

**BEFORE THE FEDERAL MARITIME COMMISSION**

**DOCKET NO. 10-06**

YAKOV KOBEL and  
VICTOR BERKOVICH,  
Complainants

vs.

HAPAG-LLOYD AG,  
HAPAG-LLOYD AMERICA INC.  
LIMCO LOGISTICS INC.  
and INTERNATIONAL TLC INC.  
Respondents

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**RESPONDENT LIMCO'S MOTION TO REOPEN TIME TO APPEAL**

Respondent LIMCO LOGISTICS INC. seeks an order reopening the time to appeal pursuant to Federal Rule of Appellate Procedure (a)(6), and in support states as follows:

FED. R. APP. P. 4(a)(6) states as follows:

(6) Reopening the Time to File an Appeal. The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77(d) of the entry of the judgment or order sought to be appealed within 21 days after entry;

(B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77(d) of the entry, whichever is earlier; and

(C) the court finds that no party would be prejudiced.

FED. R. APP. P. 4(a)(6).

Rule 77(d) provides: "Immediately after entering an order or judgment, the clerk must serve notice of the entry, as provided in Rule 5(b), on each party who is not in default for failing to appear. The clerk must record the service on the docket." Fed. R. Civ. P. 77(d)(1). As applicable here, under Rule 5(b), "[a] paper is served... by ... mailing it to the person's last known address—in which event service is complete upon mailing[.]" Fed. R. Civ. P. 5(b)(2)(C).

Here, LIMCO was not provided notice from the Secretary of the Order denying LIMCO's Motion for Reconsideration, as required under FED. R. CIV. P. 5 and FED. R. CIV. P. 77. (See, exhibit 1, affidavit of Michael Lyamport). While the Order may have been served on other parties to this proceeding shortly after it was issued, the Secretary did not serve the Order on LIMCO.

The opportunity to file a timely appeal is rendered meaningless when reasonable notice of the appealable order is not given. The Order was not timely served on LIMCO as it should have been, thus LIMCO did not have the opportunity to file a notice of appeal within the thirty days required by FED. R. APP. P. 4(a)(1). Similarly, LIMCO did not have the opportunity to file timely any motion under FED. R. APP. P. 4(a)(4) or FED R. APP. P. 4(a)(5) to stay or extend the deadline for filing a notice of appeal.

Wherefore, LIMCO respectfully requests the Commission reopen the time to file an appeal under Fed. R. App. P. 4(a)(6), and allow LIMCO fourteen (14) days from the date of entry of an Order granting this motion to file a notice of appeal along with all other relief, at law or in equity, which LIMCO might be found justly entitled to receive.

Respectfully submitted,

BLANCK COOPER & HERNANDEZ, P.A.  
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**BY: //S//Jonathan S. Cooper, Esq.**

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Attorney for Respondent LIMCO

### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and appropriate number of copies of the foregoing **Motion to Reopen Time to Appeal** with attachments were sent by overnight mail to the Commission on October 26, 2016 and that a copy was also emailed to the Commission on that date.

I CERTIFY that a true and correct copy of the foregoing **Motion to Reopen Time to Appeal with attachments** was served on the below-mentioned counsel via U.S. Mail and Email on October 26, 2016.

**Karen V. Gregory, Secretary**  
FEDERAL MARITIME COMMISSION  
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Attorney for Complainants

**Attn: Aleksandr Barvinenko**  
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**BY: //S//Jonathan S. Cooper, Esquire**

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**AFFIDAVIT OF MICHAEL LYAMPOR**

STATE OF FLORIDA            )  
  ) SS.  
COUNTY OF MIAMI-DADE )

BEFORE ME, the undersigned authority, personally appeared MICHAEL LYAMPOR,  
who after being first duly sworn on oath, deposes and says:

1. My name is Michael Lyampor. I am over the age of 18 and competent to make  
this Affidavit and have personal knowledge of the facts stated herein and it is true and correct.

2. At all times material hereto I have been the President of Limco Logistics Inc. At  
the time Limco's former legal counsel withdrew from this case in November 2015, I was identified  
as the contact person at Limco to receive service of all future filings and orders in this proceeding.

3. An Order on Limco's Motion for Reconsideration has never been served on Limco  
by the Secretary in this proceeding, nor has an Order on Limco's Motion for Reconsideration ever  
been provided to Limco by the Complainants in this case.

4. On October 10, 2016 new counsel for Limco filed their notice of appearance in this  
case.

5. On October 12, 2016 it was determined that an Order on Limco's Motion for Reconsideration had issued and that the Secretary omitted Limco from the service list.

6. No parties will be prejudiced by opening the time to file an Appeal.

FURTHER AFFIANT SAYETH NOT.



Michael Lyamport, Affiant

Before me this day appeared MICHAEL LYAMPORT, personally known to me or who has produced L516-540-79-127-0 [insert personally known or driver's license number] as identification, and being first duly sworn, deposes and says that he/she executed the foregoing, and he/she acknowledges that he/she executed same freely and voluntarily as his own act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal at Miami, Dade County, Florida, this 26<sup>th</sup> day of October, 2016.

Notary Public, State of Florida at Large



PRINT NAME: MARLENE F. KING

Commission No: EE862526

My Commission Expires: 1/3/17



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**ORDER TO REOPEN TIME TO FILE APPEAL**

The Commission finds that LIMCO did not receive notice under Fed. R. Civ. P. 77(d) of the May 5, 2016 Order Denying LIMCO's Motion for Reconsideration and that LIMCO's Motion to Reopen the Time to File an Appeal was filed within 180 days after the May 5, 2016 Order was issued and that no party would be prejudiced.

Therefore, LIMCO's Motion to Reopen the Time to File an Appeal is GRANTED. LIMCO shall have 14 days from the date of service of this Order to file a Notice of Appeal.

IT IS SO ORDERED:

Dated: \_\_\_\_\_, 2016

**cc: Attn: Donald P. Roach, Esq.**  
Email: [donroachlaw@yahoo.com](mailto:donroachlaw@yahoo.com)

**cc: Attn: Alena Tokar**  
**Attn: Aleksandr Barvinenko**  
INTERNATIONAL TLC. INC  
Email: [info@iticlogistics.com](mailto:info@iticlogistics.com)