

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

FIAT CHRYSLER AUTOMOBILES NV, FCA US LLC, AND
FCA ITALY S.P.A., *Complainants*

v.

WALLENIUS WILHELMSSEN LOGISTICS AS, WALLENIUS
WILHELMSSEN LOGISTICS AMERICAS LLC, EUKOR CAR
CARRIERS INC., NIPPON YUSEN KABUSHIKI KAISHA, NYK
LINE (NORTH AMERICA) INC., MITSUI O.S.K. LINES, LTD.,
MOL (AMERICA) INC., KAWASAKI KISEN KAISHA, LTD.,
“K” LINE AMERICA, INC., COMPAÑÍA SUD AMERICANA DE
VAPORES S.A., AND HOËGH AUTOLINERS AS, *Respondents*.

DOCKET NO. 17-09

Served: May 31, 2019

ORDER OF: Erin M. WIRTH, *Administrative Law Judge*.

INITIAL DECISION APPROVING CONFIDENTIAL SETTLEMENT WITH CSAV¹

I. Filings

On April 10, 2019, Complainant Fiat Chrysler Automobiles NV; FCA US LLC; and FCA Italy S.p.A., (collectively “FCA”) and Respondent Compañía Sud Americana de Vapores S.A. (“CSAV”), the Settling Parties, filed a joint motion and memorandum seeking approval of a settlement agreement, dismissal with prejudice of the complaint against CSAV, and confidential treatment of the settlement agreement.

On April 11, 2019, Respondents Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics Americas LLC (collectively “WWL”), and EUKOR Car Carriers Inc. (“EUKOR”) filed a motion partially opposing the confidential settlement agreement (“Opposition to CSAV Settlement”). On April 18, 2019, FCA filed a reply to the partial opposition (“FCA Reply to CSAV Opposition”).

On April 25, 2019, a stipulation of dismissal was filed by FCA and EUKOR. On May 13, 2019, a joint motion and memorandum seeking approval of a settlement agreement, dismissal with prejudice of the complaint against WWL, and confidential treatment of the

¹ This Initial Decision will become the decision of the Commission in the absence of review by the Commission. 46 C.F.R. § 502.227.

settlement agreement was filed. On May 14, 2019, a notice of WWL's withdrawal or forbearance of oppositions was filed.

To the extent that WWL objected to the settlement agreement, WWL lacked standing. Non-settling defendants, in general, lack standing to object to a settlement, because they are ordinarily not affected by such a settlement. *Eichenholtz v. Brennan*, 52 F.3d 478, 482 (3d Cir. 1995); *see also Zupnick v. Fogel*, 989 F.2d 93, 98 (2d Cir.); *Waller v. Financial Corp. of America*, 828 F.2d 579, 582-83 (9th Cir. 1987). "However, there is a recognized exception to this general rule which permits a non-settling defendant to object where it can demonstrate that it will sustain some formal legal prejudice as a result of the settlement." *Bhatia v. Piedrahita*, 756 F.3d 211, 218 (2d Cir. 2014); *see also Smith v. Arthur Andersen LLP*, 421 F.3d 989, 998 (9th Cir. 2005); *Weinman v. Fid. Capital Appreciation Fund (In re Integra Realty Res., Inc.)*, 262 F.3d 1089, 1102 (10th Cir. 2001); *In re Vitamins Antitrust Class Actions*, 215 F.3d 26, 31 (D.C. Cir. 2000); *Agretti v. ANR Freight Sys., Inc.*, 982 F.2d 242, 247-48 (7th Cir. 1992). WWL's concerns regarding the settlement's impact on its own liability, including whether a set-off would be permitted, do not rise to the level of formal legal prejudice necessary for standing to object to a settlement. To the extent that WWL was seeking to obtain information about the settlement, that is a discovery issue more properly raised in a motion to compel.

The WWL Settlement motion states: "Subject to the approval of this motion, WWL will withdraw its request to disclose the settlement agreements with the other Respondents." WWL Settlement at 4 n.1. Moreover, the parties state that "upon approval" of the WWL settlement, WWL withdraws its opposition to the CSAV settlement. WWL Notice of Withdrawal of Oppositions at 1-2.

In a separate decision issued today, the WWL confidential settlement agreement has been approved. Accordingly, WWL's objection to the "K" Line settlement is withdrawn.

II. Procedural History

On October 17, 2017, a notice of filing of complaint and assignment was issued indicating that Fiat Chrysler filed a complaint against a number of entities, including CSAV. Fiat Chrysler alleged that the Respondents violated the Shipping Act of 1984 ("Shipping Act"), including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1), 41103(2), 41104(10), 41105(1), 41105(6), and 46 C.F.R. § 535.401, *et seq.*, in connection with Fiat Chrysler's purchase of vehicle carrier services from the Respondents.

On November 30, 2017, Respondents filed a joint motion to dismiss this proceeding along with four other related proceedings. On May 7, 2018, an initial decision was issued which granted in part and denied in part the Respondents' motion to dismiss. The claim for reparations was dismissed with prejudice in part and the claims for a cease and desist order and for reparations for violations within three years of filing the complaint were allowed to proceed. Initial Decision at 56. The initial decision was not appealed.

