Swift, Traverse, Watonwan, Wilkin, and Yellow Medicine.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James L. Witt,

Director.

[FR Doc. 97–2565 Filed 1–31–97; 8:45 am]

BILLING CODE 6718–02–P

[FEMA–1153–DR]

Nevada; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Nevada, (FEMA–1153–DR), dated January 3, 1997, and related determinations.

EFFECTIVE DATE: January 17, 1997.

FOR FURTHER INFORMATION CONTACT: Magda Ruiz, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3260.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Nevada, is hereby amended to include the Hazard Mitigation Grant program in those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of January 3, 1997:

The Independent City of Carson City and the counties of Churchill, Douglas, Lyon, Mineral, Storey, and Washoe, including the Walker River Paiute tribal lands located in Lyon, Churchill, and Mineral Counties for Hazard Mitigation assistance. (Already designated for Individual Assistance and Public Assistance).

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Lacy E. Suiter,

Executive Associate Director, Response and Recovery Directorate.

[FR Doc. 97–2564 Filed 1–31–97; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

Announcing an Open Meeting of the Board

Time and Date: 9:00 a.m. Thursday, February 6, 1997.

Place: Board Room, Second Floor, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

Status: The entire meeting will be open to the public.

Matters to be Considered During Portions Open to the Public:

- Qualified Thrift Lender Test—Interim Final Rule
- Federal Home Loan Bank of Seattle AHP First-Time Homebuyer Set-Aside Program.

Contact Person for More Information: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Rita I. Fair,

Managing Director.

[FR Doc. 97–2702 Filed 1–30–97; 12:51 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

[Docket No. 86–9]

A/S Ivarans Rederi v. Companhia De Navegacao Lloyd Brasileiro, et al.; Order

This case originated with the complaint of A/S Ivarans Rederi (''Ivarans'') filed in 1986, which sought a cease and desist order and reparations for violations of the Shipping Act, 1916, 46 U.S.C. § 801 *et seq.* (1982) (''1916 Act''), and the Shipping Act of 1984, 46 U.S.C. app. § 1701 *et seq.* (''1984 Act''), resulting from attempts by respondent carrier members of the Brazil/U.S. Atlantic Coast Pool Agreement (FMC No. 10027) (''Respondents''), to enforce an arbitration award obtained in Brazil. The Commission's proceeding was discontinued in 1990 with the understanding that no further efforts to enforce the arbitration award would be undertaken by the parties pursuant to rulings by the U.S. Court of Appeals for the D.C. Circuit that enforcement of the arbitration award would result in violation of the 1984 Act. Nevertheless, it appears that a new effort to enforce the arbitration award is being made in Brazil by one of the original six Respondents, Companhia de Navegacao Maritima Netumar (''Netumar''). Therefore, Ivarans filed the Motion to Reinstate Complaint and for a Cease and Desist Order (''Motion'') which is before us.

Background

Ivarans, a party to Agreement No. 10027, a revenue pooling agreement in the northbound Brazil/U.S. Atlantic coast trade, filed its complaint against the other members of the Agreement in 1986. In addition to Netumar and Ivarans, the Respondents and parties to the Agreement were Companhia de Navegacao Lloyd Brasileiro (''Lloyd Brasileiro''), another Brazilian-flag carrier, referred to along with Netumar and the U.S.-flag carrier (originally Moore-McCormack succeeded by United States Lines, (S.A.) Inc. (''USLSA'')) as the ''National-Flag Lines,'' and Empresa Lineas Maritimas Argentinas, S.A. (''ELMA''), A. Bottachi S.A. de Navigacion C.F.I.I. (''Bottachi''), and Van Nievelt Goudriaan and Co., B.V. (''Hopal''), referred to as the ''Non-national Flag Lines.''

The Agreement divided the pool cargo among the members, assigning an 80 per cent share to the National-Flag Lines, divided equally between Brazilian and U.S.-flag lines, and a 20 per cent share to the Non-national Flag Lines; provided for a minimum number of sailings per pool period for each member carrier; established penalties for over-carriage; and provided for automatic suspension of the pool when any party or combination of parties exceeding one third of the total pool share failed to provide the minimum number of sailings.

