

**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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**APPENDIX TO COMPLAINANT’S SUPPLEMENTAL MEMORANDUM IN  
OPPOSITION TO RESPONDENTS’ MOTION FOR PARTIAL SUMMARY DECISION**

- APPENDIX 1 - TRANSCRIPT FROM THE JUNE 12, 2015 ORAL ARGUMENT ON RESPONDENTS’ MOTION FOR PARTIAL SUMMARY DECISION
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- APPENDIX 7 - RESPONDENTS’ INVOICE, HOUSE BILL OF LADING, AND AFFIDAVIT FROM THE MATTER OF EASY EXPORT INC. v. MICHAEL HITRINOV ET AL., U.S.D.C. E.D.N.Y. DOCKET NO.: 09-CV-04714
- APPENDIX 8 - U.S.D.C. D.N.J. ORDER BY HON. FATH S. HOCHBERG, DATED DECEMBER 7, 2011
- APPENDIX 9 - U.S.D.C. D.N.J. ORDER BY HON. FATH S. HOCHBERG, DATED JANUARY 16, 2015

# APPENDIX “1”

FEDERAL MARITIME COMMISSION

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BALTIC AUTO SHIPPING, INC. v. MICHAEL HITRINOV  
a/k/a MICHAEL KHITRINOV AND EMPIRE UNITED LINES  
CO., INC.  
DOCKET NO. 14-16  
ORAL ARGUMENTS

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FRIDAY, JUNE 12, 2015

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The Proceedings convened at 800 North Capitol  
Street, NW., Washington, D.C., pursuant to notice  
at 9:56 a.m.

BEFORE:

JUDGE CLAY G. GUTHRIDGE  
Administrative Law Judge

ON BEHALF OF PARTIES:

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\* \* \* \* \*

<p>1 P R O C E E D I N G S</p> <p>2 JUDGE GUTHRIDGE: This is Federal</p> <p>3 Maritime Commission Docket No. 14-16, Baltic Auto</p> <p>4 Shipping, Inc., v. Michael Hitrinov a/k/a Michael</p> <p>5 Khitrinov. And then Empire United Line Company,</p> <p>6 Inc. Judge Guthridge presiding. It is right now</p> <p>7 9:56 on June 12, 2015.</p> <p>8 Can I have appearances for counsel,</p> <p>9 please, starting with Complaint's?</p> <p>10 MR. NUSSBAUM: Good morning, Your Honor.</p> <p>11 This is Marcus Nussbaum for Complainant, Baltic</p> <p>12 Auto Shipping, Inc.</p> <p>13 MR. DOYLE: Good morning, Your Honor.</p> <p>14 This is Gerard Doyle and David Gabel for the</p> <p>15 Respondents, Empire United Lines and Michael</p> <p>16 Hitrinov.</p> <p>17 JUDGE GUTHRIDGE: Okay. We're here on</p> <p>18 Respondent's Motion for Partial Primary Decision</p> <p>19 that was filed March 23, 2015. Response has been</p> <p>20 filed and supplemental responses. And Empire has</p> <p>21 filed a reply.</p> <p>22 Empire -- in its motion, Empire contends</p> <p style="text-align: right;">Page 2</p>	<p>1 on its own routes and not any group transportation</p> <p>2 routes that had been established; and that Empire</p> <p>3 violated section 41102(c) by failing to provide</p> <p>4 Complainant with proper and lawful documents of</p> <p>5 ownership (bills of lading) shipping invoices, and</p> <p>6 the terms and submissions of transport, even</p> <p>7 though Complainant paid Respondent. Respondent</p> <p>8 failed to deal in good faith and provide proof of</p> <p>9 ownership with a correct original bill of lading</p> <p>10 and contracted transport in a timely manner to the</p> <p>11 Complainant.</p> <p>12 So do the parties understand? I'm</p> <p>13 assuming those allegations to be true for the</p> <p>14 purposes of this motion.</p> <p>15 MR. NUSSBAUM: Yes, Your Honor.</p> <p>16 MR. DOYLE: Understood, Your Honor.</p> <p>17 JUDGE GUTHRIDGE: Okay. So the question</p> <p>18 raised by Empire's motion is whether based on the</p> <p>19 material facts as to which there is no genuine</p> <p>20 dispute Baltic filed its complaint more than three</p> <p>21 years after the claims accrued. And the second is</p> <p>22 whether the settlement of the New Jersey case bars</p> <p style="text-align: right;">Page 4</p>
<p>1 that the complaint was filed more than three years</p> <p>2 after Baltic's claims accrued, and therefore, the</p> <p>3 claim for reparation must be dismissed as time</p> <p>4 barred. And Empire also contends that certain</p> <p>5 elements at least of the complaint for reparations</p> <p>6 is barred by the settlement agreement and the</p> <p>7 mutual release the parties entered into in the New</p> <p>8 Jersey case in 2011.</p> <p>9 Let me start off by saying for the</p> <p>10 purposes of this motion, I'm going to assume that</p> <p>11 Empire violated the Shipping Act as alleged in the</p> <p>12 complaint. That is, that Empire charged</p> <p>13 complainant rates greater than those charged other</p> <p>14 shippers in violation of 46 USC Section</p> <p>15 41104(2)(a), 41104(4)(a), and 41104(a); and that</p> <p>16 Empire charged Complainant rates greater than</p> <p>17 those reflected in its published tariff, in</p> <p>18 violation of the same three sections; that Empire</p> <p>19 violated 46 USC 40501(a), by failing to keep open</p> <p>20 to public inspection tariff systems -- tariffs</p> <p>21 showing all rates, charges, classifications,</p> <p>22 rules, and practices between all points or ports</p> <p style="text-align: right;">Page 3</p>	<p>1 any or some role of the claim.</p> <p>2 Mr. Nussbaum, I want to start by asking</p> <p>3 you some questions about -- to make sure I</p> <p>4 understand what actually went on with this</p> <p>5 relationship. As I understand it, the business</p> <p>6 relationship began sometime in 2007; is that</p> <p>7 correct?</p> <p>8 MR. NUSSBAUM: That's correct, Your</p> <p>9 Honor.</p> <p>10 JUDGE GUTHRIDGE: And then there were</p> <p>11 several years of shipments between 2007 and 2011</p> <p>12 between the parties.</p> <p>13 MR. NUSSBAUM: That's --</p> <p>14 JUDGE GUTHRIDGE: There's a -- the audit</p> <p>15 that was submitted -- that was prepared by Laura</p> <p>16 Supranos -- is that how her name is name is</p> <p>17 pronounced?</p> <p>18 MR. NUSSBAUM: That's correct, Your</p> <p>19 Honor.</p> <p>20 JUDGE GUTHRIDGE: Okay. Exhibit X to</p> <p>21 the -- how do you pronounce -- is it Presniacova?</p> <p>22 MR. NUSSBAUM: Presniacova.</p> <p style="text-align: right;">Page 5</p>