The Settling Parties state that they "have concluded that each faces the substantial costs of further litigation" and that that the settlement agreement was "entered into after good-faith

negotiations and with the benefit of legal counsel.” Motion at 2. The Settling Parties further state:

The Settlement Agreement negotiated by the Settling Parties, with the advice and assistance of their counsel, is reasonable and not inconsistent with any law or policy. The Settling Parties have carefully considered the costs, benefits, and risks of further litigation, and have concluded that settlement is in their mutual interests. Similarly, the Settlement Agreement—an agreement between and negotiated by sophisticated business entities—was reached in good faith and is free of fraud, duress, undue influence, mistake, or any other defect that would bar its approval. Indeed, the Presiding Judge has previously approved like settlements for other parties in a matter arising out of the same facts and circumstances as that presented by the Complaint and Settlement Agreement in this case.

Motion at 3.

In addition, the Settling Parties request that the settlement agreement be treated as confidential, contending that under the terms of the settlement agreement, the Settling Parties must keep the terms of the settlement agreement confidential. “This confidentiality requirement is an important and necessary element of the Settlement Agreement; it could be compromised by a breach of such confidentiality.” Settlement Motion at 4.

III. Discussion

Using language borrowed in part from the Administrative Procedure Act,² 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 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 Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002), quoting *Old Ben Coal Co. v. Sea-Land Serv., 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).

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

² “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).

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.” *Old Ben Coal*, 18 S.R.R. at 1092. However, 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.” *Old Ben Coal*, 18 S.R.R. at 1093. “[I]f 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 Conf. and Columbus Line, Inc.*, 24 S.R.R. 1129, 1134 (ALJ 1988) (citations omitted).

“Reaching a settlement allows the parties to settle their differences, without an admission of a violation of law by the respondent, when both the complainant and respondent have decided that it would be much cheaper to settle on such terms than to seek to prevail after expensive litigation.” *APM Terminals North America, Inc. v. Port Authority of New York and New Jersey*, 31 S.R.R. 623, 626 (FMC 2009) (citing *Puerto Rico Freight Sys. Inc. v. PR Logistics Corp.*, 30 S.R.R. 310, 311 (ALJ 2004)).

Based on the representations in the settlement motion, the settlement agreement, and other documents filed in this matter, the Settling Parties have established that the settlement agreement does not appear to violate any law or policy or contain other defects which might make it unapprovable. The Settling Parties are sophisticated business entities whose counsel engaged in arms-length negotiations. The Settling Parties have determined that the settlement reasonably resolves the issues raised in the complaint without the need for additional costly litigation. There is no evidence of fraud, duress, undue influence, or mistake nor harm to the public. Accordingly, the settlement agreement is approved.

The parties request that the settlement agreement be kept confidential. Pursuant to Commission Rule 119, parties may request confidentiality. 46 C.F.R. § 502.119. “If parties wish to keep the terms of their settlement agreements confidential, the Commission, as well as the courts, have honored such requests.” *Al Kogan v. World Express Shipping, Transportation and Forwarding Services, Inc.*, 29 S.R.R. 68, 70 n.7 (ALJ 2000) (citations omitted); *Marine Dynamics v. RTM Line, Ltd.*, 27 S.R.R. 503, 504 (ALJ 1996); *Int’l Assoc. of NVOCCs v. Atlantic Container Line*, 25 S.R.R. 1607, 1609 (ALJ 1991). Similarly, federal courts frequently maintain the confidentiality of settlement agreements, although some have questioned whether the public

interest is undermined in certain circumstances. *See Streak Products, Inc., and SYX Distribution, Inc. v. UTi, United States, Inc.*, 33 S.R.R. 641, 644-45 (ALJ 2014); *see also Schoeps v. Museum of Modern Art*, 603 F. Supp. 2d 673 (S.D.N.Y. 2009), Arthur R. Miller, *Confidentiality, Protective Orders, and Public Access to the Courts*, 105 Harv. L. Rev. 427, 484-487 (1991).

The full text of the settlement agreement has been reviewed by the undersigned and is available to the Commission. Given the parties' request for confidentiality, confidential information included in the settlement agreement, and the Commission's history of permitting agreements settling private complaints to remain confidential, the parties' request for confidentiality for the settlement agreement is granted. The settlement agreement will be maintained in the Secretary's confidential files.

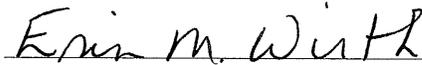
IV. Order

Upon consideration of the settlement motion, the confidential settlement agreement, and the record, and good cause having been stated, it is hereby:

ORDERED that the motion to approve the confidential settlement agreement between Fiat Chrysler and Compañia Sud Americana de Vapores S.A. be **GRANTED**. It is

FURTHER ORDERED that the complaint against Compañia Sud Americana de Vapores S.A. be **DISMISSED WITH PREJUDICE**. It is

FURTHER ORDERED that the request for confidential treatment of the settlement agreement be **GRANTED**.



Erin M. Wirth
Administrative Law Judge