

FEDERAL MARITIME COMMISSION
Office of the Administrative Law Judges

TCW, INC., *Claimant*

v.

MEDITERRANEAN SHIPPING COMPANY, S.A.;
MEDITERRANEAN SHIPPING COMPANY (USA) INC.,
Respondents.

DOCKET NO. 1994(I)

Served: August 23, 2023

BEFORE: Theresa DIKE, *Small Claims Officer.*

ORDER APPROVING SETTLEMENT AND DISMISSING PROCEEDING

On May 23, 2023, the Secretary of the Federal Maritime Commission issued a Notice of Filing of Small Claims Complaint and Assignment (“Notice”), stating that Claimant TCW, Inc. (“TCW”) had filed an informal complaint against Mediterranean Shipping Company, S.A. and Mediterranean Shipping Company (USA) Inc. (collectively “MSC”). Claimant alleges that MSC violated provisions of the Shipping Act of 1984 in connection with certain invoices they issued to Claimant.

The Secretary instructed Respondents to file a response to the Claim by June 19, 2023, and to indicate whether they consent to the adjudication of the Claim under the informal procedures provided at Subpart S of the Commission’s Rules of Practice and Procedure (46 C.F.R. § 502.301-305). The Secretary also assigned the proceeding to the Chief Administrative Law Judge to designate a Small Claims Officer to adjudicate the proceeding.

Respondents requested and were granted additional time extending the deadline for their response to the Claim to August 4, 2023, to allow them to negotiate a settlement with Claimant and to finalize the parties’ settlement agreement. On August 3, 2023, Claimant submitted a motion to dismiss, indicating that the parties had agreed to resolve their dispute. On August 4, 2023, Respondents submitted a copy of a confidential settlement agreement between the parties.

Respondents have not yet filed a response to the Claim and did not object to the adjudication of this proceeding under the informal procedures. Accordingly, the Chief Administrative Law Judge assigned this proceeding to the undersigned for adjudication under the Commission’s informal procedures on August 23, 2023.

Claimant asks that its complaint against MSC be dismissed based on a settlement agreement between the parties resolving the issues in dispute. Pursuant to the Commission's Rule 72(a)(3):

[A]n action may be dismissed at the complainant's request only by order of the presiding officer, on terms the presiding officer considers proper. If the motion is based on a settlement by the parties, the settlement agreement must be submitted with the motion for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable. Unless the order states otherwise, a dismissal under this paragraph is without prejudice.

46 C.F.R. § 502.72(a)(3). Although Rule 72, governing dismissal of Commission proceedings, is not applicable to Subpart S proceedings, the undersigned used the rule as guidance for ruling on Claimant's request to dismiss the Claim.

The Commission's regulations allow settlements by litigating parties; however, the Commission requires that settlement agreements be submitted "for determination as to whether the settlement appears to violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects which might make it unapprovable." *Maher Terminals v. The Port Authority of N.Y. & N.J.*, 34 S.R.R. 322, 325 (FMC 2016). In reviewing settlement agreements, the Commission is guided by its "strong and consistent policy of encouraging settlements and engaging in every presumption which favors a finding that they are fair, correct, and valid." *Maher Terminals*, 34 S.R.R. at 326 (quoting *APM Terminals North America, Inc. v. Port Authority of N.Y. & N.J.*, 31 S.R.R. 623, 626 (FMC 2009)).

"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 Co. v. Sea-Land Serv., Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978). 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 defect 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." *Id.* at 1093. "[I]f it is the considered judgment of the parties that whatever benefits might result from the 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).

Pursuant to the settlement agreement between the parties MSC will make a one-time payment in the amount of \$3,330.00 to Claimant, and within 30 days of the filing of Claimant's motion to dismiss the proceeding and the parties' settlement agreement, MSC and TCW's representatives will meet "to discuss, in good faith, MSC billing practice issues that have been raised by TCW, including the use of the shutout under [the Uniform Interchange and Facilities Access Agreement] when valid billing disputes exist." Settlement Agreement at 2-3.

The parties state that they "are entering into this Settlement Agreement for the purpose of making a peaceful resolution between them," and agree that "any difference between the amount

of monetary damages sought by any party and the amount or value of the consideration being exchanged pursuant to this Settlement Agreement is the result of negotiation based on the Parties' evaluation of the risks and costs associated with litigation and is accordingly deemed mutually just and appropriate by the Parties." Settlement Agreement at 3. Claimant represents that in entering into the settlement agreement it "has relied upon all necessary advice, including from its own legal counsel and that the terms of this Settlement Agreement have been completely read and explained to it by its advisors and/or attorneys, and that those terms are fully understood and voluntarily accepted by it." Settlement Agreement at 2.

A review of the settlement agreement, which is signed by both parties, does not show any indicia of fraud, duress, undue influence, or mistake, and appears to reflect an arm's-length resolution between the parties. The terms appear to be fair, reasonable, and adequate. Accordingly, the parties' settlement agreement is approved, and this proceeding dismissed.

Upon consideration of the proposed settlement and Claimant's motion to dismiss its Claim, and for the reasons stated above, it is hereby

ORDERED that the settlement agreement be **APPROVED**. It is

FURTHER ORDERED that this proceeding be **DISMISSED**.

Theresa Dike
Small Claims Officer