ORIGINAL

S E R V E D
March 15, 2007
FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION

WASHINGTON, D. C.

DOCKET NO. 06-01

WORLDWIDE RELOCATIONS, INC.; ALL-IN-ONE SHIPPING, INC.; BOSTON LOGISTICS CORP.; AROUND THE WORLD SHIPPING, INC.; TRADEWIND CONSULTING, INC.; GLOBAL DIRECT SHIPPING; MEGAN K. KARPICK (A.K.A. CATHERINE KAISER, KATHRYN KAISER, CATHERINE KERPICK, MEGAN KAISER AND ALEXANDRIA HUDSON); MARTIN J. MCKENZIE; PATRICK JOHN COSTADONI; ELIZABETH F. HUDSON; SHARON FACHLER; AND OREN FACHLER, ET AL. -- POSSIBLE VIOLATIONS OF SECTIONS 8, 10, AND 19 OF THE SHIPPING ACT OF 1984 AND THE COMMISSION'S REGULATIONS AT 46 C.F.R. §§ 515.3, 515.21, AND 520.3

DECISION ON REMAND APPROVING SETTLEMENT AGREEMENTS

INTRODUCTION

This matter is before me on remand from the Commission. My predecessor approved two proposed settlement agreements resolving the charges against four respondents. On review, the Commission determined that the administrative law judge had not adequately supported the decision to approve the settlements and remanded the case for more extensive development of the record. The settling parties have provided further information regarding the activities of the settling respondents and seek approval of the settlement agreements as originally drafted.

BACKGROUND

By Order of Investigation and Hearing dated January 11, 2006, the Commission commenced an investigation into the activities of nine corporations (Moving Services, L.L.C.; Worldwide Relocations, Inc.; International Shipping Solutions, Inc.; Dolphin International Shipping, Inc.; All-in-One Shipping, Inc.; Boston Logistics Corp.; Around the World Shipping, Inc.; Tradewind Consulting, Inc.; and Global Direct Shipping) and fourteen individuals (Sharon Fachler; Oren Fachler; Lucy Norry; Patrick J. Costadoni; Steven Kuller; Megan K. Karpick (a.k.a. Catherine Kaiser, Kathryn Kaiser, Catherine Kerpick, Megan Kaiser, and Alexandria Hudson); Barbara Deane (a.k.a. Barbara Fajardo); Baruch Karpick; Martin J. McKenzie; Joshua S. Morales; Elizabeth F. Hudson; Daniel E. Cuadrado (a.k.a. Daniel Edward); Ronald Eaden; and Robert Bachs) for possible violations of sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3. The Order of Investigation states that "[t]he Commission has received over 250 consumer complaints from shippers alleging that they hired one of nine apparently related household goods moving companies to transport their personal effects and vehicles from various location in the United States to foreign destinations." *Worldwide Relocations, Inc.*, et al. -- *Possible Violations of Sections 8, 10, and 19 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3*, FMC No. 06-01, 30 S.R.R. 902 (Jan. 11, 2006) (*Worldwide Relocations*).

> The shipper complaints include allegations that the company hired to provide the transportation: failed to deliver the cargo and refused to return the pre-paid ocean freight; lost the cargo; charged the shipper for marine insurance but never obtained insurance coverage for the shipment; misled the shipper as to the whereabouts of the cargo; charged the shipper a significantly inflated rate after the cargo was tendered and threatened to withhold the shipment unless the increased freight was paid; or failed to pay the common carrier engaged by the company as another intermediary. In many cases, the shipper was forced to pay another carrier or warehouse a second time in order to have the cargo released.

Id. at 903. The Order of Investigation does not allege that any particular respondent committed any particular act. The Commission ordered the investigation to determine:

> Whether the Respondents violated sections 8, 10 and 19 of the Shipping Act of 1984 and the Commission's regulations at 46 C.F.R. Parts 515 and 520 by operating as non-vessel-operating common carriers in the U.S. trades without obtaining licenses from the Commission, without providing proof of financial responsibility, without publishing an electronic tariff, and by failing to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

Id. at 905.