1 JUDGE GUTHRIDGE: Yeah. Mr.  
2 Presniacova's affidavit or declaration -- I forget  
3 what that was -- identifies the shipment or most  
4 of the shipment throughout the year. It didn't  
5 have any numbers for how many shipments occurred  
6 in 2007 or 2008, but then according to her audit,  
7 there were 451 containers shipped in 2009, and  
8 1,379 containers in 2010, and 650 containers  
9 shipped in 2011.

10 MR. NUSSBAUM: That's correct, Your  
11 Honor.

12 JUDGE GUTHRIDGE: Okay. Now, then, in  
13 2011, as we know from the New Jersey complaint,  
14 there are problems, or at least Baltic perceived  
15 there were problems with the relationship, and  
16 filed suit in the New Jersey District Court.

17 Now, the complaint, the New Jersey  
18 District Court complaint, alleges 167 containers  
19 were still in transit at that time. Is that  
20 correct, Mr. Nussbaum?

21 MR. NUSSBAUM: That's correct, Your  
22 Honor.

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1 this. So is it correct to infer that by the time  
2 the New Jersey complaint was filed, and probably  
3 for several years in advance, that all of the  
4 shipments in 2007, 2008, 2009, 2010, had been  
5 delivered; is that correct?

6 MR. NUSSBAUM: Correct.

7 JUDGE GUTHRIDGE: Okay. Now, and then  
8 there was the allegation of 167 shipments were in  
9 transit but the settlement agreement addressed 162  
10 shipments. What was the reason for that  
11 difference?

12 MR. NUSSBAUM: Your Honor, I don't have  
13 the answer for that right now but I can always  
14 consult with my client and produce something in  
15 writing to that effect to answer that question.

16 JUDGE GUTHRIDGE: Well, let me put it  
17 this way. There were 167 -- allegations of 167  
18 shipments in transit at the time of the New Jersey  
19 complaint, the settlement was 162 shipments, and  
20 there's evidence in the record with the emails  
21 between -- I think it was Mr. Hitrinov and Ms.  
22 Supranos regarding five containers that were

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1 JUDGE GUTHRIDGE: And those were all  
2 2011 shipments; is that correct?

3 MR. NUSSBAUM: Bear with me for one  
4 second, Your Honor. I just want to --

5 JUDGE GUTHRIDGE: All the shipments that  
6 were subject to the New Jersey complaint were  
7 shipments that came in in 2011 at some point?

8 MR. NUSSBAUM: Your Honor, if that's  
9 what it says in the complaint, then I don't  
10 dispute that.

11 JUDGE GUTHRIDGE: Okay. So when Baltic  
12 filed that complaint, was its intent to ensure  
13 delivery of all the shipments it had -- that were  
14 in transit at that time?

15 MR. NUSSBAUM: That's correct, Your  
16 Honor, because Baltic's position is that at that  
17 point it was, you know, unless it's being held  
18 hostage with this containers that were out there  
19 or that were already accruing storage or demurrage  
20 charges, Baltic's customers were already beating  
21 down the doors.

22 JUDGE GUTHRIDGE: Well, let me ask you

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1 removed from the settlement. Is that correct?

2 MR. NUSSBAUM: Bear with me for one  
3 second, Your Honor. I'd just like to check my  
4 notes.

5 JUDGE GUTHRIDGE: I'm looking at an  
6 email that was included in Empire's Reply, email  
7 exchanges between Michael Hitrinov and Laura  
8 Supranos on November 25, 2011.

9 MR. NUSSBAUM: Your Honor, if I  
10 understand correctly, you're referring to those  
11 five -- to those five bookings from Long Beach,  
12 California.

13 JUDGE GUTHRIDGE: Yes. They are also  
14 identified in -- somewhere, as five shipments that  
15 were identified in this email. I mean, it's  
16 Empire transaction number EUL -- 038EUL, 454229,  
17 454218, 455665, 455667, and 486081.

