

PUBLIC VERSION

BEFORE THE
FEDERAL MARITIME COMMISSION

TIR AUTO TRANSPORT LLC,

Complainant,

v.

DOCKET NO. 23-07

V&S BROTHERS, INC. and
V&S CARGO, INC.,

Respondents.

**JOINT MOTION FOR APPROVAL OF SETTLEMENT AND
VOLUNTARY DISMISSAL WITH PREJUDICE**

Pursuant to 46 C.F.R. Section 502.72(a)(3), Complainant, TIR AUTO TRANSPORT LLC (“TIR”), and Respondents, V&S BROTHERS, INC. (“VBI”) and V&S CARGO, INC. (“VCI”) (together, “V&S”) (collectively with TIR, the “parties”), by and through their respective undersigned counsel, hereby submit for consideration this Joint Motion for Approval of Settlement and Voluntary Dismissal of the Complaint and Counterclaims with Prejudice.

On August 8, 2023, TIR filed its Verified Complaint. V&S filed its Answer and Counterclaim against TIR on September 5, 2023. The parties conducted informal discussions regarding settlement with the assistance of the Office of Consumer Affairs & Dispute Resolution Services (“CADRS”) before the Complaint was filed. The parties also mediated this dispute on October 30, 2023 with the CADRS. Those discussions did not yield a settlement. The parties thereafter exchanged written discovery, produced documents, and discussed the scheduling of depositions. The

parties recently revisited their positions on settlement and engaged in productive discussions between counsel. Those discussions have resulted in a settlement.

The Parties have mutually agreed to settle all of the disputes and issues that are the subject of this action as well as any potential disputes relating to the parties' business relationship. A copy of the confidential Settlement Agreement dated January 27 , 2024 is attached hereto as **Exhibit A** to this Motion.¹ For the reasons set forth below, the parties submit that this Settlement Agreement should be approved by the Commission.

I. 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.” *Inlet Fish Producers, Inc. v. Sea-Land Service, Inc.*, 29 S.R.R. 975, 978 (ALJ 2002) quoting *Old Ben Coal Co. v. Sea-Land Services, Inc.*, 18 S.R.R. 1085, 1091 (ALJ 1978). The Commission’s policies, its Rules of Practice, and the Administrative Procedures Act all encourage settlements. *Id.* 18 S.R.R. at 1092. As the ALJ recognized in *Old Ben*:

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.

¹ The Settlement Agreement has been attached to the Confidential version of this filing under 46 C.F.R. Section 502.5(b). The Settlement Agreement is not attached to this Public Version of the Joint Motion and the parties request that the Settlement Agreement not be included in the public docket.

Id. (internal citations omitted).

And as stated regarding settlements by the Commission in its September 6, 2023 *Order on Motions* in this action:

The Commission has a strong and consistent policy of encouraging settlements. “The resolution of controversies by means of compromise and settlement is generally faster and less expensive than litigation; it results in saving 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.” *Old Ben Coal Co. v. Sea-Land Ser., Inc.*, 18 S.R.R. 1085, 1092 (ALJ 1978) (quoting 15A AM. JUR. 2D *Compromise and Settlement* § 3 (1976)).

Even so, the Commission reviews settlement agreements to ensure they do not “violate any law or policy and to ensure the settlement is free of fraud, duress, undue influence, mistake, or other defects.” 46 C.F.R. Section 502.72(a)(3).

The Complaint asserts claims regarding alleged shipping practices in violation of the Shipping Act. Respondents denied the allegations and asserted a Counterclaim arising from sums that Respondents contend are owed from the Complainant. The Complainant has denied all such allegations. The parties participated in discovery and made good faith attempts to discuss a fair resolution of all claims.

The parties’ settlement reflects a fair and considered judgment of the relative strengths of their positions, the desire to avoid continuing litigation costs, and to avoid inherent litigation risks. It does not contravene law or public policy. It is the product of arms-length negotiations, in which counsel for both parties participated, is free of fraud, duress, or undue influence, is not unjust or discriminatory, has no adverse effect on any third parties or the market, and does not violate the Shipping Act. It does not reflect mistake or any other defects.

The Settlement Agreement is an appropriate business decision made by each of the parties. The anticipated costs of depositions, expert witnesses, and translation services made this an appropriate time to enter into a settlement. The Settlement Agreement is fair, reasonable, and adequate, and is the product of prudent and considered judgment on the part of the parties. The parties respectfully request that it be approved.

The parties understand that in the normal course, a dismissal would be without prejudice. However, the parties included an agreement to request dismissal with prejudice as a material term of the parties' settlement. The Settlement Agreement resolves all disputes and potential disputes between the parties and their ownership. The parties respectfully request that the matter be dismissed with prejudice so that the dispute may be put behind them with finality.

II. The Parties Request the Settlement Agreement Remain Confidential

Furthermore, the Settlement Agreement contains sensitive commercial information that should be protected from public disclosure. The settlement specifically deals with a payment made to resolve all claims related to the instant matter and other commercial terms that are sensitive and should not be disclosed publicly. Accordingly, the parties respectfully request confidential treatment of the Settlement Agreement pursuant to Section 502.5(b) of the Commission's Rules of Practice and Procedure. 46 C.F.R. Section 502.5(b). **Exhibit A** has been marked as confidential in its entirety under Commission rules. The Public version of this filing does not include the Settlement Agreement.

WHEREFORE, the parties request, for the reasons set forth above, that the Settlement Agreement be approved and the Complaint and Counterclaim in this Proceeding be dismissed with prejudice.

Respectfully submitted, this 30th day of January, 2024.

By: /s/Andrew J. Steif

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CERTIFICATE OF SERVICE

I certify that, on January 30th, 2024, a true and correct copy of the foregoing Motion was filed via electronic mail with the Secretary of the Federal Maritime Commission at secretary@fmc.gov, and a copy was served via electronic mail on all counsel of record.

/s/ Andrew J. Steif

Andrew J. Steif

EXHIBIT A

- Confidential in its Entirety –

[Included With Confidential Version]