On January 12, 2006, the Commission filed a complaint in district court against several respondents identified in the Order of Investigation. The four respondents who have entered into the settlement agreements under review were defendants in this action. On motion of the Commission, the court enjoined the defendants from violating sections 8, 19(a), and 19(b) of the Shipping Act. *Federal Maritime Commission v. All-in-One Shipping, Inc.* et al., No. 0:06-CV-60054-MGC (S.D. Fla. Jan. 17, 2006) (Order Granting Preliminary Injunction).

On May 2, 2006, the Bureau of Enforcement (BOE) and the four respondents submitted two joint memoranda[1] seeking approval of two substantially identical proposed settlement agreements - one agreement with respondents Joshua S. Morales and All-in-One Shipping, Inc. (AIO) and the other agreement with respondents Daniel E. Cuadrado and Around the World Shipping, Inc. (ATW). The Order of Investigation alleges, and it is not disputed, that Morales was the sole corporate officer of AIO, and that Cuadrado was the sole director of ATW and served as its president, secretary and treasurer. The Order of Investigation states that "[i]t appears that [the four respondents] knowingly

[1] Joint Memorandum in Support of the Proposed Settlement and Proposed Settlement of Joshua S. Morales and All in One Shipping Inc.; Joint Memorandum in Support of the Proposed Settlement and Proposed Settlement of Daniel E. Cuadrado and Around the World Shipping, Inc.

and willfully provided ocean transportation services to the public for shipments from the U.S. to foreign destinations." *Worldwide Relocations*, 30 S.R.R. at 903-904 (AIO/Morales), 904 (ATW/Cuadrado).) Although Morales and Cuadrada had been employed in non-managerial positions by other corporate respondents in the proceeding, they were named "as Respondents in their individual capacity based solely on their status as the owner and only corporate officer of their respective corporations . . . . [C]omplaints made against former employers of [respondents] were not considered in the preparation of [the Supplemental Memorandum]." (Supplemental Memorandum at 4 n.2.)

The terms of the substantially identical proposed settlement agreements are set out in full in the signed agreements. They include:

> 1. Admission by the settling respondents that they have violated Sections 8 and 19 of the Shipping Act of 1984 and the Commission's regulations at 46 C.F.R. §§ 515.3, 515.21, and 520.3;
>
> 2. Consent to the entry of an Order directing each of them to cease and desist from holding out or operating as an Ocean Transportation Intermediary (OTI) in the U.S. foreign trades until and unless the Commission issues a license and they meet bonding and tariff publication requirements;
>
> 3. In the case of the individual respondents, restrictions for one year on their involvement in the ownership or management in any company engaging in providing ocean transportation services in the foreign commerce of the United States except as bona fide employees of such an entity;
>
> 4. Agreement by the respondents not to file an FMC-18 Application for a License as an OTI on behalf of either of the corporate respondents or any other entity for a period of one year from the date of the agreement, and agreement to application of 46 C.F.R. § 515.17 (direct review by the Commission) of any application filed within three years of the date of the settlement agreement;
>
> 5. Agreement to cooperate with ongoing investigative or enforcement action conducted under this docket or any related actions;

6. Agreement that, upon approval of the proposed settlement, proceedings by the Commission of a civil penalty assessment proceeding or other claim of recovery for alleged violations set forth in this docket will be barred.

(Proposed Settlement Agreements at 3-4.)

On May 23, 2006, the presiding administrative law judge entered an Initial Decision on Proposed Settlement Agreement approving the two settlement agreements. *Worldwide Relocations*, 30 S.R.R. 1004 (ALJ 2006). On June 22, 2006, the Commission served notice that it would review the administrative law judge's approval of the settlement agreements. *Worldwide Relocations*, FMC No. 06-01 (June 22, 2006) (Notice of Commission Review).

On November 29, 2006, the Commission entered an order reversing the approval of the settlement agreements and remanding the case for further proceedings. The Commission expressed the following concerns with the agreements:

