

S E R V E D
April 1, 2015
FEDERAL MARITIME COMMISSION

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DOCKET NO. 14-16

BALTIC AUTO SHIPPING, INC.

v.

**MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV, and
EMPIRE UNITED LINES CO., INC.**

ORDER RELEASING DOCUMENTS SUBMITTED *IN CAMERA*

On February 23, 2015, the parties appeared for a telephone status conference. Complainant was represented by attorney Marcus A. Nussbaum and Respondents were represented by attorney Gerald Doyle. The conference was recorded by audio, but no transcript was made of the recording. The parties have been supplied with electronic copies of the recording.

In informal discussions between the parties prior to the conference, complainant Baltic Auto Shipping, Inc. (Baltic Illinois) had sought records of twenty-one shipments carried by respondents Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc. (Empire) said to be carried for a shipper named Baltic Auto Shipping Corp. (Baltic Savannah). Baltic Illinois and Empire are each licensed by the Commission as non-vessel-operating common carriers (NVOCCs). Empire resisted providing copies of the documents to Baltic Illinois based on the claim that because Empire had carried the cargo for Baltic Savannah, not Baltic Illinois, the documents are not relevant in a proceeding alleging Empire violated the Shipping Act transporting cargo for Baltic Illinois. Furthermore, at the time of the shipments, Baltic Savannah represented to Empire that Baltic Savannah was not related to Baltic Illinois. Because Empire had reason to believe that Baltic Savannah was not related to Baltic Illinois, Empire feared that release of the documents to Baltic Illinois might risk a violation of the Shipping Act. *See* 46 U.S.C. § 41103(a) ("A common carrier, marine terminal operator, or ocean freight forwarder, either alone or in conjunction with any other person, directly or indirectly, may not knowingly disclose, offer, solicit, or receive any information concerning the nature, kind, quantity, destination, consignee, or routing of any property tendered or

delivered to a common carrier, without the consent of the shipper or consignee, if the information – (1) may be used to the detriment or prejudice of the shipper, the consignee, or any common carrier; or (2) may improperly disclose its business transaction to a competitor.”).

Among other actions, the Briefing Schedule resulting from the conference provided that by February 24, 2015, “Respondents will submit for *in camera* review the shipping records for the twenty-one shipments referenced in Attachment A of the letter dated February 18, 2015, from Complainant’s counsel to the undersigned.” *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (ALJ Feb. 24, 2015) (Briefing Schedule). The purpose of the *in camera* review was to determine whether the Baltic Savannah shipments were related to the Baltic Illinois shipments at issue in this proceeding.

On February 23, 2015, Empire sent the records to the undersigned by overnight delivery. Empire also included a report from the Illinois Secretary of State indicating the Baltic Illinois is an Illinois corporation whose president is Andrejus Presniakovas, a report from the Georgia Secretary of State indicating that Baltic Savannah is a Georgia corporation located in Savannah, Georgia, whose president is Alla Kotova, and email exchanges from Baltic Savannah to Empire denying Baltic Savannah is related to Baltic Illinois.

The record for each of the twenty-one shipments consists of an email sent to Empire from “Alla Lina” at Baltic Savannah and a dock receipt for the shipment identifying the booking number,¹ shipper, consignee, vessel, port of loading, date of sailing, and port of discharge for the shipment. The dock receipts also identify the container number, and, in the case of vehicles, identify each vehicle by manufacturer and vehicle identification number. The dock receipts identify Baltic Savannah as the shipper on eight of the shipments. (Attachment A Shipments 1, 10-15, and 20.) Other entities are identified as the shipper on the remaining thirteen shipments. Although the dock receipts are attached to emails sent from “Alla Lina” to Empire, Baltic Savannah’s role in these shipments is not clear. Commission records do not list Baltic Savannah as an ocean transportation intermediary licensed by the Commission, either as an NVOCC or an ocean freight forwarder. There is no reference to Baltic Illinois in the “Alla Lina” emails or the dock receipts. Therefore, I find that the twenty-one shipments do not relate to Baltic Illinois or shipments at issue in this proceeding.

On March 17, 2015, counsel for Baltic Illinois sent a letter to the undersigned requesting release of the records of the twenty-one shipments. (Letter dated March 17, 2015, from Marcus A. Nussbaum to the undersigned.) This letter includes a letter dated March 12, 2015, on Baltic Savannah letterhead from Alla Kotova, president of Baltic Savannah, to the undersigned authorizing the release of the documents for the twenty-one shipments to Andrejus Presniakovas, president of Baltic Illinois, and to the attorney for Baltic Illinois. On March 20, 2015, counsel for Empire sent a letter in response stating:

¹ These dock receipts do not appear to indicate who issued them and it is not clear who issued the booking numbers.

Respondents respectfully request that your Honor not release the [Baltic Savannah] documents to [Baltic Illinois] until there has been sufficient time to investigate the allegations of “coercion” that have dogged the Baltic/Baltic relationship. In view of the fact that the Summary Decision motion is now in play, it does not seem that the release of documents needs to be resolved at this time.