18 MR. NUSSBAUM: Okay. Your Honor.

19 JUDGE GUTHRIDGE: So those five  
20 shipments were not included in the settlement; is  
21 that correct?

22 MR. NUSSBAUM: Yes, that's correct.

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1 They were not included in the settlement  
2 agreement. And the reason why --  
3 JUDGE GUTHRIDGE: I'm sorry?  
4 MR. NUSSBAUM: They were not included in  
5 the settlement agreement, Your Honor. The reason  
6 why is because Baltic's customer had agreed to --  
7 bear with me one second, Your Honor.  
8 JUDGE GUTHRIDGE: Well, Mr. Hitrinov's  
9 email says that they were request -- these five  
10 shipments requested in writing by company M.E.  
11 Baltic to be put on their account.  
12 What company is M.E. Baltic?  
13 MR. NUSSBAUM: Your Honor, I spoke with  
14 my client about this, and what my client had  
15 explained to me is that those shipments belonged  
16 to a client of Baltic's. I -- as part of the  
17 subpoenaed documents that we received from the  
18 Mediterranean Shipping Company, what I actually  
19 have here, and I understand that this is part of  
20 the policy and procedures of the Bureau of Customs  
21 and Border Protection for export out of the Port  
22 of Los Angeles in Long Beach. They require a

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1 cover letter that goes along with the validated  
2 titles for the automobiles that are being  
3 exported. And I have that cover letter, which is  
4 validated together with the titles and which  
5 actually identify Baltic as the exporter.  
6 JUDGE GUTHRIDGE: You're talking about  
7 the Complainant, Baltic?  
8 MR. NUSSBAUM: That's correct.  
9 JUDGE GUTHRIDGE: Okay. Now, why  
10 weren't they included in the settlement agreement  
11 then if Baltic -- if Baltic was interested in  
12 getting all of its containers?  
13 MR. NUSSBAUM: They were not included,  
14 Your Honor, it's because these were those five  
15 bookings from which Empire had collected directly  
16 from Baltic's customer, \$175 per container.  
17 JUDGE GUTHRIDGE: All right. And so had  
18 that transaction taken place before the New Jersey  
19 settlement?  
20 MR. NUSSBAUM: No, Your Honor. What we  
21 discovered is that had taken place -- I believe it  
22 was early January of 2012.

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1 JUDGE GUTHRIDGE: So why weren't -- then  
2 why weren't they included in the settlement  
3 agreement?  
4 MR. NUSSBAUM: They were not included in  
5 the settlement agreement, Your Honor, because --  
6 JUDGE GUTHRIDGE: We're talking about a  
7 transaction that occurred after the settlement  
8 agreement?  
9 MR. NUSSBAUM: Your Honor, this  
10 transaction occurred -- we understand that it  
11 occurred after the settlement agreement was  
12 executed, and therefore, they fall outside of the  
13 settlement agreement.  
14 MR. DOYLE: Your Honor, this is Rod  
15 Doyle. May I be heard for a moment?  
16 JUDGE GUTHRIDGE: That's not an answer.  
17 Please, Mr. Doyle, you'll get your chance.  
18 MR. DOYLE: Thank you.  
19 JUDGE GUTHRIDGE: Mr. Nussbaum, what my  
20 question is, that transaction you're now talking  
21 about in January occurred after the settlement  
22 agreement; is that correct?

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1 MR. NUSSBAUM: That's correct, Your  
2 Honor.  
3 JUDGE GUTHRIDGE: So my question is, why  
4 were not -- if these were Baltic shipments --  
5 Complaint Baltic's shipments, why were they not  
6 included in the settlement agreement?  
7 MR. NUSSBAUM: Bear with me for one  
8 second, Your Honor. I just want to check my  
9 notes.  
10 Okay, Your Honor. The reason they were  
11 not included in the settlement agreement is  
12 because Baltic's customers agreed to pay the  
13 additional charges in order to get the cargo  
14 released.  
15 JUDGE GUTHRIDGE: So the customer agreed  
16 to pay?  
17 MR. NUSSBAUM: That's correct.  
18 JUDGE GUTHRIDGE: Is that customer M.E.  
19 Baltic?  
20 MR. NUSSBAUM: No. No, Your Honor.  
21 JUDGE GUTHRIDGE: Who was the customer?  
22 MR. NUSSBAUM: I have one name on the

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1 documents in front of me right now. That's G&G  
 2 Auto Sales.  
 3 JUDGE GUTHRIDGE: I'm sorry, what was  
 4 it?  
 5 MR. NUSSBAUM: G&G. It's G ampersand G.  
 6 JUDGE GUTHRIDGE: G&G?  
 7 MR. NUSSBAUM: Yeah, G&G Auto Sales.  
 8 JUDGE GUTHRIDGE: Okay. Now, for those  
 9 167 shipments, Mr. Nussbaum, those shipments all  
 10 began prior to -- obviously, prior to the time  
 11 when Baltic filed its New Jersey case; is that  
 12 correct?  
 13 MR. NUSSBAUM: That's correct.  
 14 JUDGE GUTHRIDGE: And with the exception  
 15 of maybe some extra charges that you're talking  
 16 about here that G&G agreed to pay, the freight  
 17 rate was established at the time the -- at or  
 18 around the time that the shipment began; is that  
 19 correct?  
 20 MR. NUSSBAUM: My understanding is that  
 21 these were the freight rates that were presented  
 22 to Baltic and which Baltic booked the shipment

