

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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Docket No.: 14-16

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**BALTIC AUTO SHIPPING, INC.,**

*Complainant,*

– vs. –

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

*Respondents.*

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**AFFIRMATION OF MARCUS A. NUSSBAUM IN SUPPORT OF COMPLAINANT'S  
MOTION FOR LEAVE TO AMEND ITS COMPLAINT**

Marcus A. Nussbaum, affirms the following to be true under penalties of perjury under 28 U.S.C. § 1746, and says:

1. I am the attorney for the defendants herein, and as such, I am fully familiar with the facts contained herein, based upon my personal knowledge. I submit this affirmation in support of complainant's motion for leave to amend its complaint.

2. On November 28, 2014, the undersigned filed the instant action on behalf of complainant before the Federal Maritime Commission ("FMC") in Washington, D.C., alleging that respondent EMPIRE UNITED LINES CO., INC. ("EUL") and its principal, Michael Hitrinov, had violated the Shipping Act of 1984 (the "Shipping Act").

3. Subsequent thereto, on December 8, 2014, the undersigned was contacted via email by Mr. Gerard Doyle, Esq., who is counsel for EUL and Hitrinov in this proceeding. A copy of that email is annexed hereto as **Exhibit "A"**, in which Mr. Doyle claimed that a \$200,000.00 loan made to defendants by EUL in 2010 was unpaid. The documents annexed to that email contained

a document entitled “Loan Agreement” allegedly describing complainant’s agreement to accept a loan from respondents for one month at an interest rate of 1% per month. Notably, the respondents’ allegations regarding an unpaid loan had no relationship whatsoever with the proceeding ongoing before the FMC, and counsel was advised of that fact, by email on December 14, 2014, a copy of which is annexed hereto as **Exhibit “B”**.

4. The December 14, 2014 email also advised Mr. Doyle and Mr. Werner that the loan had been paid off with interest.

5. In addition, on December 12, 2014, the undersigned was contacted by Mr. Jon Werner, Esq. who represented respondents in the 2011 District of New Jersey Action involving the parties herein that settled on or about November 29, 2011. Strangely enough, Mr. Werner began making various inquires to the undersigned regarding the proceedings ongoing before the FMC. A copy of that letter is annexed hereto as **Exhibit “C”**.

6. On December 14, 2014, the undersigned responded to Mr. Werner’s inquiry and respectfully explained to him that he had not formally appeared before the Federal Maritime Commission (“FMC”) with respect to this matter, and that the undersigned was not at liberty to discuss the details of this proceeding with him. A copy of that letter is annexed hereto as **Exhibit “C-1”**.

7. On December 28, 2014, the undersigned advised Mr. Doyle to refrain from further including Mr. Werner in the parties’ communications regarding the FMC matter, due to the fact that Mr. Werner had nothing to do with the FMC matter and had not formally made an appearance before the FMC on behalf of EUL and Hitrinov. A copy of that email is annexed hereto as **Exhibit “D”**. In that email, the undersigned also requested that Mr. Doyle refrain from copying Mr. Hitrinov on his communications to the undersigned, and also attached a second letter for Mr. Werner, that Mr. Doyle was free to forward to Mr. Werner if he chose to do so. In that letter, a

copy of which is attached as Exhibit “**D-1**”, out of professional courtesy, the undersigned again requested of Mr. Werner that going forward, he send all additional questions regarding this matter to the attorneys currently representing Empire and Mr. Hitrinov before the FMC.

8. On December 29, 2014, EUL and Hitrinov, by their counsel Mr. Werner, filed an emergency motion for an anti-suit injunction in the matter of *Baltic Auto Shipping, Inc. v. Hitrinov et al.* (U.S.D.C. – D.N.J. Docket No. 2:11-cv-06908-FSH-PS), seeking to restrain defendants from proceeding forward with their claims before the FMC. That motion was denied by the Court on January 16, 2015 in an Order by Hon. Faith S. Hochberg, a copy of which is annexed hereto as **Exhibit “E”**.

9. Prior to the denial of the motion for the anti-suit injunction, on January 5, 2015, Mr. Werner, in retaliation for defendants having started the FMC action, threatened the undersigned and the defendants with sanctions unless the undersigned agreed to withdraw the claims before the FMC, specifically stating that: “We demand that you dismiss with prejudice your claims against Empire United Lines Co., Inc. and Michael Hitrinov before the Federal Maritime Commission within 21 days of the date of this letter...” A copy of the cover letter for Mr. Werner’s FRCP 11 motion is annexed hereto as **Exhibit “F”**.

10. On January 12, 2015, in blatant disregard of the undersigned’s request to exclude Mr. Werner from communications regarding proceedings between counsel in the FMC matter, Mr. Doyle once again emailed the undersigned and copied Mr. Werner and Hitrinov by email with a request for confirmation that the loan had been repaid, a copy of which is annexed hereto as **Exhibit “G”**. In light of the undersigned previously having advised Mr. Doyle: (1) to refrain from further including Mr. Werner in the parties’ communications regarding the FMC matter; and (2) that the loan had already been repaid, the undersigned ignored that request. In addition, Mr. Doyle

again ignored the undersigned's request to cease copying Mr. Hitrinov on his communications directly to the undersigned.

11. On January 20, 2015, EUL and Hitrinov filed a new action in the U.S. District Court for the District of New Jersey, captioned as *Empire United Lines Co., Inc. et al. v. Baltic Auto Shipping, Inc.* (U.S.D.C. – D.N.J. Docket No. 2:15-cv-00355-CCC-MF), along with a new motion for an anti-suit injunction. That motion was denied by Hon. Claire C. Cecchi on January 23, 2015, and a copy of that Order is annexed hereto as **Exhibit “H”**.

12. The complaint in this new District of New Jersey matter alleges that complainant breached a settlement agreement containing a mutual release, and therefore waived its rights to bring an action against respondents before the FMC.

13. On January 22, 2015, EUL and Hitrinov once again filed a motion for a stay of the proceedings before the FMC, and that motion was denied by the Administrative Law Judge presiding over the FMC matter in an order dated February 2, 2015, a copy of which is annexed hereto as **Exhibit “I”**.

14. Once again, in retaliation for the complainant starting a proceeding before the FMC, on February 4, 2015, EUL and Hitrinov, by their counsel Mr. Werner, filed the second matter in the U.S. District Court for the Eastern District of New York (Captioned as *Empire United Lines Co., Inc. v. Presniakovas et al.* U.S.D.C. – E. D.N.Y., 1:15-cv-00557-DLI-RER), alleging that the complainant had failed to repay a loan in the amount of \$200,000.00.

15. In that Eastern District of New York matter, subsequent to complainant herein having filed its answer and counterclaim, in retaliation for complainant having started the FMC action, on or about March 19, 2015, Mr. Werner filed a frivolous motion to strike complainant's counterclaim and affirmative defenses. That motion was filed by respondents and their counsel for

the sole purpose of harassing, injuring, and annoying the complainant, and to cause complainant to incur legal fees.

16. In that motion, Mr. Werner incorrectly relied upon the adoption of a heightened pleading standard for affirmative defenses rather than the applicable standard of law in the Eastern District of New York.