> We are unable, based upon the record before us, to conclude that approval of the settlements would be in the public interest. First, the Order of Investigation states that over 250 consumer shipper complaints were filed against the Respondents named in this proceeding collectively. However, it remains unclear if any of the complaints filed against All-in-One Shipping or Around the World Shipping or the named individuals were resolved favorably for shippers. For example, was misplaced cargo located and delivered to any of the injured shippers? Was pre-paid ocean freight returned, as necessary? Were shippers refunded any monies paid as a result of inflated rates?
>
> Second, the I.D. and the proposed settlements lack a substantive discussion regarding the alleged section 10 violations. The Order of Investigation provides that the shipper complaints allege that the collective Respondents: failed to deliver cargo and refused to return pre-paid ocean freight; lost cargo; charged for marine insurance but never obtained such coverage; misled shippers regarding the location of their cargo; charged shippers inflated rates after the cargo had been tendered and then threatened to withhold the cargo unless the increased freight was paid; and failed to pay the common carrier used by Respondents as an additional intermediary. Order of Investigation at 2. The Order alleges that these activities could constitute a violation of section 10(d)(1) of the Shipping Act. That section provides that "[n]o common carrier, ocean transportation intermediary, or marine terminal operator may fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property."

46 U.S.C. § 41102. The I.D. states that Respondents admit to violating sections 8 and 19 but omits any mention of section 10 violations. It is unclear whether All-in-One, Mr. Morales, Around the World, or Mr. Cuadrado committed any of the alleged violations outlined in the Order of Investigation. It further remains unclear that if section 10 violations were committed by some or all of these four Respondents, whether the violations were remedied. These are a few examples of the issues that need to be fleshed out before the Commission can approve the proposed settlement agreements.

Therefore, we are remanding these settlement agreements to the current ALJ to develop the record to support a finding that any settlement entered into in this proceeding is in the public interest. Specifically, we direct the ALJ to determine whether and to what extent the consumer complaints giving rise to this proceeding have been resolved. In addition, with respect to any such settlements we instruct the ALJ to address more fully each of the provisions of the Shipping Act alleged to have been violated. To the extent it deems necessary, BOE is directed to provide any sensitive details in support of its settlement agreements in a confidential filing(s) to the Commission.. For example, if BOE agreed not to prosecute the alleged section 10 violations in exchange for information or cooperation that would assist in its litigation against other Respondents, that information would be helpful to the Commission's deliberations.

Worldwide Relocations, 30 S.R.R. 1208, 1211-1212 (2006) (Order Reversing Administrative Law Judge's Approval of Proposed Settlement Agreement and Remanding for Further Proceedings Consistent with this Order) (Remand Order).

On December 20, 2006, I entered an Order requiring BOE and the four settling respondents to submit joint status reports answering the following questions:

1. Do the parties intend to revise the settlement agreements to address the concerns raised by the Commission? If so, the parties should discuss how the revised settlement agreements address the Commission's concerns in their joint memoranda in support of the revised proposed settlement agreements. If the parties believe that they will submit revised settlement agreements, but that they will be unable to resolve all issues by January 19, 2007, the joint status reports should explain this and specify a date by which they anticipate all issues will be resolved and the revised settlement agreements submitted for approval.

2. Do the parties believe that given the Commission's concerns about the original settlement agreements, settlement of these cases is not possible? If so, the joint status reports should explain that they are unable to reach settlement and should also include the discovery schedule required by Rule 201(d) of the Commission Rules

> of Practice and Procedure establishing a schedule for the completion of discovery within 120 days of submission of the joint status reports. *See* 46 C.F.R. § 502.201(d).

Worldwide Relocations, FMC No. 06-01, slip op. at 3-4 (ALJ Dec. 20, 2006) (Order to File Joint Status Reports). I also instructed the parties to bring to my attention any other information they believe necessary. *Id.* at 4.

On January 25, 2007, BOE and the settling respondents submitted their Supplemental Joint Memorandum in Support of Proposed Settlement Agreements Between the Bureau of Enforcement and Respondents Daniel E. Cuadrado, Around the World Shipping, Inc., Joshua S. Morales, and All-in-One Shipping, Inc. (Supplemental Memorandum) to explain why they believe the Commission should approve the settlement agreements as originally drafted. As I believed that further explanation was necessary, on February 22, 2007, I issued an Order asking several specific questions. *Worldwide Relocations*, FMC No. 06-01 (ALJ Feb. 22, 2007) (Order for Clarification of Status). On March 6, 2007, BOE and respondents filed their Joint Reply to Order for Clarification of Status (Joint Reply). The matter is now ripe for decision.