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1 pursuant to.  
 2 JUDGE GUTHRIDGE: Okay. So Baltic knew  
 3 at the commencement of all the shipments what it  
 4 was going to pay for the shipments; is that right?  
 5 MR. NUSSBAUM: That's correct, Your  
 6 Honor, per the -- per the emails containing the  
 7 rates that Baltic was provided with.  
 8 JUDGE GUTHRIDGE: Okay. Then, in  
 9 opposition to the motion, Baltic states that there  
 10 were shipments that occurred post-settlement,  
 11 after the New Jersey settlement; is that correct?  
 12 MR. NUSSBAUM: That's correct, Your  
 13 Honor.  
 14 JUDGE GUTHRIDGE: And is that -- are  
 15 those -- the only shipments I saw or the  
 16 containers I saw referenced were the -- included  
 17 in the 21 shipments that were in the end counter  
 18 of documents that were sent in by the Respondent.  
 19 MR. NUSSBAUM: That's correct, Your  
 20 Honor.  
 21 JUDGE GUTHRIDGE: Is that the only other  
 22 shipments that there are?

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1 MR. NUSSBAUM: That's correct.  
 2 JUDGE GUTHRIDGE: Okay. And there were  
 3 21 shipments in those end counter documents, but  
 4 Baltic lists 18 in the top position; is that  
 5 correct?  
 6 MR. NUSSBAUM: Your Honor, I would have  
 7 to go back and double check.  
 8 JUDGE GUTHRIDGE: I think it's attached  
 9 to Mr. Hitrinov's audit.  
 10 MR. NUSSBAUM: Okay.  
 11 JUDGE GUTHRIDGE: Freight paid. The  
 12 very last document, the very last page in Baltic's  
 13 exhibit that was submitted in opposition. There  
 14 are 18 containers listed as freight paid in  
 15 tariffs 2012.  
 16 MR. NUSSBAUM: That's correct. It does  
 17 say -- it does say 18, Your Honor.  
 18 JUDGE GUTHRIDGE: Okay. And then --  
 19 what happened to the other three, out of  
 20 curiosity?  
 21 MR. NUSSBAUM: Bear with me for one  
 22 second, Your Honor.

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1 Your Honor, the other three were in  
 2 2011.  
 3 JUDGE GUTHRIDGE: Oh, they're in the  
 4 2011?  
 5 MR. NUSSBAUM: That's correct, Your  
 6 Honor. Three of those are in December of 2011.  
 7 JUDGE GUTHRIDGE: Okay. Now, as I see  
 8 it, then there are really three groups of  
 9 shipments that we can talk about here, and they  
 10 might get different treatment depending on which  
 11 group they're in. The shipments that were begun  
 12 between 2007 and 2011 that had been delivered and  
 13 shipment completed before Baltic commenced its New  
 14 Jersey action; there are the 167 or 162, depending  
 15 on how it's counted, that were -- that were --  
 16 well, 162 that were involved in the 2011 New  
 17 Jersey settlement; and then the 18 -- the 21 that  
 18 were not included in the -- let me back up.  
 19 Those three shipments that occurred in  
 20 December -- did they commenced in December 2011;  
 21 is that correct?  
 22 MR. NUSSBAUM: That's correct, Your

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1 Honor.

2 JUDGE GUTHRIDGE: Okay. And so those 21

3 shipments that were represented by a document that

4 submitted in camera by Empire.

5 Do you understand that is three groups?

6 MR. NUSSBAUM: Yes.

7 JUDGE GUTHRIDGE: Okay. Now, on those

8 21 shipments, what was Baltic's --

9 Those 21 shipments that were

10 post-settlement, what was Baltic's role in those

11 shipments? Complainant Baltic?

12 MR. NUSSBAUM: Okay. Your Honor, I

13 understand that Baltic's role in those shipments

14 was either -- either as the merchant for vehicles

15 that it had owned, or as an NVOCC, where it was

16 shipping the vehicles on behalf of its client.

17 And for those, we have powers of attorney and

18 shipping letters of instruction.

19 JUDGE GUTHRIDGE: You say that for the

20 shipments on which Baltic was acting as NVOCC, are

21 those Baltic's records of that submitted as part

22 of your exhibit?

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1 are you claiming they should be filed in camera or

2 sealed?

3 MR. NUSSBAUM: Yes. Yes, we are, Your

4 Honor.

5 JUDGE GUTHRIDGE: And why is that?

6 MR. NUSSBAUM: Because of their

7 confidential nature.

8 JUDGE GUTHRIDGE: Well, they are more

9 than three years old; is that correct?

10 MR. NUSSBAUM: They are.

11 JUDGE GUTHRIDGE: Are they anything

12 other than ordinary business records? Is there

13 some other element of confidentiality in them?

14 MR. NUSSBAUM: Well, Your Honor, they

15 identify my client's customers, and they're still

16 working together. But in some substance, they are

17 the powers of attorney and shipping letters of

18 instruction.

19 JUDGE GUTHRIDGE: No, but I mean what's

20 the business -- why is it a trade secret still or

21 why would it -- you think it would -- those -- I

22 just want to be very cautious in their orders.

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1 MR. NUSSBAUM: They were not submitted,

2 Your Honor, but we can submit them now if

3 necessary.

4 JUDGE GUTHRIDGE: Why weren't they

5 submitted?