In 1982, Moore-McCormack, then the only U.S.-flag carrier member, fell substantially short of its minimum 40 sailings. The other members of the Agreement sought substantial penalties from Ivarans which had carried a greater proportion of the trade cargo as a result of Moore-McCormack's missed sailings. Pursuant to the Agreement's provision for arbitration, an arbitration panel was assembled in Brazil. The panel ruled that the Agreement had not been suspended during the 1982 pool period. The panel found that Ivarans owed some $1,475,017 in over-carriage penalties to be paid to the other agreement parties in proportion to their pool shares. However, the panel reasoned that, because Moore-McCormack's failure to make its sailings had been voluntary, the over-carriage penalties due Moore-McCormack's corporate successor, USLSA, should be paid instead to the remaining Agreement parties in proportion to their pool shares.

Ivarans then filed its FMC complaint, contending that the interpretation of the Agreement by the other parties and the arbitration panel was inconsistent with the Agreement's own terms and the Commission's intention in approving the Agreement and thus, enforcement of the arbitration award would result in implementation of the Agreement not in accordance with its terms in violation of the 1984 and 1916 Acts. The presiding administrative law judge (''ALJ'') agreed with the arbitration panel's interpretation of the Agreement, but found that the remedy fashioned by the arbitration panel was unauthorized by the Agreement and that its implementation would result in a violation of the 1984 Act.

The Commission adopted this finding, agreeing with the ALJ that the thrust of

the pooling agreement was to divide the rights to pool cargo between National-Flag Lines and Non-national Flag Lines, and that the National-Flag Lines could be considered as a group for purposes of considering whether there was a failure to meet its minimum sailings by any party or combination of parties exceeding one third of the total pool. In addition, finding that the mere ''homologation,'' or judicial approval, of the arbitration panel's decision would not result in the enforcement of the unauthorized remedy, because the arbitration award was not self-enforcing and had, in fact, been vacated by a Brazilian court, the Commission denied the cease and desist order sought by Ivarans.

On appeal by Ivarans, the U.S. Court of Appeals for the D.C. Circuit reversed the Commission's dismissal of the complaint, finding that the language of the Agreement required that the Agreement be suspended under the facts presented.[1] On remand, the Commission again denied Ivarans' request for an order directing the Respondents to cease and desist from attempting to collect monies under the Agreement and for attorney's fees. The Commission concluded that a cease and desist order was unnecessary, despite the intervening decision of the Brazilian Supreme Court said to reinstate the arbitrators' award of pool payments for the 1982 pool period when the Agreement was suspended. The Commission found Ivarans' concerns unwarranted, because ''no payments under the Agreement may lawfully be made for the suspension period by virtue of the Court of Appeals' decision, and enforcement of the Agreement for this period appears unlikely.'' ___ F.M.C. ___, 25 S.R.R. 1061, 1062 (1990). The Commission noted, moreover, that USLSA had stated that it ''will take no action to enforce the arbitration award [,]'' and that the Brazilian and Argentina carriers recognized that ''the arbitral decision was contrary to the terms of the Pooling Agreement and could not be enforced by any party without violating the 1984 Act and/or the 1916 Act.'' *Id.* at 1062.

Therefore, the Commission found no indication that violation of the statute was likely and considered an injunction to obey the statute unnecessary. In dismissing Ivarans' compliant, however, the Commission acted * * * * * * without prejudice to its reinstatement if any action is taken by respondents to enforce the Agreement for the suspended period.* * * Furthermore, to save Ivarans the additional expense of filing a new complaint * * *, the Commission will permit reinstitution of this proceeding upon motion * * * should further action with respect to the complaint become necessary. *Id.* at 1063.

[1] *A/S Ivarans Rederi* v. *United States,* 895, F.2d 1441 (D.C. Cir. 1990).

