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(FEBRUARY 9, 1996)
(FEDERAL MARITIME COMMISSION)

FEDERAL MARITIME COMMISSION

WASHINGTON, D.C.

February 9, 1996

DOCKET NO. 95-06

MARINE DYNAMICS

v.

RTM LINE, LTD.

**CONFIDENTIAL SETTLEMENT APPROVED UNDER SEAL;
PROCEEDING TO REMAIN OPEN UNTIL FINAL
SETTLEMENT PAYMENT HAS BEEN MADE**

Respondent RTM Line, Ltd. ("RTM"), a non-vessel operating common carrier ("NVOCC"), and complainant Marine Dynamics submitted a joint memorandum in support of a proposed settlement of this proceeding. The parties request that the settlement agreement be kept confidential by the Commission and disclosed only to those persons within the Commission who have a need to review the agreement in connection with approval of the settlement. The parties also request that the proceeding remain open until all installment settlement payments have been made.

This proceeding was commenced April 7, 1995, by the filing of a complaint by Marine Dynamics against RTM alleging violation of sections 10(b)(1), (b)(3), (b)(5), (b)(6), (b)(12), and 10(d)(1) of the Shipping Act of 1984. The complaint sought reparations in the amount of \$32,397, plus interest and attorneys' fees. The alleged overcharging or unlawfully charging for ocean freight and other services arose out of the shipment of a cradled work boat from Jacksonville, FL, to Doha, Qatar, by Marine Dynamics on or about April 22, 1994, in which RTM acted as NVOCC, and for which the measurement and proper rating were in dispute. Respondent RTM denied all material allegations of the complaint and denied any violation of law or of the Shipping Act of 1984.

The parties thereupon engaged in extensive discovery and, pursuant to the Commission's Rules of Practice and Procedure, conducted discussions looking toward settlement of the claim. On January 16, 1996, the parties reached a confidential settlement agreement which has been filed with the Commission as a confidential document. The Administrative Procedure Act ("APA"), 5 U.S.C. § 554(c)(1), requires agencies to give interested parties an opportunity, *inter alia*, to submit offers of settlement "when time, the nature of the proceeding, and the public interest permit."

DISCUSSION

Delhi Petroleum Pty. Ltd. v. U.S. Atlantic & Gulf/Australia-New Zealand Conference and Columbus Line, Inc., ____ F.M.C. ____, 24 SRR 1129, 1134 (1988) ("*Delhi Petroleum*"), contains a succinct statement of the criteria examined by the Commission in determining whether to approve a settlement:

Generally, when examining settlements, the Commission looks to seek if the settlement has a reasonable basis and reflects the careful consideration by the parties of such factors as the relative strengths of their positions weighed against the risks and costs of continued litigation. Furthermore, if 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.

The parties believe this settlement is in the best interest of all concerned. The case involves disputed issues of fact and difficult questions of tariff law and application. The issues are strongly contested, and to litigate this suit to conclusion would be costly and highly unproductive of the executive time of two small businesses. The amount of the settlement was arrived at after arms length negotiations and the parties consider it to be fair in view of the uncertainty and expense of further litigation. Such settlement amounts are left to the parties in good-faith negotiations and are not customarily rejected unless they are egregiously outside the zone of reasonableness considering the nature of the claims or defenses. See *CDM Internationale v. Vencaribe, C.A.*, 26 SRR 78 (ALJ), FMC, notice of finality, November 6, 1991. The settlement terms have been scrutinized and fall within the zone of fairness and reasonableness. The totality of the settlement agreement embodies consideration of the *Delhi Petroleum* factors and warrants conditional approval. Commission proceedings can be terminated by mutual settlement for amounts less than those originally sought in the complaint and without admission of statutory violations. *Del Monte Corp. v. Matson Navigation Co.*, 19 SRR 1037, 1040-41 (ALJ 1979), and cases cited therein.

The parties also request that the confidential settlement agreement itself be held in confidence by the Commission. Confidentiality was an important aspect of the settlement

to respondent and played a role in respondent's final agreement as to the settlement amount. In the past, the Commission has granted similar requests for confidential treatment in order to facilitate settlement. See, e.g., *International Ass'n of NVOCCs v. Atlantic Container Line*, 25 SRR 1607 (ALJ, 1991), FMC notice of finality February 6, 1991; *Accord Craft Co., Ltd. v. ANERA*, 26 SRR 1385, FMC notice of finality, April 20, 1994; *Amsov Company, Inc. v. Dan-Transport Corp.*, FMC Docket No. 94-16, order of approval served August 2, 1995, FMC notice of finality September 7, 1995; and *Rose International v. Trans-Atlantic Agreement and Its Member Lines*, FMC Docket No. 94-23, order of approval served December 6, 1995, administratively final January 5, 1996. This confidentiality request will be granted.

The parties request that this proceeding remain open for approximately 90 days or until all installment payments have been made, which request is granted. Upon receipt of the final payment counsel will notify the administrative law judge that the proceeding may be dismissed.

IT IS ORDERED:

(1) The confidential settlement agreement, dated January 16, 1996, between RTM Line, Ltd. (Richard T. Megherly, President) and Marine Dynamics (Frank R. Pickard, President) is approved on the condition that all settlement payments be paid by RTM Lines, Ltd. to Marine Dynamics.

(2) The Confidential Settlement Agreement will be held in confidence. Neither it nor any copy will be released to the public. Neither it nor any copy will be placed in the FMC's public files.