6 MR. NUSSBAUM: My client had an issue

7 due to the confidential nature of these documents.

8 JUDGE GUTHRIDGE: Are you talking about

9 -- so this is the 21 shipments as a result of a

10 ruling April 1st. Do you think they're

11 confidential by that?

12 MR. NUSSBAUM: That's correct, Your

13 Honor.

14 JUDGE GUTHRIDGE: I think I'm going to

15 need to see those documents. If Baltic is

16 claiming that it was the shipper -- that it was

17 involved in those shipments and has a right to

18 bring an action, I'm going to need to see those.

19 MR. NUSSBAUM: Okay. I can FedEx those

20 documents to the Commission right away, Your

21 Honor.

22 JUDGE GUTHRIDGE: Are you claiming --

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1 There were no -- Empire -- rather, Baltic Savannah

2 was authorizing release of shipments which didn't

3 indicate that they were involved in it at all, at

4 least in the shipping records that I got from

5 Empire.

6 But I guess if you're contending -- if

7 Baltic is contending that those records should be

8 confidential, then submit it confidentially, but

9 with an explanation, and I think we have rules

10 that address this, of why they should be

11 confidential.

12 MR. NUSSBAUM: Okay. So I will put

13 something -- I will basically put together an

14 explanation, Your Honor. And I understand, I

15 guess, that the Commission can make a ruling at

16 that point as to whether or not they should be

17 held as confidential.

18 JUDGE GUTHRIDGE: Yeah, because, I mean,

19 the reason I did not divulge -- I didn't release

20 the other ones is because there was nothing

21 connecting them to anybody who appeared -- they

22 were connected to Baltic Savannah but not Baltic

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1 Illinois. I think those were the two terms I  
 2 used.

3 MR. NUSSBAUM: I understand.

4 JUDGE GUTHRIDGE: Okay. So anyway, as I  
 5 said, I see those as the three groups of shipments  
 6 then. And I'm not sure where to place those five  
 7 that were removed from the settlement agreement  
 8 and then that Baltic is now claiming are part of  
 9 this case.

10 MR. NUSSBAUM: Well, with respect to the  
 11 five, Your Honor, together with the powers of  
 12 attorney and the shipping letter of instructions  
 13 for the 21 bookings from Savannah, I can -- I can  
 14 also forward to the Commission the documentation  
 15 which we received from Mediterranean Shipping  
 16 Company as part of their production in response to  
 17 the Commission's subpoena regarding those five  
 18 bookings from Long Beach.

19 JUDGE GUTHRIDGE: Okay. When you send  
 20 those to the Commission, are you going to send  
 21 them to Baltic -- I mean, to Empire? I mean,  
 22 Empire was allegedly the carrier on it. It

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1 certainly should already have them.

2 MR. NUSSBAUM: Yes.

3 JUDGE GUTHRIDGE: So it's not going to  
 4 be revealing anything to them that they don't  
 5 already know.

6 MR. NUSSBAUM: Yes. Yes, I can forward  
 7 a copy to Empire.

8 JUDGE GUTHRIDGE: Okay. All right.  
 9 Now, Baltic filed its complaint November 28, 2014,  
 10 and then on my instructions, on my order, filed an  
 11 amended complaint January 8, 2015. Pursuant to  
 12 that order, Baltic was ordered to make more  
 13 explicit which sections of the act it believed  
 14 were violated.

15 I compared the original complaint and  
 16 the amended complaint, and I did not note any  
 17 changes in parts one, two, three, seven, or eight  
 18 of the -- you know, between the two complaints.  
 19 There is no part six identified. Am I correct in  
 20 that? Did I miss something, Mr. Nussbaum?

21 MR. NUSSBAUM: No, that's correct, Your  
 22 Honor.

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1 JUDGE GUTHRIDGE: Actually, there  
 2 weren't any changes to part four either. All the  
 3 changes were in part five; is that correct?

4 MR. NUSSBAUM: I believe so, Your Honor.  
 5 If I recall correctly, the Commission's order  
 6 directed me to include the subparts of the  
 7 Shipping Act violations that we were alleging to  
 8 have been violated by the Respondent.

9 JUDGE GUTHRIDGE: Okay. Okay. So if I  
 10 say complaint, amended complaint, I'm referring to  
 11 essentially the same document -- the same  
 12 information, same allegations except with the  
 13 differences -- the changes in part five of the  
 14 two. So just so the record is clear on that.  
 15 Unless I explicitly say it, I don't intend to  
 16 imply anything different by saying complaint or  
 17 amended complaint.

18 I want to start with the amended  
 19 complaint, part 5D, Mr. Nussbaum. That alleges  
 20 that Empire violated 41102(c) by failing to  
 21 provide Complainant with proper and lawful  
 22 documents of ownership (bills of lading); shipping

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1 invoices and the terms and conditions of  
 2 transport, even though Complainant paid  
 3 Respondent. Respondent failed to deal in good  
 4 faith and provide proof of ownership with a  
 5 correct bill of lading and contract for transport  
 6 in a timely manner to the Complainant.

7 Now, for all that group of documents we  
 8 talked about -- I'm sorry, group of shipments --  
 9 strike that.

10 Okay. Okay, yeah, for the shipments  
 11 between 2007 and 2011 that had been -- the  
 12 transportation had been completed and the  
 13 shipments delivered, Empire's alleged failure to  
 14 provide those documents occurred at the time of  
 15 those shipments; didn't it, Mr. Nussbaum?

