

Before the
FEDERAL MARITIME COMMISSION

Washington, D.C. 20573

Docket No. 22-08

ACHIM IMPORTING COMPANY INC. v.

YANG MING MARINE TRANSPORT CORPORATION

**JOINT MOTION FOR APPROVAL OF SETTLEMENT,
TO PRESERVE CONFIDENTIALITY OF SETTLEMENT,
AND TO EXTEND CASE DEADLINES PENDING APPROVAL**

Complainant Achim Importing Company Inc. (“Achim”) and Respondent Yang Ming Marine Transport Corporation (“Yang Ming”) (each a “Party” and, collectively, the “Parties”), having reached a settlement of Achim’s claims against Yang Ming in this action, respectfully move the Honorable Erin M. Wirth, Chief Administrative Law Judge and the presiding officer in this action, pursuant to 46 C.F.R. Sections 502.72(a)(3), 502.5, 502.13(c), and 502.141 for orders (1) permitting the Parties to file their settlement agreement (the “Settlement Agreement”) under seal, (2) approving the Settlement Agreement, (3) on the basis of the Settlement Agreement, dismissing Achim’s claims against Yang Ming in this action, with prejudice, and (4) maintaining the confidentiality of the Settlement Agreement. The Parties further request that the deadlines for discovery in this proceeding be stayed pending a ruling on this Motion.

PROCEDURAL HISTORY

Achim filed its Verified Complaint in this action on March 18, 2022. The Secretary of the Federal Maritime Commission (“FMC”) served a Notice of Filing of Complaint and Assignment on March 31, 2022. By Order dated April 4, 2022, this action was assigned to Chief Administrative Law Judge Wirth, who issued her Initial Order that same day. Yang Ming filed its Verified Answer

on May 9, 2022 pursuant to an April 14, 2022 joint motion for enlargement of time that Chief Judge Wirth granted by Order dated April 18, 2022. The Parties filed a joint status report and proposed discovery schedule on May 31, 2022, and Chief Judge Wirth issued a Scheduling Order on June 6, 2022. Pursuant to two joint motions for extensions in light of the settlement now being submitted for approval, respectively granted by Chief Judge Wirth by Orders dated June 28, 2022 and July 20, 2022, the initial discovery response deadline currently is August 8, 2022.

THE SETTLEMENT AGREEMENT SHOULD BE APPROVED

“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.’” *Aeneas Exporting LLC, Complainant v. Carlo Shipping Int’l, Inc., Respondent.*, Docket No. 20-11, 2020 FMC LEXIS 189, at *2, 2020 WL 5942148, at *2 (Fed. Mar. Comm’n Aug. 24, 2020) (Wirth, C.J.) (quoting *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, 29 S.R.R. 975, 978 (ALJ 2002)) (emphasis in original). “[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. Atl. & Gulf/Australia - New Zealand Conf. and Columbus Line, Inc.*, Docket Nos. 88-2, 88-4, 1988 FMC LEXIS 25, at *19, 24 S.R.R. 1129, 1134 (ALJ Aug. 12, 1988)). “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.” *Mac Indus., Inc. d/b/a Mac Container Line, Complainant v. Cosco Shipping Lines Co., Ltd., Respondent.*, Docket No. 20-09, 2020 FMC LEXIS 181, at *3,

2020 WL 4464298, at *2 (Fed. Mar. Comm’n July 29, 2020) (Wirth, C.J.) (quoting *APM Terminals N. Am., Inc. v. Port Auth. of N.Y. and N.J.*, 31 S.R.R. 623, 626 (FMC 2009)).

Evaluating this motion to approve the Settlement Agreement entails examining whether it “reflects careful consideration by the parties of a variety of factors, including the relative strengths of their positions weighed against the risks and costs of continued litigation.” *APM Terminals N. Am., Inc.*, 31 S.R.R. at 636 (quoting *Delhi Petroleum Pty. Ltd.*, 24 S.R.R. at 1134). The primary factor to be considered, however, is the FMC’s “strong and consistent policy of encouraging settlements” *APM Terminals N. Am., Inc.*, 31 S.R.R. at 625 (quoting *Inlet Fish Producers, Inc.*, 29 S.R.R. at 978).

