

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Globerunners, Incorporated

Complainant,

v.

Docket No. 22-27

Hoyer Global (USA), Inc.

Respondent.

MOTION FOR VOLUNTARY DISMISSAL BY COMPLAINANT

This case involves 8 tank containers of petroleum products that were shipped to Busan in January 2019, and that remained on the wharf in Busan until July 2022. Complainant Globerunners, Incorporated (“Globerunners”) filed its Verified Complaint (“Complaint”) with the Federal Maritime Commission (“FMC”) on September 30, 2022, and Respondent Hoyer Global (USA), Inc. (“Hoyer”) filed its answer to the Complaint (“Answer”) on November 8, 2022.

Hoyer previously sued Globerunners in the United States District Court for the Southern District of Texas (Docket No. 4:21-cv-4037, hereinafter the “Texas Action”), alleging that Globerunners is liable for amounts paid by Hoyer to the port in Busan for wharfage and demurrage charges. Globerunners moved to stay the Texas Action on the basis that the FMC has exclusive jurisdiction over this action pursuant to the Shipping Act of 2022, 46 U.S.C. § 40101 *et seq.*; the District Court granted the motion without hearing opposition from Hoyer.

In its Complaint in the present case, Globerunners admits that it is liable for the amount that Hoyer paid to the port in Busan for wharfage. Complaint at ¶ 14. However, Globerunners alleges that Hoyer violated the Shipping Act and FMC’s regulations by refusing to provide proof of the actual amount of charges for which it seeks to collect on a pass-

through charge to Globerunners. *Id.* at ¶¶ 15-19.

In its Answer, Respondent contests the extent to which any part of the parties' underlying dispute is subject to the jurisdiction of the FMC. It also denies that it failed to provide Globerunners with sufficient documentation related to the pass-through charge. Answer at ¶ 14. Relying on the same facts as those underlying the Complaint, the Answer also alleges that Hoyer is additionally entitled to \$504,240 in reimbursement for the demurrage on the shipping containers that were lost to service. *Id.* at ¶ 27

The parties have been engaged in settlement negotiations since April 26, 2023. The dispute was resolved when Hoyer provided proof of payment through discovery in February 2023 and confirmed exchange rates on May 2, 2023. As such, we have recently reached an agreement to settle all of the issues described above without further litigation. Pursuant to 46 CFR §502.72 (a)(3), Complainant respectfully requests an order by the presiding officer for voluntary dismissal of the Complaint with prejudice, based on the settlement by the parties submitted hereto as Exhibit A.

The Settlement Should Be Approved

The FMC has a strong and consistent policy of “encourag[ing] settlement and engag[ing] 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) (quoting *Old Ben Coal Co. v. Sea-Land Services, Inc.*, 18 SRR 1085, 1091 (ALJ 1978)). The Commission's policies, its Rules of Practice, and the Administrative Procedures Act all encourage settlements. *See id.* at 1092. The FMC has noted:

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.

Id. (citation omitted).

In determining potential approval of a settlement, the Commission examines whether the proposal “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. v. Port Auth. Of N.Y. & NJ.*, 31 SRR 623,636 (FMC 2009) (quoting *Delhi Petroleum Pty. Ltd v. US. All. & Gulf/Australia-New Zealand Conference Columbus Line, Inc.*, 24 SRR 1129, 1134 (ALJ 1988)). However, the primary factor to be considered is the FMC's “strong and consistent policy of encouraging settlements and engaging in every presumption which favors a finding that they are fair, correct, and valid.” *APM Terminals*, 31 SRR at 625 (quoting *Inlet Fish Producers*, 29 SRR at 978) (internal quotation marks and brackets omitted).

In the instant case, the settlement is the result of arm’s-length negotiations between two sophisticated entities, both of whom have been represented by counsel during the settlement process. The settlement resolves the issues described above related to Hoyer’s pass-through charges to Globberunners, as well as its claim related to reimbursement of demurrage on the shipping containers that were lost to service. As part of the settlement, Complainant agrees to move to voluntarily withdraw the present case, and Respondent agrees to move to withdraw the Action filed in the Southern District of Texas. The proposed agreement does not contravene any law or public policy, nor is it unjust or discriminatory in any way. Additionally, this agreement will not result in any adverse effects to any third parties or on the shipping public. The proposed settlement is fair and reasonable and reflects the Parties’ desire to resolve their issues without the need for costly and uncertain litigation.

As a result of the foregoing, Complainant respectfully requests that this Motion for Voluntary Dismissal and settlement be granted, and that this action be dismissed with prejudice, with each party to bear its own costs.

Request for Confidential Treatment

The Parties request that the proposed settlement remain confidential, as is routinely granted by the Commission due to the recognition that settlement agreements often contain sensitive commercial information, and thus should be protected from public disclosure. *See D.F. Young, Inc. v. NYK Line (North America) Inc.*, FMC Dkt. No. 16-02 at *4-5 (FMC May 22, 2018).

Respectfully Submitted:



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