Ivarans' Motion To Reinstate the Complaint and for a Cease and Desist Order

After recounting the history of this proceeding, Ivarans states in its Motion that on April 11, 1996, Netumar secured a judicial ''Writ of Enforcement'' from the 33rd Civil Court of Rio de Janeiro for enforcement of the arbitration award. The amount claimed by Netumar for its share of the original award plus interest totals $936,587. No response to Ivarans' Motion was received from any party.[2]

Ivarans reports that Netumar has filed for protection from creditors under Chapter 11 of the U.S. bankruptcy codes and has obtained an order from the U.S. bankruptcy court in Newark, N.J., bifurcating the case. Under the order, the court declines jurisdiction over any Netumar assets located in Brazil and excludes from participation in the U.S. bankruptcy case any claims arising from or relating to transactions in Brazil or creditors whose claims arise from such transactions. Thus, Ivarans states, it will be unable to secure relief from the U.S. bankruptcy court if Netumar succeeds in collecting the arbitration award in Brazil. Ivarans states, to the best of its knowledge, that Netumar has not filed a bankruptcy petition in Brazil.

Ivarans requests that the Commission reinstate this proceeding and order Netumar to cease and desist from proceeding in Brazil with its efforts to enforce the arbitration award. Such an order is appropriate, Ivarans advises, because, absent such an order, Ivarans will suffer irreparable injury, that is, injury for which a later Commission award for reparations would be ineffective due to the Netumar bankruptcy proceeding. Ivarans argues that a cease and desist order is within the Commission's authority and is the most appropriate form of relief, citing *Trans-Pacific Freight Conference* v. *FMC,* 314 F.2d 928 (9th Cir. 1963); *Pacific Coast European Conference* v. *FMC,* 537 F.2d 333 (9th Cir. 1976); and *FMC* v. *Australia/U.S. Atlantic & Gulf Conference,* 337 F.Supp. 1032 (S.D.N.Y. 1972). It is, says Ivarans, its intention to present the cease and desist order to the Brazilian court with a request that the Brazilian court ''recognize'' the Commission's action as a matter of comity.

[2] Ivarans served its Motion on counsel who had represented Netumar, Lloyd Brasileiro, USLSA, ELMA and Bottachi before the proceeding was discontinued in 1990. It does not appear from the record that service on attorneys who represented Netumar in the bankruptcy proceeding was attempted.

Discussion

The relief requested by Ivarans was denied by the Commission in 1990 only because Netumar's representations that it recognized the unlawfulness of the arbitration award under U.S. law rendered a cease and desist order unnecessary. The Commission stated that:

> It appears that no payments under the Agreement may lawfully be made for the suspension period by virtue of the court of appeals' decision and enforcement of the Agreement for this period appears unlikely. * * * Moreover, the Brazilian and Argentinean carriers have done nothing to date which would constitute a violation of law. * * * [T]he Brazilian and Argentinean carriers recognize that ''the arbitral decision is contrary to the terms of the Pooling Agreement and could not be enforced by any party without violating the 1984 Act and/or the 1916 Act.'' * * * We have no basis to find that respondents will act to enforce a decision which they recognize is unlawful, and thus see no purpose to be served by issuing a cease and desist order in this proceeding.
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> 25 S.R.R. at 1062.

However, since the last occasion on which we had examined this matter, Netumar appears to have ceased all active service in the U.S. trades. Netumar was a member of the Inter-American Freight Conference until May 16, 1994. Netumar has no current tariff on file with the Commission.[3] We are therefore concerned that the Commission may lack jurisdiction over Netumar because it is no longer a common carrier in U.S. commerce.

Ivarans contends that, as a result of Netumar's action in Brazil, it is likely to suffer injury for which it could not be made whole. Ivarans argues that the Commission would be unable to effectively make an award of reparations due to Netumar's U.S. bankruptcy and the order of the bankruptcy court bifurcating the proceeding. Ivarans indicates that it intends to present the cease and desist order it requests from the Commission to the Brazilian court, with a request that it be recognized and accorded ''comity.'' However, Ivarans makes no statement as to whether it

[3] This information is based on examination of the Commission's tariff and agreement files, of which the Commission herein takes official notice pursuant to 46 CFR § 502.161. Netumar's only ATFI tariff, Tariff No. 030, was canceled as of May 23, 1995 (Notice published in the Federal Register, 60 *FR* 25910 (May 15, 1995)). Netumar was reflected in FMC tariff organization records as an affiliate of the Inter-American Freight Conference until May 16, 1994.

participated in the proceeding before the Brazilian court before entry of the order of enforcement; whether it has presented or plans to present to the Brazilian court the decision of the U.S. Court of Appeals finding that the arbitration award was not in accordance with the Shipping Act of 1984; whether it presented to the Brazilian court the Commission's 1990 order on remand or Netumar's own acknowledgment in the Commission proceeding on remand that ''the arbitral decision was contrary to the terms of the Pooling Agreement and could not be enforced by any party without violating the 1984 Act and/or the 1916 Act;'' or whether Ivarans has appealed the decision of the Brazilian court.[4] Nor does Ivarans raise or address the issue of present Commission jurisdiction over Netumar, or the extraterritorial nature of the relief it requests.

