

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 23-09**  
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**HUBBELL INCORPORATED,**

**and**

**HUBS, INC.,**

**COMPLAINANTS,**

**v.**

**DSV AIR & SEA, INC.,**

**and**

**DSV OCEAN TRANSPORT A/S,**

**RESPONDENTS.**

**JOINT MOTION FOR APPROVAL OF SETTLEMENT,  
CONFIDENTIAL TREATMENT OF SETTLEMENT AGREEMENT, AND  
VOLUNTARY DISMISSAL**

Complainants, Hubbell Incorporated (“Hubbell Incorporated”) and HUBS, Inc. (“HUBS”) (each a “Complainant” and collectively “Complainants” or “Hubbell”) and Respondents, DSV Air & Sea, Inc. and DSV Ocean Transport A/S (each a “Respondent” and collectively “Respondents” or “DSV”) (each a “Party” and, collectively, the “Parties”) have reached a full and final settlement of all matters in dispute between them in this proceeding and in the related action filed by DSV in Delaware Federal District Court and have executed a definitive settlement agreement (the “Settlement Agreement”).

The undersigned counsel for the Parties hereby submit this Joint Motion for Approval of Settlement, Confidential Treatment of Settlement Agreement, and Voluntary Dismissal (the “Motion”), and respectfully move pursuant to 46 C.F.R. §§ 502.72(a)(3), 502.5, and 502.13(c) for orders (1) permitting the Parties to file the Settlement Agreement under seal, (2) approving the Settlement Agreement, (3) on the basis of the Settlement Agreement and the foregoing Motion, dismissing Hubbell’s Verified Complaint against DSV in this proceeding, and (4) maintaining the confidentiality of the Settlement Agreement.

### **PROCEDURAL HISTORY**

Hubbell filed its Verified Complaint in this action on August 23, 2023, which was served by the Secretary of the Federal Maritime Commission (“FMC”) on August 28, 2023. The Initial Order was issued on August 30, 2023. DSV filed its Verified Answer on September 22, 2023. The Respondents filed a Motion to Stay Proceeding on September 29, 2023, which was denied on October 5, 2023. A Scheduling Order was issued on October 18, 2023 and the parties commenced discovery. On December 18, 2023, Respondents filed a motion to amend the Scheduling Order, which was joined by Complainants, and an Amended Scheduling Order was issued on January 2, 2024. As noted in the motion to amend the Scheduling Order, the Parties were proceeding with voluminous document discovery and, as also noted, the Parties were scheduled to commence mediation before the FMC Office of Consumer Affairs & Dispute Resolution Services (“CADRS”) on January 9, 2024.

The Parties engaged in the mediation before CADRS between Tuesday, January 9, 2024 and Friday, January 12, 2024, at which time the Parties reached a settlement in principle. The Parties promptly proceeded to negotiate a definitive settlement agreement, which was finalized

with an effective date of January 23, 2024 and execution by the Parties was completed today, January 25, 2024. A true and correct copy of the executed Settlement Agreement has been filed for review herewith under seal, pursuant to the motion for confidential treatment herein. The Parties believe that the Settlement Agreement meets the criteria established by the FMC for the approval of settlement agreements and, therefore, the Parties move for approval of the Settlement Agreement and dismissal of this proceeding.

**THE CONFIDENTIAL 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.” *Inlet Fish Producers, Inc. v. Sea-Land Serv., Inc.*, Docket No. 00-03, 2002 FMC LEXIS 27, at \*9-10, 29 S.R.R. 975, 978 (ALJ May 9, 2002); *see also Aeneas Exporting LLC, v. Carlo Shipping Int’l, Inc.*, Docket No. 20- 11, 2020 WL 5942148, at \*1 (ALJ Aug. 24, 2020). “[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 WL 340657, at \*7, 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, v. Cosco Shipping Lines Co., Ltd.*, Docket No. 20-09, 2020 WL 4464298, at \*2 (ALJ July 29, 2020) (quoting *APM Terminals N. Am., Inc. v. Port Auth.*

*of N.Y. and N.J.*, Docket No. 07-01, 2009 WL 971291, at \*2, 31 S.R.R. 623, 626 (FMC Apr. 1, 2009)).

