

FEDERAL MARITIME COMMISSION

GLOBAL LINK LOGISTICS,
INC.

Complainant,

v.

HAPAG-LLOYD AG

Respondent.

Docket No. 13-07

Served: April 14, 2015

BY THE COMMISSION: Mario CORDERO, *Chairman*;
Rebecca F. DYE, Richard A. LIDINSKY, Jr., Michael A.
KHOURI, and William P. DOYLE, *Commissioners*.

Order Approving Confidential Settlement Agreement and Release of Claims and Dismissing Proceeding with Prejudice

I. PROCEEDING

This proceeding was initiated by Global Link Logistics, Inc. (Global Link) in a Complaint filed on September 10, 2013. In the Complaint, Global Link sought reparations and indemnification for injuries caused by Hapag-Lloyd AG (Hapag-Lloyd) for alleged

violations of 46 U.S.C. §§ 41102(c), 41104(3), and 41104(10).¹ According to the Complaint, Global Link and Hapag-Lloyd first entered into a service contract in May of 2007, and subsequently entered into five additional service contracts. Complaint at 2. Global Link alleged that Hapag-Lloyd (1) had a course of dealing that involved reducing minimum quantity commitments (MQCs) specified in its service contracts with Global Link, to reflect the actual volume of goods shipped; (2) failed to provide competitive rates that allowed Global Link to serve its customers through Hapag-Lloyd; (3) provided inadequate administrative support, thus causing errors and untimely corrections in its rates, which prevented Global Link from booking with Hapag-Lloyd; (4) reduced Global Link's allocation under the service contract by more than two-thirds; and (5) agreed to address the MQC shortfall in the service contract, but instead demanded payment from Global Link of \$535,500, the amount of damages Hapag-Lloyd claimed it was owed under the 2012 Service Contract with Global Link.

In response to Global Link's Complaint, on October 18, 2013, Hapag-Lloyd filed a Motion to Dismiss for failure to state a claim upon which relief could be granted. Fed. R. Civ. P. 12(b)(6).

¹ 46 U.S.C. § 41102(c) provides as follows: "PRACTICES IN HANDLING PROPERTY – A common carrier, marine terminal operator, or ocean transportation intermediary may not fail 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. § 41104(3) provides as follows: "A common carrier, either alone or in conjunction with any other person, directly or indirectly, may not . . . retaliate against a shipper by refusing, or threatening to refuse, cargo space accommodations when available, or resort to other unfair or unjustly discriminatory methods because the shipper has patronized another carrier, or has filed a complaint, or for any other reason"

46 U.S.C. § 41104(10) provides as follows: "a common carrier, either alone or in conjunction with any other person, directly or indirectly, may not . . . unreasonably refuse to deal or negotiate"

In its Motion to Dismiss, Hapag-Lloyd argued that the Complaint failed to meet the applicable thresholds for stating a cause of action under the Shipping Act of 1984 (the Shipping Act) for the following reasons: (1) the Complaint “fails to meet the minimum pleading standards set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 570 (2007), by failing to set forth sufficient factual allegations to state a claim to relief;” (2) the Complaint “is based on novel causes of action that are not consistent with the Shipping Act or any Commission precedent under the cited sections, and seeks to revive rights and authorities that were purposefully withheld or abolished by Congress in the Ocean Shipping Reform Act of 1998” (OSRA); and (3) the Complaint, “which was filed in response to a demand by Hapag-Lloyd for arbitration, raises contract law defenses, but not Shipping Act claims, and thus should be dismissed pursuant to 46 U.S.C. § 40502(f).” Motion to Dismiss at 1.

On November 1, 2013, Global Link filed an Opposition to Respondent’s Motion to Dismiss, in which it argued that the Commission has exclusive authority to enforce the Shipping Act, and that its Complaint asserted valid claims under the Shipping Act. On November 12, 2013, Hapag-Lloyd filed a Reply to Global Link Logistics, Inc.’s Opposition, in which it argued that Global Link misconstrued the relevant pleading standard, as supplied by the Federal Rules of Civil Procedure, and interpreted by the Supreme Court in *Twombly* and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). Hapag-Lloyd argued that with regard to each claim asserted in the Complaint, “Global Link has failed to allege facts that, if true, would establish one or more required elements,” and therefore dismissal was appropriate. Hapag-Lloyd Reply at 3.