17. Once again, on March 18, 2015, Mr. Werner, in retaliation for defendants having started the FMC action, threatened the undersigned personally and the complainant with sanctions unless the undersigned agreed to withdraw the claims before the FMC, specifically stating that: “We demand that you dismiss with prejudice your claims against Empire United Lines Co., Inc. and Michael Hitrinov before the Federal Maritime Commission within 21 days of the date of this letter, and withdraw the Answer filed with this Court on February 25, 2015. If you refuse to dismiss your claims against Empire United Lines Co., Inc. and Michael Hitrinov and withdraw the Answer, then we will be forced to file the attached Motion for Sanctions with the Court.” A copy of the cover letter for Mr. Werner’s FRCP 11 motion is annexed hereto as **Exhibit “J”**.

18. On March 25, 2015 an initial conference was held before Magistrate Judge Reyes in the Eastern District of New York matter, during which the Court noted that it was interesting how the respondents could have failed to realize that a loan in the amount of \$200,000.00 had not been repaid since 2010. Interestingly enough, during the conference, Mr. Werner also made reference to the FMC matter, when the Eastern District of New York matter has no connection to the FMC matter.

19. Subsequent thereto, on April 16, 2015, Mr. Werner admitted that his client had indeed received a wire transfer in the amount of \$202,000.00 on December 9, 2010 with the notation: “return of the loan”. Notably, respondents were advised of that fact on December 14,

2014. A copy of Mr. Werner's email, together with the bank statement indicating that the loan was repaid is annexed hereto as **Exhibit "K"**.

20. On April 8, 2015, respondents, by their counsel Mr. Werner, in retaliation for defendants having started the FMC action, filed the motion against complainant and its counsel in the new District of New Jersey matter, in which respondents seek an order granting them sanctions under Federal Rule of Civil Procedure Rule 11.

21. That motion was filed by respondents and their counsel for the sole purpose of harassing, injuring, and annoying the complainant, and to cause complainant to incur legal fees.

22. In that motion, Mr. Werner's legal arguments fail to meet the standard for warranting relief pursuant to FRCP Rule 11, as they are premised entirely on a factual dispute.

23. In that motion, Mr. Werner improperly attempts to use the motion as a discovery device and to test the legal sufficiency or efficacy of allegations in the pleadings.

24. In that motion, Mr. Werner incorrectly argued to the Court that the continuing violation doctrine is not applicable to causes of action for reparations under the Shipping Act, and that the doctrine is limited solely to the Commission's own enforcement proceedings.

25. Mr. Werner's legal arguments stand in stark and marked contrast to the FMC's binding precedent in the matter of Seatrain Gitmo, Inc. v. Puerto Rico Maritime Shipping Auth., 18 S.R.R. 1079 (ALJ 1979).

26. In that motion, Mr. Werner incorrectly argued to the Court that complainant's claim for "storage/demurrage charges and lost contracts...have nothing to do with any of the claims asserted in the FMC matter.."

27. Mr. Werner's arguments stand in stark and marked contrast to the allegations by complainant herein, in which complainant alleges that it is "seeking reparations for injuries caused to it by EUL and Hitrinov as a result of their violation of 46 U.S.C. §§ 41102, 41104, 40501 and

the FMC's regulations at 46 C.F.R. Part 515, by: (1) failing to observe regulations connected with receiving, handling, storing, and delivering of the Complainants property....” and that “During the time period alleged herein, EUL accepted money from the Complainant for the shipment of various shipping containers, then subsequently refused to release these containers.”

28. In that motion, Mr. Werner incorrectly argued to the Court that ““if there had been any breach of the settlement agreement by EUL, Baltic's recourse would have been to re-open the case in this Court to make an application for enforcement of the settlement agreement...”

29. Mr. Werner's legal arguments stand in stark and marked contrast to the well-established rule that the FMC has exclusive jurisdiction to adjudicate violations of the Shipping Act of 1984.

30. Subsequent thereto, on or about April 13, 2015, Magistrate Judge Falk, who is overseeing the case in the new District of New Jersey matter, held a telephonic conference, where he asked respondents' counsel why the motion for sanctions was filed prior to discovery having been conducted, and further noted that respondents' counsel did not follow proper procedure in doing so.

31. By virtue of the foregoing, Mr. Werner and his law firm have retaliated against the complainant for filing a complaint with the FMC.

32. Mr. Werner was advised orally and in writing numerous times that his acts were retaliatory, yet he persisted in his unlawful activity.

33. Mr. Werner's retaliatory acts include a coordinated campaign of filing frivolous motions, including two separate motions for a stay of the instant proceeding (both of which were filed in the District of New Jersey matters, all of which were denied), a frivolous motion to strike complainant's answer and counterclaim in the Eastern District of New York matter, two separate threats of sanctions against the undersigned personally and complainant, and the actual filing of

the motion for sanctions under Rule 11 of the Federal Rules of Civil Procedure in the new District of New Jersey matter.

34. All of the foregoing motions were filed for the sole purpose of retaliating against the Complainant, to discourage the undersigned and the Complainant from proceeding forward in the instant matter, and to unnecessarily cause complainant to incur legal fees. As the Commission may be aware, the acts described above constitute retaliation squarely within the meaning of the Commission's well-established precedent that discusses the prohibition against retaliation. *See, e.g., North River Insurance Co. v Federal Commerce and Navigation Co*, 20 S.R.R. 1078, 1082 (ALJ, 1981) (citing *Federal Maritime Board v. Isbrandtsen*, 356 US 481 (1958)). *See, also, Pacific American Fisheries Inc. v. American Hawaiian S.S. Co*, 2 U.S.M.C. 270, 277 (1940). As the Commission may be aware, the provision against retaliation continues to be used from time to time, as recently as 2014. *See, e.g., Complaint in Docket 14-14, Mark Barr v. Ocean Trade Lines Inc.*, at paragraph 71.

The foregoing is true and correct to the best of my knowledge under penalties of perjury under 28 U.S.C. § 1746.

Executed on April 23, 2015

  
Marcus A. Nussbaum (MN9581)

# **Exhibit “A”**

**Marcus A. Nussbaum, Esq.**

---

**From:** Gerry Doyle <gdoyle@doylelaw.net>  
**Sent:** Monday, December 08, 2014 1:50 PM  
**To:** marcus.nussbaum@gmail.com  
**Cc:** Gerry Doyle; David Gabel  
**Subject:** Unpaid Loan from Empire United Lines to Andrejus Presniakovas  
**Attachments:** loan agreement.doc; Payment Confirmation.txt; cover email sending Loan Agreement.htm

Dear Mr. Nussbaum:

Empire United Lines has advised that the \$200,000.00 loan made to Andrejus Presniakovas in October 2010 pursuant to the attached Loan Agreement and related documents, has not been repaid.

Please note that the funds were wired to Baltic Auto Shipping, and the Loan Agreement signed electronically and returned via email by Mr. Presniakovas. It would seem that both Baltic and Presniakovas have liability for the repayment of the Loan.

I am advised by Empire United that the "collateral" pledged under the Loan Agreement (i.e., "containers and cars that are inside the containers") did not belong to either Baltic or Presniakovas, but were the property of third parties – strangers to the transaction. If this should be borne out, it would appear that the Loan was induced under false representations.

Please advise if and when (and by whom) the Loan is to be repaid. Thank you.