Evaluating a motion to approve a settlement agreement requires a determination that a binding settlement agreement has been reached and examining whether the “proffered settlement does not appear to violate any law or policy and is free of fraud, duress, undue influence, mistake or other defects which might make it unprovable despite the strong policy of the law encouraging approval of settlements.” *Aeneas Exporting LLC, v. Carlo Shipping Int’l, Inc.*, Docket No. 20-11, 2020 WL 5942148, at \*1 (ALJ Aug. 24, 2020) *citing Old Ben Coal Co. v. Sea-Land Serv., Inc.*, Docket No. 78-13, 18 S.R.R. 1085, 1093 (ALJ Nov. 29, 1978).

In this action, Hubbell and DSV, both sophisticated corporate Parties, arrived at the Settlement Agreement through an in-depth, CADRS facilitated mediation and extensive, arm’s length negotiations in which counsel for both Parties and representatives of both Parties participated, and which involved careful consideration of the relative strengths of their positions weighed against the risks and costs of continued litigation. The Parties submit that the Settlement Agreement does not contravene any law or public policy, does not violate the Shipping Act, is neither unjust nor discriminatory, and is free of fraud, duress, or undue influence. The Settlement Agreement does not contemplate any adverse effects on any non-parties or the shipping public and is free of any other defects which might make it unapprovable.

The Settlement Agreement is intended to amicably resolve the contested business disputes between the Parties and the Parties have determined that the Settlement Agreement is fair and reasonable and reflects the Parties’ desire to resolve their issues without the need for further, unnecessary expenditure of time and resources by the Parties and the FMC. For these

reasons, the Parties respectfully request that the Settlement Agreement be approved and, on that basis, that Hubbell's Verified Complaint against DSV be dismissed.

**REQUEST FOR CONFIDENTIAL TREATMENT AND LEAVE TO FILE**

**UNDER SEAL**

The FMC routinely affords 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 (North America) Inc.*, Docket No. 16-02, 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 WL 948582, at \*3 (ALJ Feb. 18, 2020) (quoting *Al Kogan D/b/a Galaway Internat'l v. World Express Shipping Transp. and Forwarding Servs, Inc., D/b/a W.e.s.t. Forwarding Servs. (FMC Lic. #3188-R)*, Docket No. 00-04, 2000 WL 1920488, at \*4, 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, the matters settled are commercially sensitive, and the terms of the settlement are also commercially sensitive. The Parties themselves are subject to the confidentiality provisions of the Settlement Agreement, which permit disclosure in this Motion only on the basis of confidential submission under seal.<sup>1</sup> The Parties therefore respectfully move for confidential treatment of the Settlement Agreement submitted under seal for review and

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<sup>1</sup> FMC 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 WL 3955128, at \*6 (FMC Apr. 14, 2015) (concluding that parties had complied with 46 C.F.R. § 502.5 even though “[n]o public version of the Agreement has been filed, as the parties seek to have the entire Agreement treated confidentially”).

approval, and that the Settlement Agreement thereafter continue to be afforded confidential treatment by the FMC.

Dated: January 25, 2024

Respectfully submitted by,

**HOLLAND & KNIGHT LLP**

By: /s/ Gerald A. Morrissey III

Gerald A. Morrissey III

800 17<sup>th</sup> Street N.W., Suite 1100

Washington, D.C. 20006

Telephone: (202) 469-5497

Email: gerald.morrissey@hklaw.com

*Counsel to Complainants*

**BENESCH, FRIEDLANDER,  
COPLAN & ARONOFF LLP**

By: /s/ Deana S. Stein

Deana S. Stein

Eric Larson Zalud

127 Public Square, Suite 4900

Cleveland, OH 44114-2378

Telephone: (216)-363-4500

Email: dstein@beneschlaw.com

e Zalud@beneschlaw.com

John Gentile

1313 N. Market Street, Suite 1201

Wilmington, Delaware 19801

Telephone: (302) 442-7010

Email: jgentile@beneschlaw.com

*Counsel for Respondents*