16 MR. NUSSBAUM: That's correct, Your  
 17 Honor. However, I just wanted just to note for  
 18 the record that those same documents were  
 19 requested repeatedly, even after the time of  
 20 shipment.

21 JUDGE GUTHRIDGE: All right. But, in  
 22 fact, I saw -- I think there's a reference where

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1 Mr. Presniacova's affidavit, paragraph 10, it  
2 talks about in mid-2008 and 2009, Empire would not  
3 produce the shipping documents. I did note that.  
4 And arguably, there were a number of requests.  
5 MR. NUSSBAUM: Yes.  
6 JUDGE GUTHRIDGE: All of those shipments  
7 had been delivered and the transportation was  
8 completed. All those failures to produce occurred  
9 more than three years before Baltic filed its  
10 complaint, didn't it -- didn't they?  
11 MR. NUSSBAUM: Yes, Your Honor. But I  
12 just wanted to note one more thing because we have  
13 alleged that this failure to provide the shipping  
14 documents is a continuing violation, and the  
15 argument is that we fixed that last date of the  
16 continuing violation to be the date that the 2011  
17 settlement agreement was signed, which paragraph  
18 11, which we argue calls for the production of  
19 those documents.  
20 JUDGE GUTHRIDGE: In regards to the  
21 first thing -- so, it seems -- are you -- is  
22 Baltic claiming that there's a continuing

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1 obligation such that if a shipper ships one  
2 container, let's say, in 2007, and the carrier  
3 fails to provide it with the documents, here in  
4 2015, the shipper could file a complaint with the  
5 Commission and it would be timely because there's  
6 been a continuing failure to provide those  
7 documents?  
8 MR. NUSSBAUM: So long as the request  
9 was made multiple times and within three years of  
10 filing the claim.  
11 JUDGE GUTHRIDGE: So, a shipper,  
12 according to Baltic's theory, a shipper can make a  
13 shipment every three years within three years,  
14 say, "Hey," to the carrier, "You still haven't  
15 given me those documents." And would continue  
16 that as a violation ad infinitum. Is that what  
17 you're saying?  
18 MR. NUSSBAUM: Yes, Your Honor. And  
19 again, I just -- I respectfully refer the  
20 Commission to paragraph 11 of the 2011 settlement  
21 agreement, which actually specifically stated that  
22 the parties shall execute, deliver any old

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1 documents, and get such instructions that their  
2 agents deem may be necessary for effectuation of  
3 the terms and conditions of this agreement, which  
4 at that point, as I said, that brings it within  
5 the three years.  
6 JUDGE GUTHRIDGE: So what you're saying  
7 though is by -- are you saying that by failing to  
8 produce the documents after the settlement  
9 agreement, they violated the Shipping Act, or  
10 Empire violated the settlement agreement?  
11 MR. NUSSBAUM: Both, Your Honor.  
12 JUDGE GUTHRIDGE: And what -- was it --  
13 is Baltic's contention that it settled an  
14 agreement that obligated Empire to produce  
15 documents from 2007, 2008, 2009, 2010, and 2011  
16 shipments that had already been delivered?  
17 MR. NUSSBAUM: Yes, Your Honor.  
18 JUDGE GUTHRIDGE: Where does it say --  
19 how is that necessary for the effectuation of the  
20 terms and conditions of this agreement with 162  
21 shipments?  
22 MR. NUSSBAUM: Your Honor, it's Baltic's

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1 contention that because -- because there was a  
2 mutual release -- from the time up until the date  
3 of the release, that it covers the time period  
4 that you just mentioned.  
5 JUDGE GUTHRIDGE: So the settle -- what  
6 you're saying is the settlement agreement  
7 obligated Empire to produce those documents?  
8 MR. NUSSBAUM: Yes, Your Honor.  
9 JUDGE GUTHRIDGE: Does the Commission  
10 have jurisdiction to interpretate -- interpret  
11 this settlement agreement that was entered by a  
12 United States District Court? Why isn't that for  
13 the court to interpret, especially since the court  
14 explicitly -- and in fact, it looks like -- is it  
15 Judge Hochberg or Hoch -- Hochberg -- how is that  
16 pronounced?  
17 MR. NUSSBAUM: I believe it was Judge  
18 Hochberg.  
19 JUDGE GUTHRIDGE: I know who it was. I  
20 was just asking about pronunciation. Is it  
21 Hochberg?  
22 MR. NUSSBAUM: I think so.

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1 JUDGE GUTHRIDGE: Okay.  
 2 MR. NUSSBAUM: I was not involved in  
 3 that action, Your Honor.  
 4 JUDGE GUTHRIDGE: But Baltic was?  
 5 MR. NUSSBAUM: Yes.  
 6 JUDGE GUTHRIDGE: If the settlement  
 7 agreement is not consummated, the court will  
 8 entertain an application solely to enforce the  
 9 terms of the settlement agreement. So why -- if  
 10 it's Baltic's contention that the settlement  
 11 agreement obligated Empire to produce documents  
 12 all the way back to 2007 for every, what, 2,000 or  
 13 3,000 shipments, however many it was, why isn't it  
 14 up to Baltic to go to Judge Hochberg and say they  
 15 haven't complied with these agreements?  
 16 MR. NUSSBAUM: Your Honor, in answer to  
 17 that question, I again respectfully refer the  
 18 Commission to the case law in my brief that  
 19 discusses when there are breach of contract issues  
 20 that are intertwined with other issues that are  
 21 inherently Shipping Act violations that they said  
 22 they must be considered by the Commission.

