

FEDERAL MARITIME COMMISSION
Office of Administrative Law Judges

MAC INDUSTRIES, INC. D/B/A MAC CONTAINER LINE,
Complainant

v.

COSCO SHIPPING LINES Co., LTD., *Respondent.*

DOCKET NO. 20-09

Served: July 29, 2020

BEFORE: Erin M. WIRTH, *Chief Administrative Law Judge.*

INITIAL DECISION APPROVING CONFIDENTIAL SETTLEMENT AGREEMENT¹

On June 5, 2020, Complainant MAC Industries, Inc. d/b/a MAC Container Line (“MAC Industries”) filed a complaint alleging violations of the Shipping Act including that Respondent COSCO SHIPPING Lines Co., Ltd. (“COSCO”) violated 46 U.S.C. § 41104(3) by denying MAC Industries access to shipping rates normally available to volume shippers. The complaint states that volume “VIP Partner” rates were denied as retaliation for a prior complaint by MAC Industries regarding other rate-setting policies.

On July 6, 2020, Respondent filed a motion seeking a one-week extension of time to respond to the complaint, asserting that the parties were engaged in good faith negotiations to resolve the dispute. On July 7, 2020, an order was issued granting an extension to July 13, 2020, for COSCO to respond to the complaint.

On July 10, 2020, MAC Industries and COSCO filed a joint petition for approval of settlement (“motion”) and attached a copy of the confidential settlement agreement. On July 16, 2020, the parties submitted a confidential settlement agreement attachment, which had been inadvertently omitted. The parties jointly move for approval of the settlement agreement, voluntary dismissal of the proceeding with prejudice, and confidentiality for the settlement agreement.

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.

Using language borrowed in part from the Administrative Procedure Act,² Rule 75 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. § 502.75(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 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 Ed., 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).

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).

“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)).

The parties state:

In the instant case, the settlement is the result of arm’s-length negotiations between two sophisticated entities, both of whom have been represented by counsel during the negotiation process. The proposed agreement does not contravene any law or public policy, nor is it unjust or discriminatory in any way. Additionally, this agreement will not result in any adverse effects to any third parties or on the shipping public. The proposed settlement is fair and reasonable, and reflects the Parties’ desire to resolve their issues without the need for costly and uncertain litigation.

Motion at 2-3.

Based on the representations in the motion and other documents filed in this matter, the 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 parties are represented by counsel and have engaged in settlement discussions. The proceeding was filed recently and would require potentially expensive additional discovery and briefing. The parties have determined that the settlement reasonably resolves the issues raised in the complaint without the need for costly and uncertain litigation. There is no evidence of fraud, duress, undue influence, mistake, or harm to the public. Accordingly, the settlement agreement is approved.

The parties request that the settlement agreement be kept confidential. Pursuant to Commission Rule 5(b), parties may request confidentiality. 46 C.F.R. § 502.5(b); *see also* 46 C.F.R. § 502.141(j). “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).

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.

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

ORDERED that the petition to approve the settlement agreement between MAC Industries, Inc. and COSCO SHIPPING Lines Co., Ltd. be **GRANTED**. It is

FURTHER ORDERED that the request for confidential treatment be **GRANTED**. It is

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



Erin M. Wirth
Chief Administrative Law Judge