II. INITIAL DECISION

The Initial Decision was served April 17, 2014. *Global Link Logistics, Inc. v. Hapag-Lloyd AG*, 33 S.R.R. 512 (ALJ 2014) (Initial Decision). The Administrative Law Judge (ALJ) considered each alleged violation of the Shipping Act, and concluded with

regard to each allegation that the Complaint failed to state a claim that Hapag-Lloyd engaged in the prohibited practice. Accordingly, the ALJ dismissed the Complaint.

III. GLOBAL LINK'S EXCEPTIONS TO INITIAL DECISION, HAPAG-LLOYD'S REPLY, WORLD SHIPPING COUNCIL'S AMICUS BRIEF, AND GLOBAL LINK'S REPLY TO AMICUS BRIEF

Global Link filed Exceptions to the Initial Decision, and Hapag-Lloyd filed a Reply to Exceptions. In addition, the World Shipping Council (WSC) filed a Motion to File a Brief as *Amicus Curiae* in Support of Respondent, and conditionally filed its Brief at the same time. Global Link filed a Reply to WSC's *Amicus* Brief.

On February 26, 2015, while the proceeding was pending before the Commission for consideration of Global Link's Exceptions, Hapag-Lloyd's Reply, WSC's Brief, and Global Link's Reply thereto, Global Link filed a Petition to Withdraw Exceptions and Dismiss Complaint with Prejudice (Petition to Withdraw/Dismiss). On February 27, 2015, Global Link and Hapag-Lloyd filed a Joint Petition for Approval of Settlement (Joint Petition).

IV. GLOBAL LINK'S PETITION TO WITHDRAW EXCEPTIONS AND DISMISS COMPLAINT WITH PREJUDICE

In its Petition to Withdraw/Dismiss, Global Link states that "the parties have resolved this matter through a mutually agreed settlement." Petition to Withdraw/Dismiss at 1. Global Link further states that the "settlement fully and finally disposes of all disputes and issues between Global Link and Hapag-Lloyd with respect to the matters subject [sic] of this Proceeding," and "[a]s consideration for the settlement, Global Link has agreed to withdraw its

exceptions to the Initial Decision Granting Respondent's Motion to Dismiss and to dismiss its Complaint with prejudice." *Id.*

V. JOINT PETITION FOR APPROVAL OF SETTLEMENT

In their Joint Petition, Global Link and Hapag-Lloyd (the Parties) state that they have "mutually agreed to settle all of their disputes and issues that are [the] subject of this Proceeding." Joint Petition at 1. The Parties attached a copy of the Settlement Agreement (Exhibit A) to the Joint Petition, and they request that the Agreement be treated confidentially.

The Parties state that the Commission has a "strong and consistent policy" of encouraging settlements, and the "Commission's policies, its Rules of Practice, and the Administrative Procedure Act all encourage settlements." *Id.* at 1-2. They state that the "claims at issue relate to assertions that the Respondent's alleged unjust and unreasonable practices prevented Complainant from fulfilling the minimum quantity commitment in a service contract." *Id.* at 2. They note that the ALJ granted Hapag-Lloyd's Motion to Dismiss the Complaint; that Global Link filed Exceptions to the ALJ's Initial Decision; that Hapag-Lloyd and the World Shipping Council, as *Amicus*, filed Replies to Global Link's Exceptions; and that the proceeding is currently pending before the Commission.

The Parties state that their Settlement Agreement "reflects a fair and considered judgment of the relative strengths of their respective positions, the desire to avoid continuing litigation costs and to avoid the risks inherent in litigation," and that the "settlement is the product of arms-length negotiations, in which counsel for both parties participated, and is free of fraud, duress, or undue influence." *Id.* The Parties submit that the Settlement Agreement is "free of mistake or other defects which might make it unapprovable," and that it "does not contravene law or public policy." *Id.* at 3. The Parties state that the Settlement Agreement "is

not an unjust or discriminatory device, has no adverse effect on any third parties or the market for transportation services, and does not run afoul of any provision of the Shipping Act,” and that it “constitutes a prudent decision to settle costly litigation in which the ultimate outcome was uncertain.” *Id.*

The Parties further state that the Settlement Agreement “contains sensitive commercial information that should be protected from public disclosure,” and “specifically deals with a payment made to resolve all claims related to the instant matter, as well as commercially sensitive terms governing the release of these claims.” *Id.* Therefore, the Parties “request confidential treatment of the settlement agreement pursuant to Section 201(i) of the Commission’s Rules of Practice and Procedure; 46 C.F.R. § 502.201(i).” *Id.* Finally, the Parties request that the Commission approve their Settlement Agreement, and dismiss this proceeding with prejudice.

