

BEFORE THE
FEDERAL MARITIME COMMISSION

DOCKET NO.: 23-14

D.F. YOUNG, INC.,

1235 Westlakes Drive
Suite 255
Berwyn, PA 19312

COMPLAINANT,

v.

WALLENIOUS WILHELMSSEN LOGISTICS AS, K/N/A
WALLENIOUS WILHELMSSEN OCEAN AS, AND WALLENIOUS
WILHELMSSEN LOGISTICS AMERICAS, LLC,

300 Interpace Parkway
Building A – 300 Secaucus
NJ 07094

RESPONDENTS.

**JOINT MOTION FOR APPROVAL OF CONFIDENTIAL
SETTLEMENT**

Complainant D.F. Young, Inc. (“DFY”) and Respondents Wallenius Wilhelmsen Logistics AS, k/n/a Wallenius Wilhelmsen Ocean AS, and Wallenius Wilhelmsen Logistics America, LLC (all of whom are hereinafter referred to jointly as “Wallenius Wilhelmsen”) (DFY and Wallenius Wilhelmsen are sometimes referred to jointly as the “Parties”) submit this joint motion in support of the Confidential Settlement Agreement filed under seal concurrently herewith. The Parties believe that the Confidential Settlement Agreement meets the criteria set by the Federal Maritime Commission (“FMC” or “Commission”) for the approval of settlement agreements and therefore should be approved.

I. INTRODUCTION

This proceeding was commenced when DFY filed a complaint on December 13, 2023. Wallenius Wilhelmsen filed a motion to dismiss, following which DFY sought and was granted leave to file an amended complaint. DFY alleges that Wallenius Wilhelmsen has violated various provisions of the Shipping Act of 1984 as amended and FMC regulations by failing to pay ocean freight forwarder compensation and seeks reparations for injuries allegedly caused by Wallenius Wilhelmsen's conduct.

The Parties engaged in settlement discussions at various points in time following the filing of the amended complaint, ultimately concluding the Confidential Settlement Agreement accompanying this memorandum

II. 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.'" *Aeneas Exporting LLC v. Carlo Shipping Intl, Inc.*, Docket No. 2011, 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)). "[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. US. 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 (All 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 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 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, 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 dispute 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. REQUEST FOR CONFIDENTIAL TREATMENT AND LEAVE TO FILE UNDER SEAL

The FMC routinely affords confidential treatment to settlement agreements under 46 C.F.R. § 502.5, 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, 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. 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)). This Confidential Settlement Agreement is the result of confidential commercial negotiations between the parties, and the parties therefore respectfully request leave to file the Confidential Settlement Agreement under seal for review and approval, and that the Confidential Settlement Agreement thereafter continue to be afforded confidential treatment by the FMC.

IV. CONCLUSION

The Confidential Settlement Agreement comprehensively addresses the issues relating to the above-referenced proceeding and meets the Commission's well-established criteria for approval of agreements settling administrative litigation and should therefore be approved and, upon such approval, FMC Docket No. 23-14 should be discontinued in its entirety.

DATED: March 11, 2024

Respectfully submitted,

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