

BEFORE THE  
FEDERAL MARITIME COMMISSION

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**DOCKET NO. 22-26**

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PHILIP REINISCH COMPANY LLC  
COMPLAINANT,

v.

FLEXPORT INTERNATIONAL LLC,  
RESPONDENT.

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

Complainant, Philip Reinisch Company LLC (“Philip Reinisch”) and Respondent, Flexport International LLC (“Flexport” and collectively with Philip Reinisch, the “Parties”), submit this Joint Motion for Approval of Settlement Agreement and Confidential Treatment of Settlement Agreement. 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 September 29, 2022, Philip Reinisch filed a Complaint with the Commission alleging that Flexport had violated Section 41102(c) of the Shipping Act of 1984. Flexport has denied all such allegations. The Parties 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.

## **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. “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 v. COSCO Shipping Lines Co., Ltd.*, 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 Confidential 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 3 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, the Parties, both sophisticated corporate entities, and represented by counsel, arrived at the Confidential Settlement Agreement through arm's length negotiations and support this motion and the relief that it seeks. The Confidential 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 third parties or the shipping public. Instead, the Confidential Settlement Agreement is a fair and reasonable resolution of the disputes between the Parties and reflects their desire to resolve their issues without the need for costly and uncertain litigation. For these reasons, the Parties respectfully request that the Confidential Settlement Agreement be approved and, on that basis, the Complaint in this matter be dismissed with prejudice.

### **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). "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. v. CMA-CGM (America) LLC*, Docket No. 18-07, 2020 FMC LEXIS 24, at \*6, 2020 WL 948582, at \*3 (Fed. Mar. Comm'n Feb. 18, 2020) (Wirth, C..I.) (*quoting Al Kogan v. World Express Shipping, Transp. and Forwarding Servs., Inc.*, Docket No. 00-04, 29 S.R.R. 68, 70 n.7 (All Dec. 14, 2000)). 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 46 C.F.R. §502.5.

Wherefore, the Parties request, for the reasons set forth herein, that their settlement be approved, that the Settlement Agreement be treated as confidential, and the Complaint in this proceeding be dismissed with prejudice.

Respectfully submitted,

**SPECTOR RUBIN, P.A.**

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[EXHIBIT A – SETTLEMENT AGREEMENT  
SUBMITTED CONFIDENTIALLY TO THE JUDGE AND NOT FILED]

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