Gerard S. Doyle, Jr.  
The Law Office of Doyle & Doyle  
636 Morris Turnpike  
Short Hills, NJ 07078  
(973) 467-4433 (x. 3)  
(973) 467-1199 (fax)  
[gdoyle@doylelaw.net](mailto:gdoyle@doylelaw.net)

# **Exhibit “B”**

**Marcus A. Nussbaum, Esq.**

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**From:** Marcus Nussbaum <marcus.nussbaum@gmail.com>  
**Sent:** Sunday, December 14, 2014 9:12 PM  
**To:** Gerry Doyle  
**Cc:** David Gabel; Jon Werner  
**Subject:** Re: Unpaid Loan from Empire United Lines to Andrejus Presniakovas

Mr. Doyle:

Please speak with your client and explain to him that he needs to stop with the distractions and deal with the situation at hand. Any loans made by him to my client bear no relevance to your client's alleged violations of the Shipping Act. In any case, my client advises me that any loans made by your client were paid off with interest.

In addition, your client has taken it upon himself to call various associates of my client to discuss my competency (or lack thereof) as an attorney. It appears that he has done so in an attempt to discourage my client from proceeding with this matter. If he continues to do this, he will be faced with a defamation lawsuit at the end of this proceeding.

Your client is obviously concerned about the potential liability faced by him and the sanctions that could be levied by the FMC, particularly in light of the fact that he has cc'd additional attorneys to this email, who are not involved in this proceeding before the FMC. As you may be aware, this is not the first proceeding filed with the FMC against Mr. Hitrinov and EUL alleging facts similar to this case. In light of the foregoing, I strongly recommend that your client make a reasonable settlement offer that accounts for my attorneys' fees incurred to date.

If I have to file an opposition to your motion for a more definite statement (which I do not believe was made in good faith, particularly in light of the low pleading standard for complaints), please be advised that my client intends to fully pursue the matter with the FMC, and will not withdraw until sanctions are levied against EUL. I believe that you are aware of the potential exposure that your client faces with respect to sanctions from the FMC for each bill of lading in this case, therefore, I strongly recommend that your client seriously consider settlement as an option.

***\*\*\* Please note that my mailing address has changed \*\*\****

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
Tel: 888-426-4370  
Fax: 347-572-0439  
<http://www.nussbaumlawfirm.com/>

# **Exhibit “C”**



Attorneys At Law

JON WERNER  
E-Mail: [jwerner@lyons-flood.com](mailto:jwerner@lyons-flood.com)

ADMITTED IN NEW YORK,  
NEW JERSEY

LYONS & FLOOD LLP  
ONE EXCHANGE PLAZA  
55 BROADWAY, SUITE 1501  
NEW YORK, NY 10006  
TEL (212) 594-2400  
FAX (212) 594-4589  
[www.lyons-flood.com](http://www.lyons-flood.com)

December 12, 2014

**BY EMAIL**

**[marcus.nussbaum@gmail.com](mailto:marcus.nussbaum@gmail.com)**

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224

Re: *Baltic Auto Shipping, Inc. v. Hitrinov et al.*  
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)  
Our File No.: 2697002

Dear Mr. Nussbaum,

As you may be aware, I represented Empire United Lines Co., Inc. (“EUL”) and Michael Hitrinov in the above captioned matter which was settled in November 2011 (the “DNJ lawsuit”).

I have recently learned from my clients that you have commenced a proceeding before the Federal Maritime Commission against them, docketed as *Baltic Auto Shipping, Inc. v. Hitrinov et al.*, Docket No.: 14-16 (the “FMC matter”).

From comparison of the Complaint filed in the FMC matter with the Complaint filed in the DNJ lawsuit, it appears clear that they involve the same transaction or occurrence. Both Complaints concern claims by *Baltic Auto Shipping, Inc.* that with respect to shipments of numerous vehicles beginning in November 2007, EUL and Michael Hitrinov allegedly sought to impose different and higher shipping charges than permitted under EUL’s tariff and the Shipping Act of 1984.

I understand that you have stated that at the time you commenced the FMC matter, you were already aware of the settlement agreement and mutual release entered into by *Baltic Auto Shipping, Inc.* with respect to the DNJ lawsuit. Can you kindly explain your rationale as to why the claims alleged in the FMC matter are not subject to the settlement agreement and mutual release?

I further understand that it is your position that the settlement agreement was breached by my clients, and that this breach somehow tolls the statute of limitations with respect to the claims asserted in the FMC matter. Can you kindly explain your rationale as to how a breach of the settlement agreement could result in the tolling of the statute of limitations for violations of the Shipping Act of 1984?

NEW YORK

NEW JERSEY

CONNECTICUT

I also understand that the specific breaches of the settlement agreement you are alleging relate to a failure to pay certain storage or demurrage charges caused by delays in the release of certain containers, as well as a failure to turn over certain documents necessary for the effectuation of the settlement agreement, such as bills of lading and tariffs. Can you kindly explain what delays you claim my clients caused in the release of any containers, and further explain precisely what documents you claim my clients failed to turn over?

Finally, I have received the attached Word document which I understand you sent via email on December 10, 2014. The document seems to be describing some shipments and calculating some sort of losses regarding these shipments. Can you kindly explain what the entries in this document are purporting to describe?

For each of the charges listed, can you kindly provide:

1. The dates that these charges were incurred;
2. Invoices, statements, or other supports showing the basis for these charges; and
3. Confirmation as to whether these charges were actually paid, and if so, by whom and when.

Additionally, the document lists a number of entities such as "Baltic ch," "Loux ch," "Tonagra," "Renaldas," "Baltic sav," "Autoritm ch," "Batumi Ltd.," "Baltic la," and "Bremen Toys ch." Can you kindly explain who these entities are, what relationship they have (if any) with Baltic Auto Shipping, Inc., and whether or not you represent any of these entities as well?

Very truly yours,

**Lyons & Flood, LLP**



By: Jon Werner

Encl.

U:\FLOODDOC\2697002\Correspondence\Nussbaum 01 ltr.doc

038EUL455628	MSCU7217843	Baltic ch total loss 4600\$	\$2,600
038EUL455629	MEDU8612854	Loux ch 4 total loss 9000\$	\$2600
038EUL455631	MSCU9402917	Tonagra total loss 9500\$	\$2,600
038EUL455632	MSCU8766323	Baltic ch total loss 8700\$	\$2,600
038EUL455664	TGHU7710085	Renalas total loss 11500\$	\$1,800
038EUL455666	MSCU7031490	Baltic sav total loss 8200\$	\$1,800
038EUL455667	MEDU8102017	Baltic sav total loss 9200\$	\$1,800
038EUL486065	MSCU8278289	Baltic ch total loss 6300\$	\$2,600
038EUL486067	MSCU9802615	autoritm ch total loss 7500\$	\$2,600
038EUL486068	MEDU8320277	Baltic ch total loss 4200\$	\$2,600
038EUL486069	MEDU8065103	Baltic ch total loss 3000\$	\$2,600
038EUL486071	MSCU8284846	Autoritm ch 6000\$	\$2,600
038EUL447499	MEDU8730564	Batumi ltd total loss 3500\$	\$1,950
038EUL451166	MSCU9836410	Baltic la total loss 13600\$	\$3,100
038EUL475739	MSCU8385029	Baltic la total loss 12500\$	\$3,100
038EUL475742	MEDU8410426	Baltic la total loss 11000\$	\$3,100
038EUL454130	DFSU6834642	Baltic ch total loss 5500\$	\$2,550
038EUL455620	TCNU6006125	Renalas total loss 6900\$	\$2,600
038EUL455624	MSCU7186594	Renalas ch total loss 8100\$	\$2,600
038EUL479838	MSCU8311411	Batumi total loss 3500\$	\$1,950
038EUL451407	CAIU8675002	Batumi total loss 2800\$	\$1,950
038EUL489198	MEDU8760764	Bremen toys ch total los5000\$	\$2,000