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1 JUDGE GUTHRIDGE: I don't think that's  
 2 exactly what it says. But what you're saying, and  
 3 what you said a couple of minutes ago was that  
 4 this settlement agreement obligated Empire to  
 5 submit records all the way back to 2007. I'm  
 6 sorry, to forward shipping documents that had not  
 7 been -- allegedly had not been sent to Baltic, all  
 8 the way back to 2007.  
 9 MR. NUSSBAUM: Right.  
 10 JUDGE GUTHRIDGE: That was an  
 11 interpretation of the settlement agreement. I'm  
 12 asking, why isn't it up to the District Court of  
 13 New Jersey to interpret that settlement agreement,  
 14 not the Commission?  
 15 MR. NUSSBAUM: Well, Your Honor, again,  
 16 we came to the Commission with Shipping Act  
 17 violations, one of which was the failure to turn  
 18 over the -- among other things, was the failure to  
 19 turn over these documents.  
 20 JUDGE GUTHRIDGE: But you're saying --  
 21 you're relying on the settlement agreement as, you  
 22 say, the request within three years of the filing

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1 of the complaint that required Empire to produce  
 2 the documents back to '07. And what I'm saying to  
 3 you is, paragraph 11 of that says that Empire was  
 4 required to produce documents necessary to the  
 5 evacuation of the terms and conditions of this  
 6 agreement. And I'm saying, how were those --  
 7 production of those documents necessary for that  
 8 evacuation?  
 9 MR. NUSSBAUM: Your Honor, can I just --  
 10 in response to that, I also remind the Commission  
 11 that there was email communication between Baltic  
 12 and the Commission in November of 2011. I believe  
 13 it was Tara Nielsen in which Baltic had actually  
 14 explained to Ms. Nielsen in writing that Empire  
 15 did not provide --  
 16 JUDGE GUTHRIDGE: I saw those emails,  
 17 and as I recall, they occurred around November  
 18 21st, which was more than three years before  
 19 Baltic filed its complaint. Is that correct?  
 20 MR. NUSSBAUM: Yeah. And Your Honor,  
 21 that's the reason that this paragraph 11 was  
 22 actually put into the 2011 settlement agreement.

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1 JUDGE GUTHRIDGE: You're asking the  
 2 Commission then to interpret the 2011 New Jersey  
 3 settlement agreement entered by the court instead  
 4 of having the court determine it; is that right?  
 5 MR. NUSSBAUM: Yes, Your Honor.  
 6 JUDGE GUTHRIDGE: Okay. Now, the  
 7 complaint, as I read it, the complaint --  
 8 Part four of the complaint has specific  
 9 factual allegations, many of them -- most of them  
 10 related to specific -- or maybe to all of the four  
 11 violations of the act alleged. But there are some  
 12 that seem to be specific to the allegation in part  
 13 five. Actually, the one in part five -- or the  
 14 one related to part five be as paragraph 21 of  
 15 your complaint? It says, "At all times alleged  
 16 herein, EUL and Hitrinov failed to provide  
 17 complainant with proper and lawful documents," et  
 18 cetera?  
 19 MR. NUSSBAUM: Yes, Your Honor.  
 20 JUDGE GUTHRIDGE: Okay. And I see in  
 21 the 2011 complaint filed in New Jersey District  
 22 Court, paragraph 28, 29, and 30, there's

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1 information and belief that Empire was required by  
2 law to create and deliver a bill of lading and  
3 invoice to Plaintiff with respect to ongoing -- to  
4 the oceangoing and non-oceangoing transport of  
5 Plaintiff's vehicle. At all times relevant  
6 hereto, Empire failed and refused to deliver the  
7 Plaintiff's HBOLs and invoices for vehicles  
8 shipped overseas."

9 Paragraph 30, "In or around September  
10 2011, Plaintiff notified Defendants that the  
11 business relationship between the parties would be  
12 wound down and ultimately discontinued. At or  
13 about the same time, Plaintiff also demanded a  
14 copy of all HBOLs and invoices related to  
15 containers shipped pursuant to the parties'  
16 agreement."

17 And that's the New Jersey verified  
18 complaint that was signed on November 22, 2011,  
19 and filed with the court on November 23, 2011.

20 MR. NUSSBAUM: That's correct, Your  
21 Honor.

22 JUDGE GUTHRIDGE: Why couldn't -- those  
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1 -- that language is very similar to paragraph 21  
2 in the Federal Maritime Commission complaint.  
3 Baltic knew on November 22nd, when it signed the  
4 complaint, that it had a cause of action against  
5 Empire, or may have a cause of action, a claim  
6 against Empire with the Commission for failing to  
7 deliver those documents. Is that right?

8 MR. NUSSBAUM: That's correct, Your  
9 Honor.

10 JUDGE GUTHRIDGE: Okay. If your theory,  
11 Mr. Nussbaum, is by entering into the settlement  
12 agreements or by making demands throughout the  
13 2007 to 2011 period, that those demands sort of  
14 reacted or reactivated to extended the statute of  
15 limitations on the documents, if that's not  
16 correct, then all those shipments that Baltic knew  
17 on November 22, 2011, had all the facts necessary  
18 to file that complaint with the Commission at that  
19 time, didn't it?

