

**FEDERAL MARITIME COMMISSION**  
**Office of Administrative Law Judges**

FOREIGN TIRE SALES INC., *Complainant*

v.

EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION,  
AS AGENT FOR EVERGREEN LINE, EVERGREEN GROUP D/B/A/  
EVERGREEN LINE, *Respondent*.

**DOCKET NO. 22-05**

Served: May 3, 2022

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

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**INITIAL DECISION APPROVING SETTLEMENT AGREEMENT<sup>1</sup>**

On April 26, 2022, Complainant Foreign Tire Sales Inc., and Respondent Evergreen Shipping Agency (America) Corporation, as agent for Evergreen Line, Evergreen Group d/b/a Evergreen Line Inc. filed a petition (“Motion”) seeking approval of a settlement agreement, voluntary dismissal of the complaint with prejudice, confidential treatment of the settlement agreement, and, if denied, to extend the time for Respondent to answer the complaint. A copy of the confidential settlement agreement was attached to the motion. The parties acknowledge that the confidential settlement, if approved, “would fully and finally dispose of all issues and disputes that are the subject of this Action.” Motion at 3. Additionally, Complainant acknowledges that “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.” Motion at 8.

Using language borrowed in part from the Administrative Procedure Act, 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); *see* 5 U.S.C. § 554(c). If dismissal is sought due to 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.” 46 C.F.R. § 502.72(a)(3). “Unless the order states otherwise, a dismissal under this paragraph is without prejudice.” 46 C.F.R. § 502.72(a)(3).

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<sup>1</sup> This initial decision will become the decision of the Commission in the absence of review by the Commission. Any party may file exceptions to this decision within twenty-two days of the date of service. 46 C.F.R. § 502.227.

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 AM. JUR. 2D *Compromise and Settlement* § 3 (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)).

The parties state that in reaching the confidential settlement, “the Parties each had the benefit of advice from counsel” and the settlement is the result of “negotiations between the parties that have been ongoing since the complaint was filed.” Motion at 5-6. The parties state that the settlement is free of fraud or duress, that each party “is acting in its own self-interest,” and “neither party has been subject to pressure or duress from the other Party.” Motion at 5.

Furthermore, the Parties have good cause to settle because “the Parties will incur substantial costs and expenses of litigation including attorneys’ fees if the case goes forward” because “any Final Decision by the ALJ can be appealed to the Commission,” the “losing Party risks being held liable for the opposing Party’s attorneys’ fees which stand to be substantial,” and because the confidential settlement “involves no admissions of liability on behalf of either party.” Motion at 6.

Lastly, the settlement does not contravene law or public policy, 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. Motion at 7. Rather, “the terms and conditions of the Confidential Settlement are facially reasonable,” and it “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.” Motion at 7.

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 arms-length settlement discussions. The proceeding would require potentially expensive briefing. The parties have determined that the settlement reasonably resolves the issues raised in the complaint without the need for costly and uncertain litigation. 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).

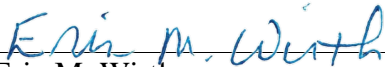
The full text of the settlement agreement has been reviewed by the undersigned and is available to the Commission. Given the parties’ request for confidentiality, confidential information included in the settlement agreement, and the Commission’s history of permitting agreements settling private complaints 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 motion to approve the settlement agreement between Complainant Foreign Tire Sales Inc., and Respondent Evergreen Shipping Agency (America) Corporation, as agent for Evergreen Line, Evergreen Group d/b/a Evergreen Line be **GRANTED**. It is

**FURTHER ORDERED** that the Motion to Extend Time to Answer be **DENIED AS MOOT**. 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