Total loss 160100\$,not include demurrage,storage in the port,storage in the inland,labor,  
Doc fee,phone,wire,tiket ,servise/aprox-15000-25000\$/

Exhibit “C-1”

# MARCUS A. NUSSBAUM, ESQ.

**Mail Drop:** P.O. Box 245599, Brooklyn, NY 11224

**Tel:** 888-426-4370 | **Fax:** 347-572-0439

**Email:** marcus.nussbaum@gmail.com

**Web:** www.nussbaumlawfirm.com

12/14/14

Lyons & Flood LLP  
One Exchange Plaza  
55 Broadway, Suite 1501  
New York, NY 10006  
Attn: Jon Werner, Esq.

Re: Baltic Auto Shipping, Inc. v. Hitrinov et al.  
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)  
Your File No.: 2697002

Dear Mr. Werner:

As you may recall, I represent Complainant Baltic Auto Shipping in their current proceeding before the Federal Maritime Commission against your former client, Empire United Lines Co., Inc.

I am in receipt of your letter of December 12, 2014 and I am writing to you as matter of courtesy, as you have not formally appeared before the Federal Maritime Commission (“FMC”) with respect to this matter. Respectfully, I am not at liberty to discuss the details of this proceeding with you, however, with regard to your reference to the settlement agreement, the agreement covers 163 containers that were shipped between a two month time period, to wit: from approximately September of 2011 through November of 2011. As you can see, the complaint in the FMC matter covers a larger range of dates and a higher quantity of containers.

If you also recall, the main issue in the Federal Court Action was your client’s refusal to release containers to my client due to a dispute over non-payment of ocean freight. Respectfully, the Federal Court Action has nothing to do with the issues at hand, which are Empire’s violations of the Shipping Act of 1984.

In any case, with respect to the settlement agreement, I will advise my client that they always have the option to file an action for breach of contract in state court if they choose to do so.

Thank you for your courtesy and consideration.

Very truly yours,



Marcus A. Nussbaum, Esq.

# **Exhibit “D”**

 **Marcus A. Nussbaum, Esq.**

---

**From:** Marcus Nussbaum <marcus.nussbaum@gmail.com>  
**Sent:** Sunday, December 28, 2014 2:25 PM  
**To:** Gerry Doyle; David Gabel  
**Subject:** Re: Unpaid Loan from Empire United Lines to Andrejus Presniakovas  
**Attachments:** Letter Jon Werner 12.14.14.pdf; Letter Jon Werner 12.28.14.pdf

Dear Mr. Doyle,

As you are aware I represent Baltic Auto Shipping Inc. solely with respect to its claims against your clients before the FMC. Going forward, I am going to ask that you kindly refrain from cc'ing Mr. Hitrinov and Mr. Werner from your communications addressed to me. Respectfully, I have no intentions of communicating with your client and Mr. Werner has not made an appearance in the matter presently before the FMC. I also ask that you instruct anyone to whom you have forwarded my communications, to respond through you.

As you may be aware, Mr. Werner wrote to me on December 12, 2014 and made various inquiries to me regarding this case, at which time I explained to him that I was responding out of courtesy, but that I was not at liberty to discuss the matter with him. A copy of my letter of December 14, 2014 is attached. As you can see, Mr. Werner has written to me again on December 24, 2014, in response to an email that I had written directly to you. Once again, I am not at liberty to discuss the matter with Mr. Werner unless he has formally appeared before the FMC on behalf of Empire and Mr. Hitrinov. As a courtesy, you may feel free to forward Mr. Werner the attached letter that I have prepared in response to his email of December 24, 2014.



Sincerely,

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
Tel: 888-426-4370  
Fax: 347-572-0439  
<http://www.nussbaumlawfirm.com/>

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Exhibit “D-1”

# MARCUS A. NUSSBAUM, ESQ.

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12/28/14

Lyons & Flood LLP  
One Exchange Plaza  
55 Broadway, Suite 1501  
New York, NY 10006  
Attn: Jon Werner, Esq.

Re: Baltic Auto Shipping, Inc. v. Hitrinov et al.  
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)  
Your File No.: 2697002

Dear Mr. Werner:

I am responding to your email out of professional courtesy. I have a lot of respect for the reputation that you have earned within our small community of maritime attorneys, and you and I may find ourselves on opposite sides of a different matter at some point in the future. I hope that you can appreciate my efforts to respond to your inquiries in the most reasonable manner possible.

With respect to my last email to Mr. Doyle, as you can see, I have made no accusations. My words were carefully chosen: “I ask that you please speak with him and make him aware of this, **if in fact he had anything to do with it.**” Unfortunately, I cannot disclose anything further due to attorney/client privilege.

My knowledge of criminal law is limited, so the only thing that I can say is that if someone potentially committed a criminal offense in this situation, it will be up to the authorities to decide whether or not the matter should be pursued, and if it is a criminal matter at all. I trust that this resolves the matter.

Going forward, I ask that you forward all additional questions regarding this matter to the attorneys currently representing Empire and Mr. Hitrinov before the FMC.

Wishing you a happy and healthy New Year.

Very truly yours,



Marcus A. Nussbaum, Esq.

# **Exhibit “E”**

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

---

BALTIC AUTO SHIPPING, INC.,  
Plaintiff,

v.

MICHAEL HITRINOV, et al.,  
Defendants.

---

: Civil Case No. 11-6908  
: (FSH)

: **ORDER**

: Date: January 16, 2015  
:  
:  
:

**HOCHBERG, District Judge:**

This matter comes before the Court upon a Motion for a Temporary Restraining Order and a Motion for Preliminary Injunction by Defendants Empire United Lines Co. and Michael Hitrinov to enforce a 2011 settlement agreement [Dkt. No. 5 & 8]; and for good cause shown.

Plaintiff filed an admiralty claim on November 23, 2011 and a summons was issued to Plaintiff from the Clerk of the Court on December 1, 2011; four days later, before any proof of service was filed, the parties stipulated to dismissal on December 5, 2011; on December 7, 2011, the Court entered an order stating: “if the settlement is not consummated, the Court will entertain an application solely to enforce the terms of the settlement agreement.”

Three years after dismissal and consummation of the settlement, Defendant sought an order to enforce the settlement agreement and an injunction restraining Plaintiff from proceeding with an action before the Federal Maritime Commission. However, the Court’s 2011 Order did not retain jurisdiction indefinitely. Rather, it retained jurisdiction only if the settlement was not

consummated. The Court is without jurisdiction to enforce a breach of a settlement agreement consummated over three years ago. Moreover, it appears the original matter was settled before proper service of the Complaint and filing of proof of service, and thus before this Court had acquired jurisdiction. Accordingly, this matter remains closed.