RESULTS OF INVESTIGATION BY THE BUREAU OF ENFORCEMENT

After the Commission issued the Order of Investigation, BOE commenced discovery and engaged in other investigation techniques. BOE representatives interviewed respondents Morales and Cuadrado and obtained shipment files and associated documentation from All-in-One Shipping, Inc., and Around the World Shipping, Inc. It then entered into settlement discussion with those four respondents that resulted in execution of the proposed settlement agreements under review. (Supplemental Memorandum at 2.)

1. Customer Complaints Against All-in-One Shipping, Inc. and Joshua S. Morales.

BOE determined that there were a total of two complaints against All-in-One Shipping, Inc., and Joshua S. Morales. Prior to issuance of the Order of Investigation, the Commission's Office of Consumer Affairs and Dispute Resolution Service (CADRS) had received one complaint. BOE counsel interviewed a second shipper not in the CADRS database about a potential problem. BOE also determined that AIO handled 67 shipments during its ten months of existence. (Supplemental Memorandum at 3-5 and n.2.)

In the complaint filed with CADRS, the shipper alleged that he had hired AIO to transport an automobile, small boat, and mixed assortment of personal effects from California to Nicaragua. AIO collected a deposit on the ocean freight charge and booked the shipment with a licensed NVO. AIO then arranged for delivery of the goods to the port of loading. The licensed NVO booked the shipment with a vessel-operating common carrier (VOCC). Due to an error by the VOCC, the automobile was shipped without the required authentication of title; therefore, the shipment was refused entry into Nicaragua and returned to the United States where it accrued storage charges while the automobile title was verified. The shipper complained about the delay in delivery and alleged that AIO withdrew additional sums of money from his bank account without his authorization. AIO responded that the withdrawal was authorized by the shipper and constituted the remainder of the freight payment due AIO plus an agreed upon division of the storage charges due the port. Although the shipper ultimately received his cargo in Nicaragua, he continues to assert that AIO owes him a refund for a portion of the freight charge as compensation for the delay in delivery. While AIO is responsible for the acts or admissions of intermediaries it engages in the transaction, the parties contend that the facts of this complaint do not rise to the level of a section 10 violation. (Supplemental Memorandum at 4-5; Joint Reply at 1-2.)

The second shipper with a complaint against AIO contacted BOE after learning of this proceeding. The shipper sought assistance with filing an insurance claim with AIO for damages to household goods alleged to have occurred while a shipment was in transit. In its review of the file, BOE determined that although insurance was discussed, no insurance documentation was completed or received, no fee for insurance was charged, insurance was not included free with the quoted price for the move, and no coverage obtained for the shipment.

2. Customer Complaints Against Around the World Shipping, Inc. and Daniel E. Cuadrado.

BOE determined that there were a total of five complaints against Around the World Shipping, Inc. and Daniel E. Cuadrado. Prior to issuance of the Order of Investigation, CADRS had received one complaint. Four additional complaints were received against ATW after issuance of the Order, three involving individual shippers and one involving a foreign-based removal company engaged by ATW. (Supplemental Memorandum at 4). BOE determined that ATW handled fifty shipments during its five months of existence. (*Id.* at 7.)

In the complaint filed with CADRS, the shipper hired ATW to transport household goods from California to Australia. ATW quoted the shipper a rate based on an estimated volume of 375 cubic feet. ATW based the estimated volume on the shipper's description of the items to be moved. When measured by the carrier upon receipt, the actual volume exceeded the estimated volume by 260 cubic feet, and the shipper was charged for the additional volume. (Supplemental Memorandum at 5-6; Joint Rely at 3.) The final invoiced amount was $5,568.56, $2,205 more than the total originally quoted. The shipper states that she paid $4,725.00, leaving a balance of $853.56. ATW has not attempted to collect this balance. (Joint Reply at 2.)

The parties also state that while the quoted rate did not expressly include insurance, ATW offered free insurance coverage. BOE determined that ATW prepared insurance forms and sent them to the shipper as attachments to an email, but she did not return the completed forms and no insurance policy was issued. The shipper stated that she did not receive the insurance forms, but ATW was able to document that the forms were sent on June 30, 2005, two weeks before the shipment was picked up. The goods suffered significant damage in the move. As no insurance policy went into effect, the shipper replaced the damaged goods at her own expense. The shipper states that the replacement cost exceeded $10,000.00. (Supplemental Memorandum at 5-6; Joint Reply at 3.)

