

FOREIGN TIRE SALES INC.,

v.

EVERGREEN SHIPPING  
AGENCY (AMERICA)  
CORPORATION, as agent for  
EVERGREEN LINE,  
EVERGREEN GROUP d/b/a/  
EVERGREEN LINE

**PETITION ADDRESSED TO THE COMMISSION FOR  
APPROVAL OF A SETTLEMENT BETWEEN COMPLAINANT  
AND RESPONDENT AND FOR VOLUNTARY DISMISSAL OF  
THIS ACTION WITH PREJUDICE TOGETHER WITH A  
MOTION TO MAINTAIN THE CONFIDENTIALITY OF THE  
SETTLEMENT AND TO EXTEND RESPONDENTS TIME TO  
ANSWER COMPLAINT**

**[46 C.F.R. §§ 502.72(a)(3) and 502.5]**

**Public Version – Confidential Materials Excluded**

FOREIGN TIRE SALES INC.,

v.

EVERGREEN SHIPPING  
AGENCY (AMERICA)  
CORPORATION, as agent for  
EVERGREEN LINE,  
EVERGREEN GROUP d/b/a/  
EVERGREEN LINE

**PETITION ADDRESSED TO THE COMMISSION FOR  
APPROVAL OF A SETTLEMENT BETWEEN COMPLAINANT  
AND RESPONDENT AND FOR VOLUNTARY DISMISSAL OF  
THIS ACTION WITH PREJUDICE TOGETHER WITH A  
MOTION TO MAINTAIN THE CONFIDENTIALITY OF THE  
SETTLEMENT AND TO EXTEND RESPONDENTS TIME TO  
ANSWER COMPLAINT**

**[46 C.F.R. §§ 502.72(a)(3) and 502.5]**

1. **RELIEF REQUESTED:** Pursuant to **46 C.F.R. §§ 502.72(a)(3) and 502.5**, Complainant asks the Commission to issue an Order:
  - (a) Dismissing this Action with prejudice and without costs or attorneys' fees to either Party; and
  - (b) Approving the attached Confidential Settlement Agreement & Release (the "Confidential Settlement"); and
  - (c) That the Settlement be filed on a confidential basis and that its confidentiality be maintained.
  
2. **THE CONFIDENTIAL SETTLEMENT IS SUBMITTED WITH THIS PETITION:** A true and complete copy of the executed Confidential Settlement is attached to this Joint Petition as an *Addendum* and is being filed on a confidential basis.

3. **THE CONFIDENTIAL SETTLEMENT WOULD END THE DISPUTE:** The Confidential Settlement, if approved, would fully and finally dispose of all issues and disputes that are the subject of this Action.

4. **CONSENT OF BOTH PARTIES:** Both parties consent to the relief requested by this Petition.

5. **HISTORY OF THE CASE:**

(a) This Action was commenced on March 18, 2022.

(b) The Complainant ("FIS") a beneficial cargo owner, sued Respondent Evergreen Shipping Agency(America) Corp.("EGA"), as agent for ocean carrier Evergreen Line , Evergreen Group D/B/A Evergreen Line, for various relief against EGA including an investigation by the FMC of the allegations in the complaint and order after investigation finding that EGA has violated the provisions of the Shipping Act of 1984 including 46 U.S.C. secs 41102(c), 41104(a)(2),41104(a)(5), 41104(a)(9) and 41104(a)(10); an Order compelling Evergreen to cease and desist from violations of the Shipping Act requiring Evergreen to put in practices to provide FIS with space on Evergreen vessels and an order pursuant to 46 U.S.C. 41305 awarding damages with interest as permitted by 46 U.S.C. 41305(a) and reasonable attorney fees.

(c) A motion by special appearance to extend Respondents time to answer was filed on April 5, 2022, and an extension was granted up to May 2, 2022.

6. **TEXT OF THE RULE:**

- (a) The Parties petition under **46 C.F.R. §§ 502.72(a)(3)** which reads:

**By order of the presiding officer.** Except as provided in paragraphs (a)(1) and (a)(2) of this section, an 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.

- (b) **46 C.F.R. §§ 502.72(a)(1)** is inapplicable because a settlement is involved
- (c) **46 C.F.R. §§ 502.72(a)(2)** is inapplicable because dismissal is based on a Confidential Settlement.

7. **SUMMARY OF GROUNDS FOR PETITION:** There are no impediments to contract formation which would make the Confidential Settlement void or voidable.

- (a) FTS and EGA are large commercial entities of equal bargaining power who negotiated at arm's length, with the benefit of legal counsel.
- (b) The Parties are fully knowledgeable of the facts. The Confidential Settlement comes after extensive negotiations.
- (c) Nothing in the Confidential Settlement appears to violate law or public policy.
- (d) It is the Commission's policy to encourage settlements and to allow such settlements to remain confidential.

8. **GROUNDS FOR THE PETITION:**

- (a) **Sophistication of the Parties**

- (i) FTS on average imports a thousand or more containers every year from various Far East ports and has its principal place of business in Union, New Jersey and has a website at [www.foreigntire.com](http://www.foreigntire.com).
- (ii) Respondent is the U.S. agent for the member lines of the Evergreen Line Joint Service Agreement FMC No. 011982-which is a joint service agreement in the international commerce of the United States. The Joint Service Agreement does business under the trade name Evergreen Line.
- (iii) In reaching this Confidential Settlement, the Parties each had the benefit of advice from counsel. FTS' counsel was the undersigned attorney Mr. Lawrence N. Lavigne and Evergreen's counsel was Paul M. Keane who made a special appearance on behalf of Evergreen to make a motion to obtain an extension of time for Evergreen to answer the complaint. The aforementioned attorneys negotiated the terms and conditions of the Confidential Settlement, subject to their respective client's approval, and drafted the Addendum memorializing its terms and conditions.