Defendants may file a new action and deliver an application for an order to show cause with temporary restraints to the Clerk in accordance with L.Civ.R. 65.1.

The Clerk of the Court shall administratively terminate Docket No. 5.

**IT IS SO ORDERED**

**/s/ Faith S. Hochberg**  
**Hon. Faith S. Hochberg, U.S.D.J.**

# **Exhibit “F”**



JON WERNER

E-Mail: [jwerner@lyons-flood.com](mailto:jwerner@lyons-flood.com)

ADMITTED IN NEW YORK,  
NEW JERSEY

LYONS & FLOOD LLP  
ONE EXCHANGE PLAZA  
55 BROADWAY, SUITE 1501  
NEW YORK, NY 10006  
TEL (212) 594-2400  
FAX (212) 594-4589  
[www.lyons-flood.com](http://www.lyons-flood.com)

January 5, 2015

**BY MAIL and EMAIL**

**[marcus.nussbaum@gmail.com](mailto:marcus.nussbaum@gmail.com)**

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224

Re: *Baltic Auto Shipping, Inc. v. Hitrinov et al.*  
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)  
Our File No.: 2697002

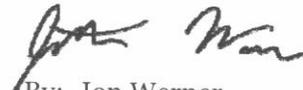
---

Dear Mr. Nussbaum,

Pursuant to Fed. R. Civ. P. 11(c) (2), attached is a service copy of the Fed. R. Civ. P. 11 Motion for Sanctions which we are providing to you. We demand that you dismiss with prejudice your claims against Empire United Lines Co., Inc. and Michael Hitrinov before the Federal Maritime Commission within 21 days of the date of this letter. If you refuse to dismiss your claims against Empire United Lines Co., Inc. and Michael Hitrinov, then we will be forced to file the attached Motion for Sanctions with the Court.

Very truly yours,

**Lyons & Flood, LLP**



By: Jon Werner

Encls.

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# **Exhibit “G”**

**Marcus A. Nussbaum, Esq.**

---

**From:** Gerry Doyle <gdoyle@doylelaw.net>  
**Sent:** Monday, January 12, 2015 11:56 AM  
**To:** Gerry Doyle; Marcus Nussbaum  
**Cc:** David Gabel; Jon Werner; Michael Hitrinov  
**Subject:** RE: Unpaid Loan from Empire United Lines to Andrejus Presniakovas

Mr. Nussbaum:

I have not received any information supporting your contention that the Loan was repaid.

Please forward such proof forthwith, or we will have to assume that you and your client are in error.

In such case, full payment is demanded.

Gerard S. Doyle, Jr.  
The Law Office of Doyle & Doyle  
636 Morris Turnpike  
Short Hills, NJ 07078  
(973) 467-4433 (x. 3)  
(973) 467-1199 (fax)  
[gdoyle@doylelaw.net](mailto:gdoyle@doylelaw.net)

---

**From:** Gerry Doyle  
**Sent:** Friday, December 19, 2014 9:47 AM  
**To:** 'Marcus Nussbaum'  
**Cc:** David Gabel; Jon Werner; Gerry Doyle  
**Subject:** RE: Unpaid Loan from Empire United Lines to Andrejus Presniakovas

Mr. Nussbaum:

Thank you for your response.

It seems to me that in order to put this matter to rest, all your client needs to do is provide proof that the loan was, as you represent "paid off with interest".

I look forward to receiving the payment records.

Gerard S. Doyle, Jr.  
The Law Office of Doyle & Doyle  
636 Morris Turnpike  
Short Hills, NJ 07078  
(973) 467-4433 (x. 3)  
(973) 467-1199 (fax)  
[gdoyle@doylelaw.net](mailto:gdoyle@doylelaw.net)

---

**From:** Marcus Nussbaum [<mailto:marcus.nussbaum@gmail.com>]  
**Sent:** Sunday, December 14, 2014 9:12 PM  
**To:** Gerry Doyle  
**Cc:** David Gabel; Jon Werner  
**Subject:** Re: Unpaid Loan from Empire United Lines to Andrejus Presniakovas

# **Exhibit “H”**

**NOT FOR PUBLICATION**

**UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY**

EMPIRE UNITED LINES and MICHAEL  
HITRINOV,

Plaintiffs,

v.

BALTIC AUTO SHIPPING, INC.,

Defendant.

Civil Action No.: 15-cv-355

**OPINION AND ORDER**

**CECCHI, District Judge.**

This matter comes before the Court on the Order to Show Cause filed by Plaintiffs Empire United Lines Co., Inc. (“EUL”) and EUL’s President, Michael Hitrinov (“Hitrinov,” and collectively, “Plaintiffs”), requesting that this Court enter a Temporary Restraining Order and a Preliminary Injunction pursuant to Federal Rule of Civil Procedure 65 against Defendant Baltic Auto Shipping, Inc. (“Defendant”). ECF No. 5.

Plaintiffs state that on November 26, 2014, Defendant commenced a suit against Plaintiffs before the Federal Maritime Commission (“FMC”), allegedly in violation of a settlement agreement between the parties, which had resolved a prior suit in this Court over three years ago. Pls.’ Br. 2. On January 20, 2015, Plaintiffs filed the instant action in this Court, seeking damages stemming from Defendant’s alleged breach of the settlement agreement and specific performance of the settlement agreement, including an injunction prohibiting Defendant from proceeding with its claims before the FMC. Compl. ¶¶ 23-34. Along with the Complaint, on January 20, 2015, Plaintiffs filed an Order to Show Cause seeking temporary restraints and, eventually, a preliminary

injunction enjoining Defendant from proceeding with its claims before the FMC. Pls.' Br. 9.

Federal Rule of Civil Procedure 65 permits District Courts to grant temporary restraining orders. Fed. R. Civ. P. 65(b). Granting injunctive relief is "an extraordinary remedy . . . which should be granted only in limited circumstances." AT&T v. Winback and Conserve Program, Inc., 42 F.3d 1421, 1426-27 (3d Cir. 1994) (internal quotation and citation omitted). For a court to grant injunctive relief, a party must show: "(1) a likelihood of success on the merits; (2) that it will suffer irreparable harm if the injunction is denied; (3) that granting preliminary relief will not result in even greater harm to the nonmoving party; and (4) that the public interest favors such relief." Kos Pharms., Inc. v. Andrx Corp., 369 F.3d 700, 708 (3d Cir. 2004). The party seeking injunctive relief bears the burden of showing that all four factors weigh in favor of preliminary relief. AT&T, 42 F.3d at 1427. Further, the Supreme Court has stated that "the basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies." Sampson v. Murray, 415 U.S. 61, 88 (1974) (quoting Beacon Theaters, Inc. v. Westover, 359 U.S. 500, 506-07 (1959)); see also 11A Charles Alan Wright et al., Federal Practice and Procedure § 2948.1 (3d ed.) ("Only when the threatened harm would impair the court's ability to grant an effective remedy is there really a need for preliminary relief.").

As to Plaintiffs' likelihood of success, there is a dispute between Plaintiffs and Defendant over whether the release contained in the parties' earlier settlement agreement applies to the FMC proceedings. Plaintiffs argue that the release was a general release that clearly prohibits Defendant's commencement of FMC proceedings. Defendant argues, among other things, that the release applied only to shipping charges related to specific containers identified in Exhibits A and B of the settlement agreement. Thus, given the differing possible interpretations, this factor does not weigh strongly in favor of or against granting injunctive relief.