VI. DISCUSSION

This proceeding is pending before the Commission for consideration of Global Link’s Exceptions to the Initial Decision, and Replies thereto filed by Hapag-Lloyd and WSC. Prior to the issuance of a final Order on Exceptions by the Commission, Global Link filed its Petition to Withdraw/Dismiss and Global Link and Hapag-Lloyd filed their Joint Petition. As no final Order on Exceptions has been issued by the Commission, Global Link wishes to withdraw its Exceptions and have its Complaint dismissed, and the Parties have submitted a Settlement Agreement, we will grant Global Link’s Petition to Withdraw Exceptions and Dismiss Complaint with Prejudice. We now turn to consideration of the Parties’ Joint Petition for Approval of Settlement, including their request for confidential treatment of the Settlement Agreement.

A. Offers of Settlement: Commission Rule 91, 46 C.F.R. § 502.91

Rule 91 of the Commission's Rules of Practice and Procedure provides an opportunity for parties to a proceeding to submit "offers of settlement," "[w]here time, the nature of the proceeding, and the public interest permit" 46 C.F.R. § 502.91(b). It is advantageous for offers of settlement to be submitted as soon as practicable after the commencement of a proceeding, and typically settlement agreements are filed with and ruled upon by Commission administrative law judges. In this case, the proceeding is pending before the Commission for consideration of Global Link's Exceptions, and the Replies thereto filed by Hapag-Lloyd and WSC. The Commission's final decision has not been issued, and therefore time permits submission and consideration of the Parties' Settlement Agreement.

With regard to the nature of the proceeding, the "claims at issue relate to assertions that Respondent's [Hapag-Lloyd's] alleged unjust and unreasonable practices prevented Complainant [Global Link] from fulfilling the minimum quantity commitment in a service contract." Joint Petition at 2. Given the fact that the Shipping Act violations alleged in Global Link's Complaint are related to a service contract entered into by Global Link and Hapag-Lloyd, the nature of the proceeding permits a Settlement Agreement between the Parties.

Finally, with regard to the public interest component of Rule 91, settlement of the issues in this proceeding will result in reducing the time and costs that would be associated with further litigation, both for the Commission and the Parties. Such time and cost savings, from the Commission's perspective, are in the public interest, as noted in *Old Ben Coal Co. v. Sea-Land Service, Inc.*, 18 S.R.R. 1085 (ALJ 1978):

“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.”

18 S.R.R. at 1092 (quoting 15A AM. JUR. 2D Ed., pp. 777-778 (1976)). As time, the nature of the proceeding, and the public interest permit the offering of a settlement in this case, consistent with Rule 91, the Settlement Agreement is accepted for filing.

B. Commission Precedent: Settlement Agreement Review Standards

The Commission has stated that it will not “merely rubber stamp any proffered settlement, no matter how anxious the parties may be to terminate their litigation.” *Old Ben Coal*, 18 S.R.R. at 1092. The Commission has set out the following standards for reviewing settlement agreements:

[T]he Commission typically reviews a settlement agreement to ensure that it does not contravene law or public policy. *Old Ben Coal* [18 S.R.R.] at 1093. Such review typically includes evaluating factors to determine that the settlement agreement was not a product of fraud, duress, undue influence, or mistake. *Id.* The Commission also reviews the terms of settlement agreements to ensure that the terms are fair, reasonable, and adequate.

World Chance Logistics (Hong Kong), Ltd. – Possible Violations of 1984 Act, 31 S.R.R. 1346, 1350 (FMC 2010). The Commission has

stated that it will authorize a settlement “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” *Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia*, 24 S.R.R. 1129, 1134 (ALJ 1988).

With regard to specific payment amounts in settlement agreements, the Commission has left such determinations to the parties:

Commission proceedings can be terminated by mutual settlement for amounts less than those originally sought in the complaint and without admissions of statutory violations. *Del Monte Corp.*, 19 SRR at 1040-41. See also *Alaskan Gold*, slip op. at 4 (“Moreover, the amounts of settlements are left to the parties who have negotiated them in the exercise of their business judgments.”).