The three other shipper complaints against ATW are similar. In all three cases, a shipper hired ATW to transport household goods from the United States to an overseas destination. Although the shipments were delivered timely to their discharge ports, the goods were not released because ATW had not paid the intermediary for its services. The failure to pay allegedly occurred as a result of the order issued by the United States District Court for the Southern District of Florida enjoining ATW from continuing to operate as an unlicensed OTI. The three shippers were required to pay the ocean freight bill a second time to secure release of the goods. ATW gave full refunds to two of the shippers, and the third shipper received a refund of $2,050 out of a payment of $2,160. (Supplemental Memorandum at 6-7 and n.5.) The parties advise that the third shipper believes that she fared as well as she could and that the situation has been resolved as well as it could be. (Joint Reply at 4.)

The fifth case against ATW is a continuing commercial dispute between ATW and a foreign removal company. This dispute over an alleged debt of approximately 700 Euros remains

unresolved. (Supplemental Memorandum at 7 n.5; Joint Reply at 4.) BOE believes that this is primarily a contractual dispute, not a possible Shipping Act violation. (Joint Reply at 4.)

DISCUSSION

I. THE COMMISSION'S SPECIFIC CONCERNS ON REMAND.

In its order remanding the case, the Commission expressed specific concerns in three areas. First, it noted that the Order of Investigation stated that over 250 consumer shipper complaints were filed against the respondents named in this proceeding collectively, but the Initial Decision did not clarify how many of those complaints concerned the settling respondents or whether and how those complaints had been resolved. The Commission explicitly directed the administrative law judge "to determine whether and to what extent the consumer complaints giving rise to this proceeding have been resolved." *Worldwide Relocations*, 30 S.R.R. at 1211. Second, the Commission noted that although the Order of Investigation alleged violations of section 10 of the Shipping Act, neither the settlement agreements nor the Initial Decision mentioned section 10. Third, it instructed the administrative law judge to address whether and how the settlement agreements would protect the public interest. *Id.*

A. Complaints Against the Settling Respondents.

As set forth above, of the more than 250 complaints known to the Commission on which it based its decision to issue the Order of Investigation, two involved the settling respondents, one against each corporation. The known complaint against AIO involved the shipment that Nicaragua barred from entry because the VOCC with whom AIO had contracted to carry the goods erroneously shipped an automobile without the required authentication of title. While the VOCC did not charge for its carriage of the good on the second trip, extra storage charges were incurred that were split

between AIO and the shipper. The shipper believes that some of the shipping charges should be refunded to compensate him for the delay in the shipment. *Supra*, p.8. Reparations for delay of a shipment of commercial goods would be measured by the difference between the market value at the time the goods should have been delivered as compared to the time they were actually delivered. *See, e.g., Tractors and Farm Equipment Ltd. v. Cosmos Shipping Co.*, 26 S.R.R. 788, 802 n.15 (ALJ 1992), citing *Cohn v. United States Shipping Board*, 20 F.2d 56, 62 (6th Cir. 1927). Applying this principle to the apparently used automobile, small boat, and mixed assortment of personal effects that were delayed, it would be difficult for the shipper to establish entitlement to reparations for this delay.

The known complaint against ATW involved an increase in the charge for carriage and the lack of insurance to cover damage to the goods. In its investigation, BOE determined that the increased charge resulted when the accurate measurement by the carrier exceeded the estimate that had been based on information from the shipper. BOE determined that the lack of insurance resulted when the shipper did not return the insurance forms that the records obtained by BOE indicate were sent to the shipper by email.

During the investigation, a shipper sought assistance from BOE with filing an insurance claim with AIO for damages to household goods alleged to have occurred while a shipment was in transit. In its review of the file, BOE determined that although insurance was discussed, no insurance documentation was completed or received, no fee for insurance was charged, insurance was not included free with the quoted price for the move, and no coverage obtained for the shipment.

