

S E R V E D
January 12, 2007
FEDERAL MARITIME COMMISSION

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WASHINGTON, D. C.

DOCKET NO. 06-10

TRANSPORT EXPRESS, INC. and
THE INTERMODAL MOTOR CARRIERS CONFERENCE, AMERICAN TRUCKING
ASSOCIATIONS,

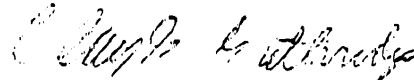
v.

SINOTRANS CONTAINER LINES CO, LTD. and
SINOTRANS SHIPPING AGENCY (NA), INC.,

**ORDER DISMISSING AS MOOT PETITION FOR LEAVE TO INTERVENE AS
AMICUS CURIAE OR, ALTERNATIVELY, MOTION TO FILE AMICUS BRIEF**

On November 8, 2006, the Intermodal Association of North America, Inc. (IANA) filed a Petition for Leave to Intervene as Amicus Curiae or, Alternatively, Motion to File Amicus Brief. On November 27, 2006, the parties submitted a Joint Motion for Approval of Settlement Agreement and Consent Order and Consent Motion to Extend Time, including time to respond to the Motion for Protective Order. I am approving the Settlement Agreement by separate order. As the parties have settled this case, it is hereby

ORDERED that Intermodal Association of North America, Inc.'s Petition for Leave to Intervene as Amicus Curiae or, Alternatively, Motion to File Amicus Brief be dismissed as moot.



Clay G. Guthridge
Administrative Law Judge

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PROTECTIVE ORDER

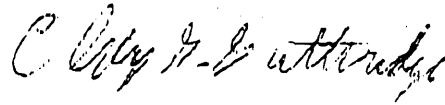
Complainants¹ filed a motion for a protective order with respect to Exhibits X and Y attached to complainants' Memorandum of Facts and Arguments. On November 20, 2006, I entered an order granting respondents' motion to extend the time for respondents to respond to this motion.

On November 27, 2006, the parties submitted a Joint Motion for Approval of Settlement Agreement and Consent Order and Consent Motion to Extend Time, including time to respond to the Motion for Protective Order. I am approving the Settlement Agreement by separate order.

¹ In their motion, they describe themselves as "respondents," Motion for Protective Order at 1, but they are the complainants in this matter.

Upon consideration of complainants' motion for protective order and the circumstances of this case, it is hereby

ORDERED that complainants' motion be **GRANTED**.



Clay G. Guthridge
Administrative Law Judge

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SINOTRANS SHIPPING AGENCY (NA), INC.,**

INITIAL DECISION ON PROPOSED SETTLEMENT AGREEMENT

Complainants commenced this action by filing a complaint alleging that respondents unlawfully terminated complainant Transport Express, Inc.'s interchange rights under the industry-wide Uniform Intermodal Interchange and Facilities Access Agreement (UIIA). They alleged that respondents took this action in response to Transport Express's refusal to pay an invoice for damages that it was not obligated to pay pursuant to the terms of that UIIA. The complaint alleged that this termination violated relevant provisions of section 10 of the Shipping Act of 1984. *See* 46 U.S.C. §§ 41102(c), 41104(10). Complainants requested that their complaint be adjudicated using the Subpart K Shortened Procedure. *See* 46 C.F.R. Part 502, Subpart K.

On November 27, 2006, the parties submitted a Joint Motion for Approval of Settlement Agreement and Consent Order and Consent Motion to Extend Time. Although respondents do not admit to the allegations set forth in the complaint, the Settlement Agreement requires them to reinstate the interchange privileges of complainant Transport Express, Inc., under the UIIA. Respondents further agree not to terminate interchange and other arrangements with Transport Express, Inc., and any other motor carrier that is a party to the UIIA in response to any assertion by a motor carrier of any right or defense that the motor carrier may have as a party to the UIIA. Respondents agree to procedures by which carriers can protect their rights in similar circumstances.

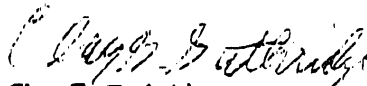
They also agree to pay Transport Express reparations of \$2,100.00 (Transport Express sought \$2,102.00 in its complaint) and pay \$10,000.00 to complainants as a contribution to legal fees incurred in this matter.

The Administrative Procedure Act, 5 U.S.C. § 554(c)(1) and Rule 91 of the Commission's Rules of Practice and Procedure provide for the use of offers of settlement "when time, the nature of the proceeding, and the public interest permit." 46 C.F.R. § 502.91. 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 Service, Inc.*, 29 S.R.R. 975, 978 (2002), quoting *Old Ben Coal Co v. Sea-Land Service, Inc.*, 21 F.M.C. 506, 512; 18 S.R.R. 1085, 1091 (ALJ 1978). "Indeed, the courts have endorsed the use of the APA settlement provision 'to eliminate the need for often costly and lengthy formal hearings in those cases where the parties are able to reach a result on their own which the appropriate agency finds compatible with the public interest.'" *Id.*, quoting *Pennsylvania Gas and Water v. Federal Power Comm'n*, 463 F.2d 1242, 1247 (D.C. Cir. 1972). "If a 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, the settlement will probably pass muster and receive approval." *Old Ben Coal*, 21 F.M.C. at 513; 18 S.R.R. at 1093.

The proposed Settlement Agreement would save the parties the time and expense required to litigate the action to a conclusion. The risks of litigation are controlled for the parties by their settlement on a negotiated outcome. The settlement does not appear to violate any law or policy, and nothing indicates that it resulted from fraud, duress, undue influence, mistake, or other defect. By this settlement, Transport Express will obtain all but \$2.00 of the reparations it sought by the complaint. Complainants also will receive attorney fees in the amount of \$10,000.00. See 46 U.S.C. § 41305(b) (party awarded reparations under the Shipping Act may also receive reasonable attorney fees). While there is no acknowledgment by respondents that they acted as alleged in the complaint or violated any law, they do agree to establish a procedure to prevent future occurrences involving Transport Express and any other motor carrier that is a party to the UIIA; therefore, the Settlement Agreement protects the public interest.

Accordingly, it is hereby

ORDERED that the Settlement Agreement between complainants Transport Express, Inc. and the Intermodal Motor Carriers Conference, American Trucking Associations and respondents Sinotrans Container Lines Co., Ltd. and Sinotrans Shipping Agency (NA), Inc. be **APPROVED**. In accordance with Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227, this Initial Decision will become final unless it is reviewed by the Commission.


Clay G. Guthridge
Administrative Law Judge