Accord Craft Co., Ltd. v. Asia North America Eastbound Rate Agreement, 26 S.R.R. 1385, 1386-1387 (ALJ 1994). In *Accord Craft*, the Commission approved a settlement agreement involving a dispute, quite similar to the dispute in this proceeding, over payment of liquidated damages for a shortfall connected with an MQC in a service contract. In *Accord Craft*, Accord and ANERA entered into a service contract that provided for liquidated damages in the event that Accord did not ship a minimum quantity of certain commodities. ANERA notified Accord that it had not met its MQC under the contract, and demanded payment of liquidated damages for the shortfall. Accord disputed its liability for liquidated damages, and ANERA demanded arbitration to resolve the dispute. Accord then filed a complaint with the Commission, alleging that ANERA violated various provisions of the Shipping Act. Subsequently, Accord and ANERA negotiated a confidential

settlement agreement, which they filed under seal with the Commission.

The ALJ in *Accord Craft* noted that the Commission has consistently adhered to a policy of encouraging settlements, citing Rule 91 of the Commission's Rules, and the decision in *Old Ben Coal*. The ALJ noted that there were numerous issues in dispute, both before the Commission and an arbitrator, and without a settlement, there would be further proceedings regardless of which party prevailed before the Commission. The ALJ concluded that "in view of the respective merits of the case, the cost of further litigating the issues in a multiplicity of forums, and the parties' desire to reach a commercially sound and mutually acceptable compromise, the settlement negotiated by the parties herein is just and reasonable and will be approved." 26 S.R.R. at 1387.

C. Application of Review Standards to Settlement Agreement in This Proceeding

Global Link and Hapag-Lloyd have requested that the terms of the Settlement Agreement remain confidential, and this request is discussed below. In light of the request for confidentiality, the terms of the Agreement will be discussed generally, in order not to disclose "sensitive commercial information." The parties state that they wish to avoid the time, expense, and uncertainty of litigation and settle all existing disputes, without acknowledging liability. In this case, the Settlement Agreement provides for a lump sum payment intended by the parties "to resolve all claims related to the instant matter" Joint Petition at 3. The Agreement also provides that Global Link will file a motion with the Commission withdrawing its Exceptions and requesting that the proceeding be dismissed with prejudice. When these terms have been met, the Parties agree to a mutual release, as well as the release of certain lenders.

Following the standards of review applicable to settlement agreements set out by the Commission in *World Chance*, the Settlement Agreement does not contravene law or public policy, and there is no indication of fraud, duress, undue influence, or mistake associated with the Agreement. 31 S.R.R. at 1350. The Parties are represented by counsel, and they have weighed the “likelihood of success on the merits against the cost and complexity of proceeding to final judgment.” *Metro Freight Services, Inc. – Possible Violations of Section 19(e)(3) of the Shipping Act and 46 C.F.R. Part 515*, Docket No. 14-13, slip op. at 4 (ALJ Feb. 19, 2015). The terms of the Settlement Agreement appear on their face to be fair, reasonable, and adequate. As stated by the Commission, “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 will authorize the settlement. *Delhi Petroleum*, 24 S.R.R. at 1134.

In this case, Global Link and Hapag-Lloyd have determined that whatever benefits they might obtain as a result of continued litigation are outweighed by the costs of such litigation, and the Settlement Agreement does not appear to be the result of fraud, duress, undue influence, or mistake. Therefore, we will approve the Settlement Agreement.

D. Request for Confidential Treatment of Settlement Agreement

As noted above, the Parties have requested “confidential treatment of the settlement agreement pursuant to Section 201(i) of the Commission’s Rules of Practice and Procedure; 46 C.F.R. § 502.201(i).” Joint Petition at 3. Rule 201 sets out general provisions governing discovery, and Rule 201(i) specifically concerns “conferences by order of the presiding officer.” Therefore, this Rule does not govern requests for confidential treatment of documents. Rule 5 of the Commission’s Rules, 46 C.F.R. § 502.5,

governs requests for such confidential treatment, and provides that “confidential copies shall consist of the complete filing and shall include a cover page marked “Confidential-Restricted,” with the confidential materials clearly marked on each page. *Id.* at § 502.5(a). The Rule also provides that when a confidential filing is submitted, “there must also be submitted an original and two copies of a public version of the filing.” *Id.* at § 502.5(b).²

In this case, the Parties request confidential treatment of the entire Settlement Agreement, and have submitted the complete Agreement, with a cover page marked “CONFIDENTIAL RESTRICTED” and with each page of the Agreement marked “CONFIDENTIAL,” consistent with Rule 502.5(a). No public version of the Agreement has been filed, as the parties seek to have the entire Agreement treated confidentially. Therefore, the Parties appear to have complied with the Commission’s requirements in Rule 5 relating to the filing of confidential documents.