(Letter dated March 20, 2015, from Gerald S. Doyle to the undersigned.) On March 24, 2015, counsel for Baltic Illinois sent a reply to the March 20, 2015, letter.

In light of respondents’ allegation of coercion between the Baltic/Baltic relationship, I am writing to advise the Commission that I have been retained to represent [Baltic Savannah] with respect to any matters currently before this Commission, as well as any Federal Court matters that involve Baltic Savannah and that may be related to the instant matter. Baltic Savannah advises me that there have been no instances of “coercion” between the Complainant and Baltic Savannah, as alleged in the respondents’ letter of March 20, 2015.

(Letter dated March 24, 2015, from Marcus A. Nussbaum to the undersigned.)

Given this turn of events, although the shipping records do not appear to relate to shipments by Baltic Illinois, the complainant in this proceeding, I find that it is appropriate to make the documents submitted for *in camera* review by Empire on February 23, 2015, part of the record of this proceeding. Therefore, Empire’s original submission will be transferred to the Secretary to be docketed in the record. Item 4 in that filing, the records of the shipments, may contain information that fits within the protection of 46 U.S.C. § 41103(a). Accordingly, I ask the Secretary to treat the documents in Item 4 as confidential. Empire’s counsel’s letter and the other information filed with the shipping documents (Items 1-3) do not contain information protected by section 41103(a) and are not confidential.

Although the undersigned originally believed that the matter of the Baltic Savannah shipping documents could be resolved more informally, I find it appropriate to treat the March 17, 2015, letter from counsel for Baltic Illinois as a motion for release of the records, the March 20, 2015, letter from counsel for Empire as a response to that motion, and the March 24, 2015, letter from counsel for Baltic Illinois as a supplement to Baltic Illinois’s motion. Therefore, I ask the Secretary to enter the letters and their attachments in the docket with those descriptions.

The letter from the president of Baltic Savannah asks that the documents for the twenty-one shipments be released to Baltic Illinois and its counsel. The dock receipts identify Baltic Savannah as the shipper on eight of those shipments and, as the shipper, Baltic Savannah has the authority to consent to the release of these documents to Baltic Illinois and its counsel. 46 U.S.C. § 41103(a). Empire’s unsupported allegation of “coercion” does not prevent the Commission from releasing Baltic Savannah’s records to its attorney and a third party designated by the president of Baltic Savannah. Therefore, copies of the emails and dock receipts for these eight shipments will be forwarded to counsel for Baltic Illinois with a hard copy of this order.

As noted above, the dock receipts for thirteen of the shipments identify entities other than Baltic Savannah as the shipper. (Attachment A Shipments 2-9, 16-19, 21.) Other than the "Alla Lina" emails, the involvement of Baltic Savannah (which is not licensed by the Commission as an ocean transportation intermediary) in these thirteen shipments is not clear. Accordingly, it is not clear that Baltic Savannah has the authority to authorize release of shipping documents related to these other shippers. Therefore, copies of the emails and dock receipts for Attachment A Shipments 2-9, 16-19, and 21 will not be forwarded to Baltic Illinois at this time.

I note that all eight of the Baltic Savannah shipments took place more than three years ago and may be entitled to little if any continued confidentiality. See *DNB Exports LLC v. Barsan Global Lojistik Ve Gumruk Musavirligi A.S.*, FMC No. 11-07, Order at 1-5 (ALJ January 24, 2014) (Order on Motions for Confidential Treatment of Merits Briefs and Materials Filed with Merits Briefs) (denying confidential treatment to ordinary business records more than three years old). Counsel for Baltic Illinois states that he has been "retained to represent [Baltic Savannah] with respect to any matters currently before this Commission." If Baltic Savannah contends that the shipping documents for Attachment A Shipments 1, 10-15, and 20 should remain confidential, on or before April 6, 2015, it must file a motion for continued protection of the documents "describ[ing] the nature and extent of the authority for requesting confidential treatment." 46 C.F.R. § 502.5. Absent a motion, on April 7, 2015, the Secretary may put the documents for these eight shipments in the public record.

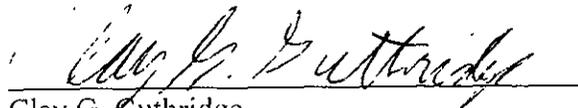
The parties are advised that future "requests" for action by the presiding officer or the Commission must be made by written motion filed pursuant to 46 C.F.R. §§ 502.2 and 502.69-71.

O R D E R

Upon consideration of the request of complainant Baltic Auto Shipping, Inc., to release the shipping records submitted *in camera* by respondents Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc., the opposition of Empire, and for the reasons stated above, it is hereby

ORDERED that the request be construed as a motion. It is

FURTHER ORDERED that the motion be **GRANTED IN PART** and **DENIED IN PART**. The shipping records for Attachment A Shipments 1, 10-15, and 20 will be released to counsel for Complainants.



Clay G. Guthridge
Administrative Law Judge