

**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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**AMENDED VERIFIED COMPLAINT**

Complainant Baltic Auto Shipping, Inc. ("Complainant") by its undersigned attorney, Marcus A. Nussbaum, Esq., files this complaint against the respondents herein, alleging violations of the Shipping act of 1984, 46 U.S.C. §40101, et. Seq. (the "Shipping Act") as follows:

**I. Complainant**

1. Complainant Baltic Auto Shipping, Inc. is a corporation organized and existing under the laws of Illinois with a principal place of business at 5811 W. 66<sup>th</sup> Street, Bedford Park, IL60638.

**II. Respondents**

2. Respondent Michael Hitrinov ("Hitrinov") is an adult individual and is a citizen of the State of New York who maintains a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223.

3. Respondent Empire United Lines Co., Inc. ("EUL") is a closely held corporation

organized and existing under the laws of the State of New York with a principal place of business at 2303 Coney Island Avenue, Brooklyn, NY 11223. EUL also maintains a place of business at 52 Butler Street, in Elizabeth, New Jersey.

4. Respondent EUL is in the business of providing services as an ocean transportation intermediary, and operates as a non-vessel operating common carrier (“NVOCC”).

5. Respondent Hitrinov is the sole principal and officer of EUL.

6. The operation and supervision of EUL’s day-to-day activities are conducted by respondent Hitrinov.

7. At all times hereinafter mentioned, EUL is and was licensed by the Federal Maritime Commission as an ocean freight forwarder and/or a non-vessel operating common carrier (“NVOCC”) under license number 012052.

### **III. Jurisdiction**

8. The Federal Maritime Commission (“FMC”) has subject matter jurisdiction over the claims in this action as this matter relates to contracts for carriage of goods by sea from ports of the United States in foreign trade and thus comes under the Carriage of Goods by Sea Act (“COGSA”), 46 U.S.C.S. § 30701, and the Shipping act of 1984, 46 U.S.C. §40101, et. Seq.

9. Complainant 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; (2) by resorting to unfair and unjust discriminatory methods because the Complainants have patronized another carrier; (3) by engaging in unfair and unjust discriminatory practice in the matter of rates and charges by charging rates not in accordance with EUL’s tariff on file with the Commission; (4) by engaging in unfair and unjust discriminatory

practice in the matter of the loading and landing of freight and adjustment and settlement of claims; and (5) by unreasonably refusing to deal or negotiate.

10. EUL is a non-vessel operating common carrier within the meaning of the Shipping Act.

#### **IV. Statement of Facts and Matters Complained of**

11. As set forth in detail below, the respondents have provided service in the liner trade that is not in accordance with rates, charges, classifications, rules, and practices contained in a tariff published with the Commission. The Respondent also engaged in an unfair and unjust discriminatory practice in the matter of rates or charges by charging the Complainant rates higher than that charged other shippers. Finally the Respondents failed to keep open to public inspection in its tariff system tariffs showing all its rates charges classifications rules and practices between all points or ports on its own route and on any through transportation route that has been established.

12. From approximately November of 2007 through January of 2012, Complainants, via EUL, shipped containers with automobiles acquired by Complainants on behalf of foreign customers to ports abroad including, without limitation, the Port of the port of Kleipeda, Lithuania. Said containers contained in excess of 4000 used automobiles valued in excess of \$5,000,000.

13. Due to concerns about the rates it was being charged for transportation services provided by EUL, Complainant conducted an audit of the shipping related documents provided to Complainant by EUL for the period from 2007 through January of 2012. That audit revealed that EUL charged Complainant for shipments in excess of the amounts set forth in EUL's tariff. The amount Complainant was overcharged and the amount it overpaid for shipments was in excess of \$200,000.00 for that time period.

14. Upon information and belief, EUL did not have tariffs on file for various shipments handled by it on behalf of Complainant.

15. During the time period from November of 2007 through January of 2012, EUL billed Complainant in excess of \$200,000.00 for shipments for which it had no tariff on file.

16. Upon information and belief Complainant believes that EUL has overcharged it by billing amounts in excess of its lawful tariff from 2007 through January of 2012.

17. Complainant only learned that EUL was billing it for amounts in excess of its published tariff when it conducted an audit of the shipping related documents provided to Complainant by EUL for the period from 2007 through January of 2012. Complainant engaged in this analysis due to concern as to the rates it was being charged by EUL.

18. Prior to January of 2012 Complainant neither knew nor could have known that EUL was charging it for amounts in excess of EUL's published tariff.

19. EUL engaged in an unfair and unjustly discriminatory practice by charging Complainant rates greater than those it charged other shippers.

20. 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.

21. At all times alleged herein, EUL and Hitrinov failed to provide Complainant with proper and lawful documents of ownership (bills of lading), nor did they ever provide shipping invoices nor the terms and conditions of transport even though Complainant paid respondents. Respondents failed to deal in good faith and provide proof of ownership with a correct original bill of lading and contract of transport in a timely manner to the Complainant.

## **V. Violations of the Shipping Act**

A. EUL violated 46 U.S.C. §§ 41104(2)(a), 41104(4)(a) and 41104(8) by charging Complainant rates greater than those it charged other shippers.

B. EUL violated 46 U.S.C. §§ 41104(2)(a), 41104(4)(a) and 41104(8) by charging Complainant rates greater than those reflected in its published tariff.

C. EUL violated 46 U.S.C. § 40501(a) by failing to keep open to public inspection in its tariff system tariffs showing all its rates charges classifications rules and practices between all points or ports on its own route and on any through transportation route that has been established.

D. EUL violated 46 U.S.C. §41102(c) by failing to provide Complainant with: (1) proper and lawful documents of ownership (bills of lading); (2) shipping invoices; and (3) the terms and conditions of transport even though Complainant paid respondents. Respondents failed to deal in good faith and provide proof of ownership with a correct original bill of lading and contract of transport in a timely manner to the Complainant.

## **VII. Injury to Complainant**

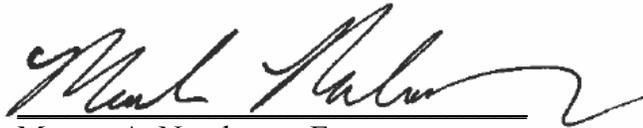
A. As a result of respondents' aforementioned violations of the Shipping Act of 1984, the complainant has sustained and continue to sustain injuries and damages in excess of \$400,000.00. The full extent of damages can only be determined after obtaining discovery in regard to the entire time period for which EUL has been overcharging Complainant and the dollar amount of such overcharges.

## **VIII. Prayer for Relief**

A. Statement regarding ADR procedures: Alternative dispute resolution procedures were not used prior to filing the Complaint and Complainant has not consulted with the Commission Dispute Resolution Specialist about utilizing alternative

dispute resolution.

- B. **WHEREFORE**, Complainant prays that respondents be required to answer the charges herein; that after due hearing, an order be made commanding said respondent to pay to Complainant by way of reparations for the unlawful conduct hereinabove described the sums described herein, with interest and attorney's fees or such other sum as the Commission may determine to be proper as an award of reparation; and that such other and further order or orders be made as the Commission determines to be proper in the premises.
- C. Complainant requests a hearing on this matter, and further requests that the hearing be held in Washington, D.C.



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Dated: January 8, 2015