During the investigation, BOE determined that three ATW shipments were delayed because ATW did not pay intermediaries. Each of these occurred after the district court enjoined ATW from operating. The parties state that ATW's failure to pay the intermediaries was not the result of

intentional disregard of financial obligations or an effort to leverage additional payments from shippers, but "was instead due to a lack of business acumen and sound financial practices on the part of Mr. Cuadrado and ATW." (Supplemental Memorandum at 9.) ATW made two of the shippers completely whole by returning the fee that it had received, and returned all but $110 to the third shipper. BOE believes that the problem with the foreign removal company is primarily a contractual dispute, not a possible Shipping Act violation. (Joint Reply at 4.)

With the exception of the claim for damages for the delay of delivery of the shipment to Nicaragua, which as noted, would be a difficult claim to prove, the Shipping Act disputes seem to have been resolved satisfactorily to the shippers.

B. Section 10 Violations.

The Order of Investigation recited a number of acts alleged by complainants that, if proven, could constitute section 10 violations. The Order did not allege that any particular respondent committed any particular act, however. Based on its investigation, BOE determined that the evidence would not support a determination that the settling respondents committed any acts that would violate section 10. (Supplemental Memorandum at 7.)

The parties address the specific acts by the settling respondents in the Joint Reply. They recognize that section 10 could be implicated in some of these situations. For instance, AIO is ultimately responsible for the delay caused when the VOCC carried the automobile without the authenticated title. The parties contend that the specific facts "do not rise to the level of a section 10 violation." (Joint Reply at 2.) A practice of deliberately underestimating the volume and hence the price of a shipment could violate section 10 if it were done to entice a shipper to commit, then impose an additional cost when the shipper has committed, but the ATW shipment for which the underestimate occurred was based on the shipper's description of the items to be moved. There is

no evidence to suggest that ATW made a practice of underestimating the volume, as this shipment was the only one on which an underestimate occurred out of fifty ATW shipments. Based on the evidence it gathered, BOE determined that the lack of insurance on this shipment was caused by the shipper's failure to return the insurance forms. On three occasions, ATW's failure to pay intermediaries for services caused shippers to pay a second time for the services. The failures to pay resulted when the district court enjoined ATW's operations and ATW no longer had the cash flow to pay the intermediaries. The parties convincingly argue that the failure to pay was not an intentional disregard of financial obligations or an effort to extort extra payments from shippers that would violate section 10, but the result of a lack of sound financial practices. As noted above ATW returned the payments to two of the shippers in full and all but $110 to the third. BOE believes that the problem with the foreign removal company is primarily a contractual dispute, not a possible Shipping Act violation. (Joint Reply at 4.)

The Commission expressed an interest in knowing "if BOE agreed not to prosecute the alleged section 10 violations in exchange for information or cooperation that would assist in its litigation against other Respondents." *Worldwide Relocations*, 30 S.R.R. at 1211-1212. The parties did not address this issue in their original joint memoranda in support of the proposed settlements.

BOE does not believe that the actions of the settling respondents rose to the level of section 10 violations; therefore, respondents' cooperation was not a factor in omitting section 10 from the settlement agreements. (Supplemental Memorandum at 7.) Nevertheless, the settlement agreements state that the respondents "have cooperated during the investigation, meeting with Commission personnel to answer questions and disclose information, facts and documents related to their transportation activities and practices as well as [Morales and Cuadrado's] prior employment history,

activities and practices pertaining to other named parties in Docket No. 06-01." (Proposed Settlement Agreements at 2.) The settling respondents have also agreed

> to cooperate with respect to ongoing investigative activity or enforcement action conducted by the Commission in Docket 06-01 or any related actions regarding the transportation activities identified by the Commission or disclosed by Respondents which give rise to the alleged violations herein including providing documents or testimony deemed necessary by the Commission.

(Proposed Settlement Agreements at 4.) "The evidence provided BOE by Respondents already has assisted in the continuing investigation in this proceeding as well as a related proceeding[2] . . . . The testimony of these Respondents also will prove valuable in both proceeding should a full hearing on the merits be required." (Supplemental Memorandum at 10.)

Based on these facts, I conclude that BOE's decision not to include section 10 in the settlement agreements was justified.

C. Public Interest Considerations.

In its Remand Order, the Commission stated that based upon the record, it was unable to conclude that approval of the settlements would be in the public interest. It noted that "the Order of Investigation states that over 250 consumer shipper complaints were filed against the Respondents named in this proceeding collectively. However, it remains unclear if any of the complaints filed against [the settling respondents] were resolved favorably for shippers." Remand Order at 6.