More importantly, Plaintiffs have not demonstrated that they will suffer irreparable harm in the absence of injunctive relief. Plaintiffs argue that they will suffer irreparable harm “that cannot be redressed adequately by monetary damages.” Pls.’ Br. 5-6. The harms Plaintiffs specify are litigation costs, ongoing reputational damage and the risk of multiple and inconsistent decisions from this Court and the FMC. *Id.* at 6. First, litigation costs can be compensated by monetary damages, and thus do not support a finding of irreparable harm. *See Kos Pharms.*, 369 F.3d at 728 (“Mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay, are not enough [to constitute irreparable harm].”) (quoting *Sampson v. Murray*, 415 U.S. 61, 90 (1974)).

Second, the reputational injury complained of by Plaintiffs already occurred when the commencement of the FMC action was published in the Federal Register. *See* Pls.’ Br. 2. Moreover, the Federal Register merely indicates that Defendant filed a complaint against Plaintiffs with the FMC; it characterizes the contents of the complaint as allegations, not facts, and provides dates by which the matter will be decided by the FMC. *See* *Hitrinov Cert.*, Ex. I. Plaintiffs submit the speculative assertions that EUL will continue to suffer reputational harm from the ongoing proceedings before the FMC, in addition to the risk of multiple inconsistent decisions on the scope of the release. *Hitrinov Cert.* ¶ 16; *see also* Pls.’ Reply at 7 (arguing that Plaintiffs are at risk of “irreparable harm due to the potential for multiple and inconsistent decisions”). Plaintiffs do not explain why the speculative risk of multiple and inconsistent decisions would constitute immediate harm to them, apart from litigation costs (compensable by monetary damages) associated with pursuing their dispute in multiple fora.

Plaintiffs do not contest that they may raise their claims that the Defendant has breached the settlement agreement before the FMC. Pls.’ Reply 4-5 (“It is precisely **because** plaintiffs may

move to dismiss the FMC matter on the same grounds which plaintiffs are relying upon to support their cause of action in this case for breach of the settlement agreement, that plaintiffs are exposed to the risk of multiple and inconsistent decisions.”). Plaintiffs’ request for injunctive relief thus boils down to their preference for this Court as a forum in lieu of the FMC. *Id.* at 5 (“When the parties settled the 2011 Baltic Lawsuit, they specifically negotiated for and contracted for this Court to retain jurisdiction over enforcement of the settlement agreement . . .”). However, Judge Hochberg’s order dated January 16, 2015, denying Plaintiffs’ application for injunctive relief filed in the earlier case that was settled, indicated that this Court did not retain jurisdiction over the matter to enforce the settlement agreement. *See* ECF No. 9, Civil Action No. 11-6908. The specter of any remaining issues concerning concurrent litigation does not justify injunctive relief at this time. Plaintiffs have failed to satisfy their burden as to irreparable harm.

Finally, Plaintiffs’ arguments regarding the public interest do not outweigh the absence of irreparable harm, and Plaintiffs have not sufficiently demonstrated that the balancing of the hardships between the parties weighs in Plaintiffs’ favor.

For the foregoing reasons, the Court denies Plaintiffs’ request for temporary restraints.

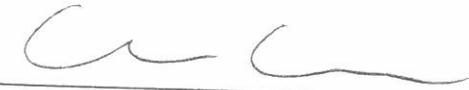
Accordingly,

**IT IS** on this 23rd day of January, 2015,

**ORDERED THAT:**

1. Plaintiffs' request for temporary restraints (ECF No. 5) is DENIED.
2. The Order to Show Cause is DENIED.

**SO ORDERED.**



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**CLAIRE C. CECCHI, U.S.D.J.**

# **Exhibit “I”**

S	E	R	V	E	D
February 2, 2015					
FEDERAL MARITIME COMMISSION					

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 14-16**

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**BALTIC AUTO SHIPPING, INC.**

**v.**

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

---

**ORDER DENYING REQUEST FOR STAY**

---

On January 22, 2015, respondents Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc. (Empire) filed "Respondents' Emergent Request for Stay of Proceeding."<sup>1</sup> The request includes a copy of a civil complaint that Empire filed against complainant Baltic Auto Shipping, Inc. (Baltic) in the United States District Court for the District of New Jersey. *Empire United Lines Co., Inc. and Michael Hitrinov v. Baltic Auto Shipping, Inc.*, No. 2:15-cv-00355-CCC-MF (D.N.J. Jan. 20, 2015) (complaint filed). In that complaint, the second of two relevant district court cases between the parties, Empire alleges that when Baltic filed the Complaint in this proceeding before the Commission, it violated a settlement agreement between the parties resolving a 2011 New Jersey district court case, the first district court case. *See id.*, Complaint ¶ 9, referring to *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., et al.*, No. 2:11-cv-06908-FSH (D.N.J. Dec. 7, 2011) (Stipulation and Dismissal).

---

<sup>1</sup> Empire first made this request by email addressed to the Secretary. After consultation with the Office of the Secretary, Empire resubmitted a substantially identical request in a PDF attachment to an email. The body of the attachment was also addressed to the Secretary. Baltic filed an opposition to the request for stay in the form of a letter to the Secretary, and Empire filed a reply in the form of a letter. The parties should note that the presiding officer has the authority to grant or deny a stay, not the Secretary. 46 C.F.R. § 502.25. Any future "requests" regarding this proceeding should be made by motion filed with the Secretary. 46 C.F.R. §§ 502.2; 502.25; 502.69-502.71.

Empire states:

Respondents herein respectfully request a stay of the proceeding now pending before the Federal Maritime Commission until the federal District Court for New Jersey determines whether the instant matter is simply the reiteration of an old, settled matter that had been dismissed with prejudice. It would be in the interest of judicial economy to grant such relief.

(Respondents' Emergent Request for Stay of Proceeding.)

On January 27, 2015, Baltic filed an opposition to the request. The opposition includes an Opinion and Order entered by Judge Cecchi in the 2015 district court case denying Empire's request for temporary restraint and an order to show cause. *Empire United Lines Co., Inc. and Michael Hitrinov v. Baltic Auto Shipping, Inc.*, No. 2:15-cv-00355-CCC (D.N.J. Jan. 23, 2015) (Opinion and Order). Judge Cecchi's order refers to an order dated January 16, 2015, issued by Judge Hochberg in the 2011 case. *Id.* at 4. On January 29, 2015, I issued an Order requiring Baltic to file a copy of Judge Hochberg's order. *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (ALJ Jan. 29, 2015) (Order to File District Court Opinion and Order). Empire filed Judge Hochberg's order on the same day.

In the 2015 order in the 2011 case, Judge Hochberg stated:

[T]he Court's 2011 Order did not retain jurisdiction indefinitely. Rather, it retained jurisdiction only if the settlement was not consummated. The Court is without jurisdiction to enforce a breach of a settlement agreement consummated over three years ago. Moreover, it appears the original matter was settled before proper service of the Complaint and filing of proof of service, and thus before this Court had acquired jurisdiction. Accordingly, this matter remains closed.