(b) **No Fraud or Mistake.** There has been no fraud or duress involved in the settlement reached between the parties.

(c) **No duress or undue influence.** On behalf of their respective clients, the counsel will, if required, certify:

- (i) Each Party is acting in its own self-interest.
- (ii) Neither Party has been subject to pressure or duress from the other Party.

- (iii) Undue influence is not a factor because neither Party has a special relationship of trust or confidence with the other. See, *In re Mildred M.J.*, 43 A.D.3d 1391, 1392-93, 844 N.Y.S.2d 539, 541 (N.Y. App. 2007) (Defining “undue influence”).
  - (iv) The Confidential Settlement is the result of negotiations between the parties that have been ongoing since the complaint was filed
- (d) **The Parties have good cause to settle.** Each party has weighed the following factors in determining to settle this Action:
- (i) That the Parties will incur substantial costs and expenses of litigation including attorneys’ fees if the case goes forward and wish to avoid substantial outlays that would become necessary if the case were to go forward:
  - (ii) That any Final Decision by the ALJ can be appealed to the Commission and any such decision by the Commission can still be appealed to the D.C. Court of Appeals, and from there the losing Party has the right to petition the U.S. Supreme Court for certiorari.
  - (iii) That, as in all litigation, the outcome here cannot be guaranteed. Confidential Settlement allows the Parties to avoid that uncertainty and fix their rights by agreement
  - (iv) That the losing Party risks being held liable for the opposing Party’s attorneys’ fees which stand to be substantial
  - (v) That the Confidential Settlement involves no admissions of liability on behalf of either party.

- (e) **Reasonability of Settlement.** Both Parties submit that the terms and conditions of the Confidential Settlement are facially reasonable.
  - (i) The Settlement reflects the fair and considered judgment of the relative strengths of their respective positions, the desire to avoid expensive litigation costs and to avoid the risks inherent in litigation.
  - (ii) Nothing in the Confidential Settlement appears onerous, one-sided or unconscionable.
- (f) The Confidential Settlement does not appear to any contravene law or public policy.
  - (i) It defeats none of the purposes of the Shipping Act [46 U.S.C. 40101] and in particular is not discriminatory.
  - (ii) It does not call for any act or omission that contravenes the Shipping Act's General Prohibitions. See, 46 U.S.C. 41102. And,
  - (iii) It does not affect any third parties.
- (g) The Commission has a strong and consistent policy of actively encouraging settlements and engages in every presumption which favors a finding that they are fair, correct, and valid. *Inlet Fish Producers, Inc. v. Sea-Land Service, Inc.*, 29 SRR 975, 978 (ALJ 2002) (Decision, pp. 7, 8).

9. **MOTION FOR CONFIDENTIAL TREATMENT:**

- (a) Dismissal of the Complaint and withdrawal of the Exceptions and Motions are conditioned on both the Commission's approval of the Settlement and its grant

of confidentiality. The parties will be unable to resolve the claims if confidentiality is not granted.

- (b) The Parties therefore ask that the Confidential Settlement remain confidential. Such confidentiality is one of the terms and conditions of the Settlement [*see, Addendum, para. 3*] and is routinely granted by the Commission.

In previous proceedings, requests have been granted to maintain the confidentiality of settlement agreements and the agreements have been approved. [*Citing cases*] The full terms of the Settlement agreement are available for the Commission to consider although they will be maintained confidential pursuant to 46 C.F.R. § 502.119.

*Inlet Fish Producers, supra, (Decision, pp. 6-7)* (Bracketed text ours). The Settlement's confidentiality provision should not be considered as illegal or against public policy because it contains an exception for disclosure required by law. *See, Addendum, para. 3(b)*.

#### **10. MOTION TO EXTEND TIME TO ANSWER**

- (a) Because there will be no necessity to file an answer if Complainant's Motion to Dismiss with Prejudice is granted nor will there be any need for any further proceedings in this matter, Complainant requests that Respondents time to answer be extended until 21 days after the ALJ's decision in regard to these motions is served in the event that the motion is denied. Obviously if the motions are granted there will be no need for Respondent to file an answer.

**WHEREFORE,** Complainant respectfully request that this Petition be granted.

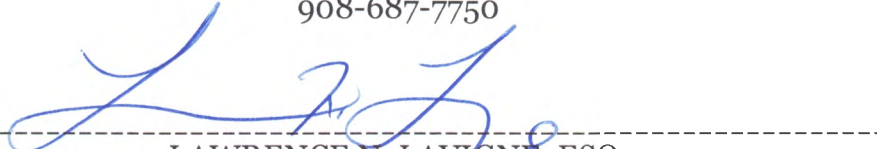


Dated: April 22, 2022

Respectfully Submitted,

LAWRENCE N. LAVIGNE, ESQ. LLC  
2444 Morris Avenue, Ste 206  
Union, New Jersey 07083  
908-687-7750

By: \_\_\_\_\_



LAWRENCE N. LAVIGNE, ESQ.  
larry@lnlavignelaw.com

**PUBLIC VERSION- CONFIDENTIAL MATERIALS EXCLUDED**

**CONFIDENTIAL SETTLEMENT**

**AGREEMENT EXCLUDED**