In their Supplemental Memorandum, BOE and respondents set forth the resolution of complaints regarding each settling respondent. Of the 250 complaints that had been filed against the nine corporate respondents at the time the Commission issued its Order of Investigation, one had

[2] *EuroUSA Shipping, Inc., Tober Group, Inc., and Container Innovations Inc. – Possible Violations of Section 10 of the Shipping Act of 1984 and the Commission's Regulations at 46 C.F.R. § 515.27*, FMC No. 06-06, 30 S.R.R. 988 (2006) (Order of Investigation and Hearing).

been filed against AIO and one against ATW. During its investigation, BOE identified one more shipper who had problems with AIO and three shippers who had problems with ATW. With the exception of the Nicaragua shipment, these problems have been substantially resolved. ATW also has a continuing problem with a foreign removal company that appears to be a contract problem, not a Shipping Act problem. (Joint Reply at 4.) Therefore, the public interest in resolving past problems has been satisfied.

The public interest is protected prospectively by the restrictions that the settlement agreements place on these respondents. With regard to the activities that led to the Commission's issuance of the Order of Investigation and Hearing, Morales, AIO, Cuadrado, and ATW were relatively minor figures. If they want to resume operations, it will only be as licensed entities with proof of financial responsibility.

II. THE PROPOSED SETTLEMENTS ARE CONSISTENT WITH COMMISSION POLICY.

The Administrative Procedure Act, 5 U.S.C. § 554(c)(1) and the Rule 91 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.91, permit offers of settlement "when time, the nature of the proceeding, and the public interest permit." Among the factors to be considered in deciding the appropriateness of a proposed settlement agreement are the Commission's enforcement policy, litigative probabilities, and litigative and administrative costs. *Far Eastern Shipping Co. - Possible Violations of Sections 16, Second Paragraph, 18(b)(3) and 18(c), Shipping Act, 1916*, 21 S.R.R. 743, 759 (1982). 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).

In *Old Ben Coal*, it was stated that "[i]f 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." 21 F.M.C. at 513; 18 S.R.R. at 1093.

The proposed settlement agreements in this case would, like any settlement at an early stage in litigation, save the parties the time and expense required to litigate the action to a conclusion. In addition, the risks of litigation are controlled for all parties by their settlement on a negotiated outcome. BOE will obtain, without the uncertainty inherent in litigation, an acknowledgment by the respondents of violations of the Shipping Act.

The proposed settlements advance the enforcement policy of the Commission. The respondents have agreed to refrain from participating in their former capacity in the industry for a set period, and then resume participation only under specified conditions subject to the Commission's regulatory authority. The terms of the agreement will penalize the respondents, ensure their future compliance, and may reasonably be expected to deter similar misconduct within the industry.

The proposed settlements protect the public interest. As discussed above, the settling respondents have made good faith efforts to rectify the injuries suffered by the shippers who were harmed by their activities. If they return to the business one year after the settlements,[3] it will only be as licensed entities with proof of financial responsibility. The settling respondents have

[3] A representative of BOE signed the proposed settlement agreements on May 2, 2006. The motions seeking approval of the agreements were submitted the same day. Nothing in the record suggests that the settling respondents have not complied with their agreements since May 2, 2006. Accordingly, the one-year and three-year periods set forth on pages 3 and 4 of the agreements should run from May 2, 2006.

cooperated in BOE's investigations, and BOE is using evidence provided by the settling respondents to further its enforcement activities against other respondents in this case and in another enforcement action. Nothing in the record rebuts the presumption that the proposed settlement agreements are fair, correct, and valid, they do not appear to violate any law or policy, and they appear to be free of fraud, duress, undue influence, mistake, or other defects. Therefore, I approve the proposed settlement agreements.

ORDER

The proposed settlement agreements between the Bureau of Enforcement and respondents Joshua S. Morales and All-in-One Shipping, Inc., and between the Bureau of Enforcement and respondents Daniel E. Cuadrado and Around the World Shipping, Inc., are approved. In accordance with Rule 227, Rules of Practice and Procedure, 46 C.F.R. § 502.227, this Decision on Remand Approving Settlement Agreements will become final unless it is reviewed by the Commission.

Clay G. Guthridge
Administrative Law Judge