In this action, Achim and Yang Ming, both sophisticated corporate entities, arrived at the Settlement Agreement through extensive, arm’s length negotiations that involved businesspeople and counsel on both sides, and make this motion to approve the Settlement Agreement jointly. The Settlement Agreement does not contravene any law or public policy, and is neither unjust nor discriminatory. It does not contemplate any adverse effects on any non-parties or the shipping public. Instead, the Settlement Agreement is intended to restore and reinforce the long-standing business relationship between the Parties. As such, the Settlement Agreement is fair and reasonable, and reflects the Parties’ desire to resolve their issues without the need for costly and uncertain litigation. For these reasons, the Parties respectfully request that the Settlement Agreement be approved and, on that basis, Achim’s claims against Yang Ming in this action be dismissed, with prejudice.

REQUEST FOR CONFIDENTIAL TREATMENT AND LEAVE TO FILE UNDER SEAL

The FMC routinely affords confidential treatment under 46 C.F.R. Section 502.5 to settlement agreements, recognizing that they “ often contain sensitive commercial information that

should be protected from public disclosure.” *D.F. Young, Inc., Complainant, v. NYK Line (North America) Inc., Respondent.*, Docket No. 16-02, 2018 FMC LEXIS 41, at *6, 1 F.M.C.2d 135, 136–37 (Fed. Mar. Comm’n May 22, 2018). ““If parties wish to keep the terms of their settlement agreements confidential, the Commission, as well as the courts, have honored such requests.”” *Marine Transp. Logistics, Inc., Complainant v. CMA-CGM (America) LLC, Respondent.*, Docket No. 18-07, 2020 FMC LEXIS 24, at *6, 2020 WL 948582, at *3 (Fed. Mar. Comm’n Feb. 18, 2020) (Wirth, C.J.) (quoting *Al Kogan v. World Express Shipping, Transp. and Forwarding Servs., Inc.*, Docket No. 00-04, 29 S.R.R. 68, 70 n.7 (ALJ Dec. 14, 2000)). This Settlement Agreement is the result of confidential commercial negotiations between the Parties, and the Parties therefore respectfully request leave to file the Settlement Agreement under seal for review and approval, and that the Settlement Agreement thereafter continue to be afforded confidential treatment by the FMC.

Under the terms of the Settlement Agreement, the Parties must keep the terms of the Settlement Agreement confidential. This confidentiality requirement is an important and necessary element of the Settlement Agreement; it could be compromised by a breach of such confidentiality. The Parties therefore respectfully request that the Commission keep the unredacted copy of the Settlement Agreement confidential. Because the entire Settlement Agreement is confidential, the Parties have not filed a public version of the Settlement Agreement. Commission precedent provides that settling parties need not file a public version of a settlement in such circumstances. *Global Link Logistics, Inc. v. Hapag-Lloyd AG*, Docket No. 13-07, 2015 FMC LEXIS 4, at *12 (FMC Apr. 14, 2015) (concluding that parties had complied with Commission Rule 5 even though “[n]o public version of the Agreement has been filed, as the parties seek to have the entire Agreement treated confidentially”).

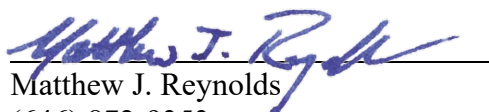
**THE PARTIES' DEADLINES SHOULD BE
EXTENDED PENDING REVIEW OF THE SETTLEMENT**

The settlement submitted for approval is the result of continued diligent work by the Parties and undersigned counsel. In light of those efforts, as well as the Parties' continued mutual desire to avoid unnecessary effort and expense in connection with this action while the Commission reviews the settlement, the Parties respectfully request that the Presiding Officer stay the current deadlines in this action, pending resolution of this Motion, including in particular the current deadline for the Parties to serve objections and responses to each other's initial written discovery requests, and permitting depositions to begin to be noticed. This requested extension is particularly important because Respondent's initial written discovery requests to Complainant included numerous requests for admission, which under 46 C.F.R. Section 502.147 would be, absent stipulation of the Parties and/or order of the Presiding Officer, deemed admitted unless answered by the current August 8, 2022 deadline set by the Presiding Officer's July 20, 2022 Order. The Parties jointly stipulate to the extension requested herein under 46 C.F.R. Section 502.141(l), but for the sake of clarity and certainty also seek the Presiding Officer's approval under that section and 46 C.F.R. Section 502.147(a)(3).

Accordingly, the Parties request that, in the event this Motion is denied and the settlement not approved, they be granted leave to appeal the denial directly to the Commission, and if no party appeals, the Parties request they be afforded a reasonable amount of additional time to respond to pending discovery requests, with other deadlines to follow at the previously prescribed intervals.

Dated: August 4, 2022

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Respectfully submitted,

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