

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO. 22-07

ACME FREIGHT SERVICES CORP.

COMPLAINANT,

v.

TOTAL TERMINALS INTERNATIONAL, LLC

RESPONDENT.

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AND CONFIDENTIAL
TREATMENT OF SETTLEMENT AGREEMENT**

Acme Freight Services Corp. (“Complainant”), and Total Terminals International, LLC (“Respondent” and, together with Complainant, the “Parties”) submit this Joint Motion for Approval of Settlement. Mediterranean Shipping Company (“MSC”) has agreed to make a payment to Complainant, and, in consideration for that payment, Complainant has agreed to dismiss this action. All of the disputes and issues that are the subject of this Proceeding are, accordingly, settled. A copy of the Settlement Agreement executed by all the Parties to this proceeding is being filed on a confidential basis as Exhibit A to this Motion. For the reasons set forth below, the Parties submit that (1) the Settlement Agreement should be approved by the Commission, and (2) upon approval of the Settlement Agreement, Complainant’s claims against Respondent should be dismissed with prejudice.

I. Procedural History

On February 7, 2022, Complainant filed a Complaint with the Commission alleging that Respondent had violated Section 41102(c) of the Shipping Act of 1984. Respondent has denied all such allegations and stated that Complainant paid the disputed demurrage to MSC. The Parties and MSC have engaged in settlement discussions and have reached agreement on a settlement embodied in the confidential Settlement Agreement filed in connection with this Motion for Approval whereby MSC will make a settlement payment to Complainant.

II. The Settlement Should Be Approved

The Commission has a strong and consistent policy of “encourage[ing] settlements and engag[ing] in every presumption which favors a finding that they are fair, correct, and valid.” *See Aeneas Exporting LLC v. Carlo Shipping. Int’l, Inc., Docket No. 20-11 (August 24, 2020) (Wirth, C.J.), quoting Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc., 29 SRR 975, 978 (ALJ 2002). See also Delhi Petroleum Pty. Ltd. v. U.S. Atl. & Gulf/Australia - New Zealand Conf. and Columbus Line, Inc., 24 S.R.R. 1129, 1134 (ALJ Aug. 12, 1988) (“[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.”).*

The Commission’s policies, its Rules of Practice, and the Administrative Procedures Act all encourage settlements. As the ALJ recognized in *Old Ben Coal Co. v. Sea-Land Services, Inc., 18 S.R.R. 1085, 1091 (ALJ 1978)*:

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.

The Commission reviews settlement agreements to ensure that they do not contravene any law or public policy, and are free of fraud, duress, undue influence, or mistake, or other defects which might make them not subject to approval. Here, the Parties' settlement reflects a fair and considered judgment of the relative strengths of their respective positions, the desire to avoid continuing litigation costs and to avoid the risks inherent in litigation. The settlement is the product of arms-length negotiations between sophisticated entities (the Parties and MSC) represented by counsel, and is free of fraud, duress, or undue influence. The Parties also submit that the settlement is free of mistake or other defects which might make it not subject to approval.

Further, the settlement does not contravene law or public policy. It is not an unjust or discriminatory device, 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. Rather, it constitutes a prudent decision by the Parties and MSC. In sum, the settlement should be approved because it is fair, reasonable and adequate, and is the product of prudent and considered judgment on the part of the Parties and MSC.

III. The Terms of the Settlement Agreement Should Remain Confidential

The Commission has generally afforded confidential treatment under 46 C.F.R. § 502.5 to settlement agreements, recognizing that they “often contain sensitive commercial information that should be protected from public disclosure.” *D.F. Young, Inc. v. NYK Line (N. Am.) Inc.*, 1 F.M.C.2d 135, 136–37 (FMC May 22, 2018). The Settlement Agreement contains sensitive commercial information that should be protected from public disclosure. Accordingly, the Parties respectfully request confidential treatment of the Settlement Agreement, as is routinely granted by

the Commission, pursuant to the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.5.

WHEREFORE, the Parties request, for the reasons set forth herein, that their settlement be approved and the Complaint in this Proceeding be dismissed with prejudice.

DATE: October 21, 2022

Respectfully submitted,



David K. Monroe
John H. Kester
GKG LAW, P.C.
1055 Thomas Jefferson Street, NW
Washington, DC 20007
Telephone: 202/342-5235
Facsimile: 202/342-5219
dmonroe@gkglaw.com
jkester@gkglaw.com

Attorneys for Complainant

/s/ Joseph N. Akrotirianakis

Joseph N. Akrotirianakis
Jeremy M. Bylund
Amy R. Upshaw
KING & SPALDING LLP
1700 Pennsylvania Avenue, NW
Suite 900
Washington, DC 20006
(202) 737-0500
jakro@kslaw.com
jbylund@KSLAW.com
aupshaw@KSLAW.com

Attorneys for Respondent

EXHIBIT A

CONFIDENTIAL MATERIALS EXCLUDED

CERTIFICATE OF SERVICE

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the parties to this proceeding via email transmission on this 21st day of October, 2022.

/s/ Joseph N. Akrotirianakis
Joseph N. Akrotirianakis