Defendants may file a new action and deliver an application for an order to show cause with temporary restraints to the Clerk in accordance with L. Civ. R. 65.1.

*Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., et al.*, No. 2:11-cv-06908-FSH (D.N.J. Jan. 16, 2015) (Order).

In the order in the 2015 case, Judge Cecchi stated:

Plaintiffs [Empire and Hitrinov] do not contest that they may raise their claims that [Baltic] has breached the settlement agreement before the FMC. Pls. Reply 4-5 ("It is precisely *because* plaintiffs may move to dismiss the FMC matter on the same grounds which plaintiffs are relying upon to support their cause of action in this case for breach of the settlement agreement, that plaintiffs are exposed to the risk of multiple and inconsistent decision."). Plaintiffs' request for injunctive relief thus

boils down to their preference for this Court as a forum in lieu of the FMC. *Id.* at 5 (“When the parties settled the 2011 Baltic Lawsuit, they specifically negotiated for and contracted for this Court to retain jurisdiction over enforcement of the settlement agreement . . .”). However, Judge Hochberg’s order dated January 16, 2015, denying Plaintiffs’ application for injunctive relief filed in the earlier case that was settled, indicated that this Court did *not* retain jurisdiction over the matter to enforce the settlement agreement. *See* [Judge Hochberg’s 2015 Order]. The specter of any remaining issues concerning concurrent litigation does not justify injunctive relief at this time. Plaintiffs have failed to satisfy their burden as to irreparable harm.

*Empire United Lines Co., Inc. and Michael Hitrinov v. Baltic Auto Shipping, Inc.*, No. 2:15-cv-00355-CCC, Order at 3-4 (D.N.J. Jan. 23, 2015) (Opinion and Order) (emphasis in Opinion and Order).

On January 30, 2015, Empire filed a reply. A motion for stay is a non-dispositive motion. 46 C.F.R. § 502.69(g). The party filing a non-dispositive motion may only file a reply to an opposition to the motion “unless requested by the Commission or presiding officer, or upon a showing of extraordinary circumstances.” 46 C.F.R. § 502.71(c). Empire contends that extraordinary circumstances exist because of Baltic’s argument “that the decision of the District Court of New Jersey not to grant injunctive relief to [Empire] renders [Empire’s] request for a stay of the instant Proceeding moot.” (Respondents’ Reply at 1.) I note that the district court order was entered after Empire filed its request for stay; therefore, Empire was not able to address the order in its request. In these circumstances, I find that Empire has demonstrated extraordinary circumstances and permit filing of the reply. In the reply, Empire contends that the Commission should stay this proceeding because the 2015 district court case is a continuation of the 2011 district court case and the 2011 district court case was the first case between the parties on this matter, so judicial economy requires staying the Commission case.

In an earlier order in this proceeding, I stated:

The appropriate test for the Commission’s jurisdiction is whether a complainant’s allegations “involve elements peculiar to the Shipping Act.” *Cargo One, Inc. v. COSCO Container Lines Company, Ltd.*, 28 S.R.R. 1635, 1645 (FMC 2000). Baltic alleges that Empire, a non-vessel-operating common carrier licensed by the Commission, violated the Shipping Act on transportation of cargo by water between ports in the United States and ports in a foreign country. To expedite this proceeding, I affirmatively find that the Commission has subject matter jurisdiction over this proceeding.

*Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16, Order at 6 (ALJ Dec. 22, 2014) (Order on Respondents’ Motion for a More Definite Statement). To elaborate, section 8(c) of the Shipping Act, now codified at 46 U.S.C. § 40502(f), provides: “Unless the parties agree otherwise, the exclusive remedy for a breach of a

service contract is an action in an appropriate court.” In *Cargo One*, the question was whether this provision precluded Commission jurisdiction over complaints alleging Shipping Act violations related to service contracts.

While section 8(c) reasonably precludes the Commission from adjudicating breach of contract claims, the courts more properly equipped to address those matters are not authorized to address Shipping Act matters exclusively within the Commission’s jurisdiction. Such issues are not addressed in actions for breach of contract and no remedy for such violations would be provided in a breach of contract action. Moreover, as noted *supra*, reliance on the Commission to pursue such violations *sua sponte* in its investigatory role would eviscerate the reparations remedy afforded complainants by the statute. Therefore, we find that the ALJ should proceed to consider those claims.

*Cargo One*, 28 S.R.R. at 1645.

Relying on the principles stated in *Cargo One*, the Commission has held that jurisdiction over a complaint alleging violations of the Shipping Act exists even though a proceeding in another forum may have resolved some issues between the parties. For instance, prior to filing its complaint with the Commission, one complainant had sought and obtained an arbitration award of several hundred thousand dollars against the Commission respondent. The complainant filed a complaint with the Commission alleging Shipping Act violations and seeking another million dollars. The Commission reversed the order of the administrative law judge dismissing the complaint and remanded for further proceedings on the Shipping Act claims set forth in the complaint. The Commission held that the fact that the service contract between the parties required arbitration:

does not outweigh the Commission’s duty to protect the public by ensuring that service contracts are implemented in accordance with the Shipping Act. . . . To preclude Anchor from proceeding with its complaint solely because a private arbitrator previously issued a ruling would be inconsistent with our statutory mandate to hear such complaints.

*Anchor Shipping Co. v. Aliança Navegação E Logística Ltda.*, 30 S.R.R. 991, 998 (FMC 2006). The Commission stated that “[o]n remand, we direct the ALJ to address only those allegations involving Shipping Act violations, and any disputes previously addressed by the Arbitrator that are based upon common law breach of contract claims shall remain binding upon the parties.” *Id.*, at 999-1000.

The 2011 district court case between Baltic and Empire seems to have ended with Judge Hochberg’s January 16, 2015, Order. Baltic’s 2015 complaint seeks “specific performance of the [2011] settlement agreement, including a preliminary injunction and temporary restraining order against [Baltic] continuing to proceed with its claims before the . . . Commission.” *Empire United Lines Co., Inc. and Michael Hitrinov v. Baltic Auto Shipping, Inc.*, No. 2:15-cv-00355-CCC-MF,

Complaint at 7 (D.N.J. Jan. 20, 2015) (filed). Judge Cecchi denied temporary relief, but did not dismiss the complaint; therefore, it appears that the complaint for specific performance is still active.

The Commission should not delay its proceeding pending a decision in the 2015 district court case, however. Whatever the outcome of the New Jersey cases, “[t]he Commission has exclusive jurisdiction to administer and enforce the 1984 Act. Violations of the 1984 Act can be rectified only by the sanctions and remedies provided for in that Act.” *Unpaid Freight Charges*, 26 S.R.R. 735, 739 (FMC 1993) (preamble to final interpretive rule now codified at 46 C.F.R. § 545.2). The Amended Complaint in this proceeding alleges that Empire violated sections 41104(2)(a), 41104(4)(a), and 41104(8) of the Act by charging Baltic rates greater than those it charged other shippers and by charging Baltic rates greater than those reflected in its published tariff; section 40501(a) by failing to keep tariffs open to public inspection; and section 41102(c) by failing to provide Baltic with shipping documents. (Amended Complaint at 5.) These allegations are within the jurisdiction of the Commission. Therefore, Empire’s request to stay this proceeding pending the conclusion of the New Jersey district court cases is denied.

