. In settlement of any and all claims, counterclaims, demands, rights, matters and causes of action under the Shipping Act of 1984, as amended, and Commission regulations, related to any of the alleged facts, conclusions, inferences, or alleged violations set forth and described in the original or amended complaint and in motions, replies thereto, affidavits and declarations and otherwise related to or contained in the record of this Proceeding, or with any other alleged basis whatsoever, the Parties hereby enter into an arms-length settlement of all claims between them without any admission of any liability with respect thereto.

3. General Release. The Parties hereby agree to release, acquit and forever discharge each other, and each of their respective former and present officers, directors, shareholders, employees, agents, attorneys, parents, subsidiaries affiliates, predecessors

in interest and successors in interest, from any and all causes of action, claims, counterclaims, liabilities and demands of whatever nature, including those that could have been made, whether known or unknown, past or present, under the Shipping Act of 1984, as amended, and/or Commission regulations, or on any other basis whatsoever, prior to and including the date of execution of this Agreement. The Parties warrant that each has actual agency authority to execute this Agreement and to bind all persons, classes of persons, or entities referred to hereinabove (all of whom shall be deemed included in the definition of "Parties" wherever that term is used herein) to this Agreement's terms and conditions and each of such "Parties" as defined herein hereby expressly releases and is released by all other such "Parties".

4. No Admission of Liability. This Agreement, including but not limited to its negotiation, execution and performance, is not to be deemed or construed as an admission of any act or liability by the Parties, or either of them, nor is this Agreement to be deemed or construed as an admission that the Parties, or either of them, was responsible for any acts or liability alleged in any of the pleadings filed in the Proceeding, and the Parties, and each of them, expressly disclaim any admission of liability in connection with the Proceeding and the matters addressed therein. Instead, this Agreement represents a full and complete settlement of any and all disputes between the Parties, to resolve once and for all every disputed claim that has been asserted or could have been asserted by the Parties arising from or related to the allegations, claims and issues in this proceeding or otherwise arising under the Shipping Act of 1984, as amended, and Commission regulations, or on any other basis whatsoever, prior to and including the date of execution of this Agreement.

5. Consultation with Legal Counsel and Adequate Time to Consider Agreement. The Parties represent and agree that they have been given an opportunity to consult with their respective legal counsel, including counsel in the FMC Proceeding, before signing this Agreement, that they have been given a sufficient, reasonable period of time to carefully consider all of the provisions of this Agreement, and hereby stipulate that this Agreement is made with adequate consideration for the obligations of all Parties hereto.

6. Further Action Necessary. The Parties agree to take further action, if necessary, including the execution and delivery of any additional documents reasonably required to effectuate the terms and conditions of this Agreement, including such actions as may be necessary to comply with statutory, regulatory and procedural requirements of the Shipping Act of 1984, as amended, and the Commission's regulations in connection with this Agreement. The Parties further agree to the submission to and filing with the Commission of any documents necessary to Commission approval of this Agreement and to its implementation.

7. Warranty of Authority. Each person executing this Agreement on behalf of a Party hereto warrants and represents that she or he is duly authorized to execute this Agreement on behalf of such Party, and each Party warrants and guarantees that it has actual agency authority to execute this Agreement on behalf of and to bind all persons, classes of persons, or entities described in Clause 3 hereof to all this Agreement's

provisions.

8. Attorney Fees and Expenses. Upon the issuance of a final Commission decision or order resulting in the final approval of this Agreement, "K" Line's amended complaint will be dismissed with prejudice, and the Parties shall bear their own legal fees and costs associated with the Proceeding.

9. Entire Agreement. This is the entire agreement between the Parties, and no modification, amendment or waiver of this Agreement or any provision hereof shall be effective unless made in writing signed by the Parties hereto, either themselves or by their authorized agents.

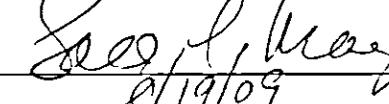
10. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original for all purposes. All counterparts shall be construed together and shall constitute one Agreement.

11. Facsimile Signature. A facsimile signature shall be as valid as an original signature for all purposes hereunder.

FASHION ACCESSORIES SHIPPERS
ASSOCIATION, INC. on Its Own Behalf
and on Behalf of All Described Hereinabove
for Whom It Acts as Agent.

By: 
Date: 8/19/09

GEMINI SHIPPERS ASSOCIATION, INC.
on Its Own Behalf and on Behalf of All
Described Hereinabove for Whom It Acts as
Agent.

By: 
Date: 8/19/09

KAWASAKI KISEN KAISHA, LTD. By
and Through its General Agent, "K" LINE
AMERICA, INC., and on Behalf of All
Described Hereinabove for whom
KAWASAKI KISEN KAISHA, LTD. Acts
as Agent.

By: _____
Date: _____

provisions.

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FASHION ACCESSORIES SHIPPERS
ASSOCIATION, INC. on Its Own Behalf
and on Behalf of All Described Hereinabove
for Whom It Acts as Agent.

By: _____
Date: _____

GEMINI SHIPPERS ASSOCIATION, INC.
on Its Own Behalf and on Behalf of All
Described Hereinabove for Whom It Acts as
Agent.

By: _____
Date: _____

KAWASAKI KISEN KAISHA, LTD. By
and Through its General Agent, "K" LINE
AMERICA, INC., and on Behalf of All
Described Hereinabove for whom
KAWASAKI KISEN KAISHA, LTD. Acts
as Agent.

By: John P. Meade, VP - LAW
Date: 24 AUGUST 2009