There is a troubling corollary issue raised by Ivarans' argument that the Commission would be unable to effectively make an award of reparations due to Netumar's U.S. bankruptcy and the order of the bankruptcy court bifurcating the proceeding; it is unclear whether under these circumstances a cease and desist order issued by the Commission would be enforceable. We are also concerned that the issue of present Commission jurisdiction over Netumar be addressed.

While Netumar may have acted in violation of the 1984 Act by seeking to enforce an unlawful interpretation of the pooling agreement, Ivarans has not offered compelling evidence that it has been damaged by Netumar's action. Ivarans has not provided a copy of the Brazilian court's order of enforcement nor any evidence of action by Netumar to secure attachment or other action against Ivarans' assets in Brazil. Therefore, we are disposed to grant Ivarans' Motion only to the extent of re-opening the proceeding and allowing Ivarans an opportunity to present evidence as to the present status of proceedings in Brazil (including the orders of the Brazilian court not previously provided by Ivarans in support of its Motion), actual or likely damages to Ivarans, and what form of relief it believes the Commission can effectively grant.

Therefore, it is ordered, That F.M.C. Docket No. 86–9, *A/S Ivarans Rederi* v. *Companhia de Navegacao Lloyd Brasileiro, et al.*, is re-opened and it is referred to the Chief Administrative Law Judge, for assignment and issuance of an initial decision;

It is further ordered, That the administrative law judge to whom this proceeding is assigned shall exercise his discretion to insure that the issues are resolved by the most expeditious means consistent with due process and a sufficient record upon which to render a decision;

It is further ordered, That the following issues be addressed by Ivarans in the proceeding:

1. Commission jurisdiction over Netumar;

2. Ivarans' role in the proceedings in Brazil and the status of those proceedings;

3. Damage to Ivarans resulting from Netumar's action; and

4. What relief the Commission might effectively grant.

It is further ordered, That pursuant to Rule 61 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.61, the initial decision of the Administrative Law Judge shall be issued by November 1, 1997 and the final decision of the Commission shall be issued by February 28, 1998;

It is further ordered, That notice of this Order be published in the Federal Register, and a copy be served on A/S Ivarans Rederi;

It is further ordered, That other persons having an interest in participating in this proceeding may file petitions for leave to intervene in accordance with Rule 72 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.72;

It is further ordered, That all further notices, orders, and decisions issued by or on behalf of the Commission in this proceeding, including notice of the time and place of hearing or prehearing conference, shall be served on parties of record; and

It is further ordered, That all documents submitted by any party of record in this proceeding shall be directed to the Secretary, Federal Maritime Commission, Washington, D.C. 20573, in accordance with Rule 118 of the Commission's Rules of Practice and Procedure, 46 C.F.R. 502.118, and shall be served on all parties of record.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 97–2531 Filed 1–31–97; 8:45 am]

BILLING CODE 6730–01–M

[4] A copy of Netumar's March 7, 1996 application to the Brazilian court for enforcement of the award and an English translation are attached as Exhibit 1 to Ivarans' Motion. However, no copies of other pleadings or the court's order of enforcement are provided.

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 18, 1997.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198-0001:

1. Charleen Y. Frerichs, Hildreth, Nebraska; to acquire an additional 6.8 percent, for a total of 100 percent, of the voting shares of Hildreth State Company, Inc., Hildreth, Nebraska, and thereby indirectly acquire State Bank of Hildreth, Hildreth, Nebraska.

Board of Governors of the Federal Reserve System, January 28, 1997.

Jennifer J. Johnson,

Deputy Secretary of the Board.

[FR Doc. 97–2528 Filed 1–31–97; 8:45 am]

BILLING CODE 6210–01–F

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also