As grounds for confidential treatment, the parties state that the “settlement specifically deals with a payment made to resolve all claims related to the instant matter, as well as commercially sensitive terms governing the release of these claims.” Joint Petition

² While the Parties’ request for confidential treatment of their Settlement Agreement is governed by Rule 5 currently in effect, we note that on March 13, 2015, the Commission issued a Direct Final Rule amending section 502.5 of its Rules governing requests for confidential treatment of documents, and stated that the “the current confidentiality provisions in Part 502 will benefit from a more consistent format.” *Amendments to Rules Governing Service of Private Party Complaints and Documents Containing Confidential Materials*, Docket No. 15-01 (Mar. 13, 2015), at 2. The Commission stated further that the “revisions also correct an erroneous reference to section 502.201(i)(1)(vii) in the introductory text to section 502.5.” *Id.* The Direct Final Rule also provides that “[i]f confidentiality is sought for a filing containing information not previously designated as confidential by the Commission or presiding officer, the confidential filing must be accompanied by a motion justifying confidential treatment.” *Id.* at 5. The Direct Final Rule will become effective June 24, 2015, unless significant adverse comments are filed prior to May 26, 2015.

at 3. Therefore, the Parties state that the “settlement contains sensitive commercial information that should be protected from public disclosure.” *Id.*

The Commission has in the past granted requests for confidential treatment of settlement agreements. *See, e.g., Streak Products, Inc. v. UTi, United States, Inc.*, 33 S.R.R. 641 (ALJ 2014) (admin. final Oct. 15, 2014); *American Stevedoring, Inc. v. The Port Authority of New York and New Jersey*, 32 S.R.R. 466 (ALJ 2011) (admin. final Dec. 2, 2011); *Draft Cargoways (India) Pvt. Ltd. v. Damco USA, Inc.*, 31 S.R.R. 1875 (ALJ 2011) (admin. final Apr. 27, 2011); and *Al Kogan v. World Express Shipping, Transportation and Forwarding Services, Inc.*, 29 S.R.R. 68, 70 n.7 (ALJ 2000) (admin. final Jan. 17, 2001). Federal courts have also maintained confidential treatment of settlements, balancing competing public interest and privacy issues. In *Gambale v. Deutsche Bank AG*, 377 F.3d 133 (2d Cir. 2004), the court balanced public disclosure against maintaining confidentiality of a settlement amount, and stated that “[w]ithout some further showing of public interest in the disclosure of the settlement amount, the Bank’s reasons for maintaining the confidentiality easily overcome the markedly weak presumption of access here.” *Id.* at 143-144. *See also Pansy v. Borough of Stroudsburg*, 23 F.3d 772, 786 (3d Cir. 1994).

In this case, the Parties want to maintain confidentiality of the Settlement Agreement as it contains terms setting out the settlement amount, as well as terms governing the release of all claims related to the controversy involved. There does not appear to be public interest in disclosure of the settlement amount or the terms of the release of the involved claims, that outweighs the Parties’ interest in maintaining the confidentiality of these terms. The Agreement involves resolution of claims related to commercial arrangements between the Parties, and no other party has expressed interest in having the Settlement Agreement made available to the public.

VII. CONCLUSION

We have reviewed the Settlement Agreement pursuant to standards set out by the Commission in earlier decisions, discussed above, and have determined that the Agreement does not contravene law or public policy, and is free of fraud, duress, undue influence, and mistake. Therefore, we grant the Joint Petition for Approval of Settlement filed by Global Link and Hapag-Lloyd.

We also grant the Parties' request for confidential treatment of the Settlement Agreement, as the Parties have complied with the requirements of Rule 5 governing the filing of confidential documents; the Settlement Agreement contains information related to a payment to resolve claims involved in this proceeding, as well as commercially sensitive information governing release of these claims; and the Commission has in the past allowed settlement agreements to be filed confidentially under similar circumstances.

THEREFORE, IT IS ORDERED, That the Joint Petition for Approval of Settlement is granted, and the Settlement Agreement and Release of Claims between Global Link Logistics, Inc. and Hapag- Lloyd AG is approved.

IT IS FURTHER ORDERED, That the request for confidential treatment of the Settlement Agreement is granted.

IT IS FURTHER ORDERED, That Global Link Logistics, Inc.'s Petition to Withdraw Exceptions and Dismiss Complaint with Prejudice is granted.

FINALLY, IT IS ORDERED, That this proceeding is dismissed with prejudice.

By the Commission.

Karen V. Gregory
Secretary