

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 24-11

**OL USA LLC
COMPLAINANT,**

v.

**MAERSK A/S,
RESPONDENT.**

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

Complainant, OL USA LLC (“OL USA”) and Respondent Maersk A/S (“Maersk”) (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 OL USA in the Federal District Court for the Southern District of New York 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 OL USA’s Verified Complaint against Maersk in this proceeding with prejudice, and (4) maintaining the confidentiality of the Settlement Agreement.

PROCEDURAL HISTORY

OL USA filed its Verified Complaint in this Action on February 9, 2024, which was served by the Secretary of the Federal Maritime Commission (“FMC”) on February 14, 2024. The Initial Order was issued on February 29, 2024. Maersk filed its Answer on March 1, 2024. A Scheduling Order was issued on March 20, 2024. The Parties participated in mediation before CADRS on June 21, 2024 and July 11, 2024 but were unable to reach a resolution. Nevertheless, the Parties continued to engage in settlement discussions and were able to resolve this matter on August 14, 2024. The Parties promptly proceeded to negotiate a definitive settlement agreement, which was finalized with an effective date of August 30, 2024. OL USA executed the Settlement Agreement on August 30, 2024 and Maersk executed the Settlement Agreement on September 2, 2024.

A true and correct copy of the 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 with prejudice.

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 unapprovable 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, OL USA and Maersk, both sophisticated corporate Parties, arrived at the Settlement Agreement after two CADRS facilitated mediations and extensive, arm’s length negotiations in which counsel and representatives for both Parties participated, and which involved careful considerations 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 OL USA's Verified Complaint against Maersk be dismissed with prejudice.

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 agreement are also commercially sensitive. The Parties themselves are subject to the confidentiality provisions of the Settlement Agreement. The Parties therefore respectfully move for confidential treatment of the Settlement Agreement submitted under seal for review and

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

Respectfully submitted,

s/ Eric L. Zalud

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Joint Motion for Approval of Settlement, Confidential Treatment of Settlement Agreement, and Voluntary Dismissal* was filed on September 11, 2024.

/s/Eric L. Zalud
One of the attorneys for OL USA LLC