The Initial Order requires the parties to “submit a joint status report with proposed schedule . . . within twenty days of the service of the answer.” *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16, Order at 6 (ALJ Dec. 5, 2014) (Initial Order). In the circumstances of this proceeding, I find that it would be beneficial for the parties to have a telephone conference with the undersigned prior to filing the schedule. Therefore, the parties are ordered to determine a time on Wednesday, February 4, 2015, or Thursday, February 5, 2015, when they will be available for the conference and notify the undersigned of the time by email addressed to [judges@fmc.gov](mailto:judges@fmc.gov).

#### O R D E R

Upon consideration of Respondents’ Emergent Request for Stay of Proceeding and construing the request as a motion, the opposition thereto, and the record herein, and for the reasons stated above, it is hereby

**ORDERED** that Respondents’ motion be **DENIED**. It is

**FURTHER ORDERED** that the parties notify the undersigned forthwith of the date and time they are available for a telephone conference.

  
\_\_\_\_\_  
Clay G. Guthridge  
Administrative Law Judge

# **Exhibit “J”**



JON WERNER  
E-Mail: [jwerner@lyons-flood.com](mailto:jwerner@lyons-flood.com)

ADMITTED IN NEW YORK,  
NEW JERSEY

LYONS & FLOOD LLP  
ONE EXCHANGE PLAZA  
55 BROADWAY, SUITE 1501  
NEW YORK, NY 10006  
TEL (212) 594-2400  
FAX (212) 594-4589  
[www.lyons-flood.com](http://www.lyons-flood.com)

March 18, 2015

**BY EMAIL**

**[marcus.nussbaum@gmail.com](mailto:marcus.nussbaum@gmail.com)**

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224

Re: *Baltic Auto Shipping, Inc. v. Hitrinov et al.*  
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)  
Our File No.: 2697002

Dear Mr. Nussbaum,

Pursuant to Fed. R. Civ. P. 11(c) (2), attached is a service copy of a Fed. R. Civ. P. 11 Motion for Sanctions which we are providing to you. We demand that you dismiss with prejudice your claims against Empire United Lines Co., Inc. and Michael Hitrinov before the Federal Maritime Commission within 21 days of the date of this letter, and withdraw the Answer filed with this Court on February 25, 2015. If you refuse to dismiss your claims against Empire United Lines Co., Inc. and Michael Hitrinov and withdraw the Answer, then we will be forced to file the attached Motion for Sanctions with the Court.

Very truly yours,

**Lyons & Flood, LLP**



By: Jon Werner

Encls.

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# EXHIBIT “K”

## Marcus A. Nussbaum

---

**From:** Jon Werner <jwerner@lyons-flood.com>  
**Sent:** Thursday, April 16, 2015 5:15 PM  
**To:** 'Marcus A. Nussbaum'  
**Subject:** RE: Empire United Lines Co., Inc. v. Baltic Auto Shipping, Inc., 15 Civ. 355 (CCC) (MF)

Mr. Nussbaum,

Yes, my client admits that the wire transfer you describe was received. Although it appears to be the case, whether this actually constitutes repayment of the loan is something my client is still checking.

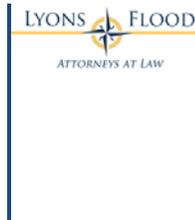
However, I note that the payment of the loan (if it is the case) appears to have been made 6 days later than one month after the loan was made. Thus, my client is still entitled to the interest for those 6 days (as a share of the 1% per month agreed upon rate) and interest for over four years on this amount. I know it is not a lot of money but my client is still entitled to this amount and my client has spent significant attorneys' fees already to collect this amount.

Please provide me with confirmation as soon as you have contacted Bank of America regarding the withdrawal of the subpoena.

Regards,

**Jon Werner**

One Exchange Plaza  
55 Broadway, Suite 1501  
New York, NY 10006  
Tel: (212) 594-2400  
Fax: (212) 594-4589  
Mob: (917) 509-2797  
[jwerner@lyons-flood.com](mailto:jwerner@lyons-flood.com)



NOTICE: This message contains information from the law firm of Lyons & Flood, LLP, which may be privileged, confidential, and exempt from disclosure under applicable law. If you have received this message in error, please inform us immediately and delete all copies of it from your system.

---

**From:** Marcus A. Nussbaum [<mailto:marcus.nussbaum@gmail.com>]  
**Sent:** Thursday, April 16, 2015 4:02 PM  
**To:** 'Jon Werner'  
**Subject:** RE: Empire United Lines Co., Inc. v. Baltic Auto Shipping, Inc., 15 Civ. 355 (CCC) (MF)

Mr. Werner,

Based upon these bank statements, does your client now admit that he did in fact receive a wire transfer in the amount of \$202,000.00 on December 9, 2010 for repayment of the loan with interest?

If he does, then I can withdraw the subpoena tomorrow. Please let me know.

**\*\*\* Please note that my mailing address has changed \*\*\***

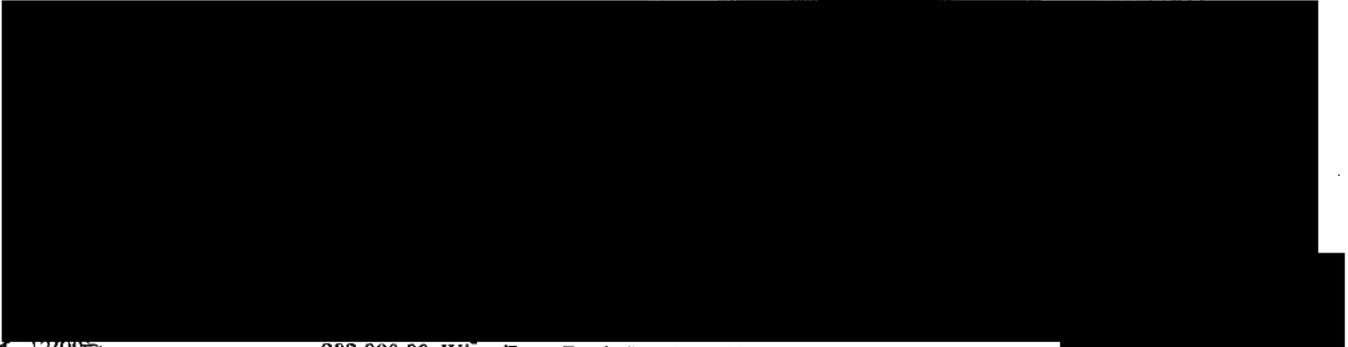
Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
Tel: [888-426-4370](tel:888-426-4370)  
Fax: [347-572-0439](tel:347-572-0439)

EMPIRE UNITED LINES CO.,INC.

Page 6 of 20  
Statement Period  
12/01/10 through 12/31/10  
E00 P PC 9C 62  
Enclosures 139  
Account Number 0093 8000 9007

Deposits and Credits - Continued

Date Customer Posted Reference	Amount (\$)	Description	Bank Reference
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V

12/09

202,000.00 Wire Type:Book IN Date:101209 Time:1416 Et  
 Trn:2010120900216526 Sndr Ref:2010343002699  
 Orig:Baltic Auto Shipping Inc ID:291002688873  
 Pmt Det:Retn of the loan 903712090216526