20 MR. NUSSBAUM: It did, Your Honor, but  
21 again, I refer the Commission to paragraph 11,  
22 which we say fixes that that actual -- that last  
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1 date of the continuing violation to be November  
2 29th.

3 JUDGE GUTHRIDGE: Okay. Assuming --  
4 assuming this is a Shipping Act violation -- or  
5 say it is a Shipping Act violation to fail to give  
6 Baltic the documents that you say were not given,  
7 what's the actual injury that Empire suffered as a  
8 result of that? I'm sorry, that Baltic suffered  
9 as a result of not getting those documents?

10 MR. NUSSBAUM: Monetary damages, Your  
11 Honor, due to the fact that Baltic lost a lot of  
12 customers that just walked away because Baltic was  
13 unable to provide the shipping documents to their  
14 customers.

15 JUDGE GUTHRIDGE: So customers from 2008  
16 and 2008 walked away?

17 MR. NUSSBAUM: That's correct, Your  
18 Honor. Customers that Baltic was regularly doing  
19 business with.

20 JUDGE GUTHRIDGE: And they were walking  
21 away because in 2011, Baltic was unable to give  
22 them documents for shipments that occurred in  
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1 2007; is that what you're saying?

2 MR. NUSSBAUM: Different clients, Your  
3 Honor.

4 JUDGE GUTHRIDGE: That's not an answer  
5 to my question.

6 Are you saying -- is Baltic claiming  
7 that shippers it had in 2007 weren't doing  
8 business with Baltic because in 2011, Baltic  
9 failed to produce documents from 2007?

10 MR. NUSSBAUM: Yes, Your Honor.

11 JUDGE GUTHRIDGE: Okay, fine. So four  
12 years -- what you're saying is four years after  
13 the shipment, Baltic's customers, who for four  
14 years had not been getting those documents,  
15 suddenly said, "If you don't give them to us,  
16 we're going to stop doing business with you"?

17 MR. NUSSBAUM: That's correct, Your  
18 Honor. Some of those customers were doing  
19 business for four years. Some of those customers  
20 were doing business for a shorter period of time.

21 JUDGE GUTHRIDGE: Okay. Paragraph 5D of  
22 the Commission complaint alleges that Empire  
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1 violated three sections of the act by charging  
 2 Complainant rates greater than those reflected in  
 3 its published tariff. And in paragraph 18 of the  
 4 complaint, Baltic states, "Prior to January 2012,  
 5 Complainant neither knew nor could have known that  
 6 Empire was charging it the amount in excess of the  
 7 published tariff."  
 8 Is that correct?  
 9 MR. NUSSBAUM: That's correct, Your  
 10 Honor. I do not dispute what the complaint says.  
 11 JUDGE GUTHRIDGE: I beg your pardon?  
 12 MR. NUSSBAUM: I don't dispute what the  
 13 2011 complaint says.  
 14 JUDGE GUTHRIDGE: Now, according to the  
 15 Supreme Court, both shippers and carriers are  
 16 charged with constructive notice of tariff  
 17 filings; isn't that right?  
 18 MR. NUSSBAUM: That is correct, Your  
 19 Honor, but it's Baltic's contention that  
 20 constructive notice does not apply here.  
 21 JUDGE GUTHRIDGE: Why not?  
 22 MR. NUSSBAUM: I can explain that quite

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1 thoroughly -- just bear with me for a moment -- on  
 2 the issue of constructive notice.  
 3 The response is actually cited to the  
 4 matter of Fry Trucking Corp. v. Shenandoah Quarry,  
 5 Inc. And I'd like to just sort of explain to the  
 6 Commission what Baltic's position is here.  
 7 With respect to that particular case,  
 8 and I can quote it actually, it says that the rate  
 9 filed is a matter of public record, of which the  
 10 shipper must take notice at his peril. The  
 11 problem is that if the carrier is not authorized  
 12 on the route, then he has no rate on file with the  
 13 ITC and the shipper has no way of checking the  
 14 file for that carrier and discovering what the  
 15 actual rate is. Therefore, it is impossible to  
 16 charge the shipper with constructive notice of the  
 17 rate.  
 18 And, you know, if I could sum up the --  
 19 JUDGE GUTHRIDGE: Go ahead.  
 20 MR. NUSSBAUM: If I could sum up the  
 21 audit in one sentence, that one sentence would  
 22 basically be that the Respondents did not have

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1 tariffs on file for the port-to-port shipment,  
 2 40-foot high cube containers for the commodities  
 3 shipped by Complainant and for the ports of  
 4 destination and ports of loading that were offered  
 5 by the Respondent to the Complainant. So those  
 6 rates never existed. And therefore, there was no  
 7 constructive notice, just like there -- just the  
 8 same as explained in the -- in Fry Trucking Corp.  
 9 And I also respectfully refer the  
 10 Commission as to -- Your Honor -- to Your Honor's  
 11 decision from the Matter of Streak Products, Inc.  
 12 v. UTi United States, Inc., dated October 23,  
 13 2013, where it begins on page -- on the bottom of  
 14 page seven, where Your Honor actually talks about  
 15 an argument made by UTi which -- that it did not  
 16 publish its tariff rates for shipment and then UTi  
 17 then argues that if it fails to comply with the  
 18 Shipping Act and doesn't publish the tariff, that  
 19 a shipper may not receive a reparation award  
 20 because there's no measure of damages. And Your  
 21 Honor found that argument unpersuasive and denied  
 22 UTi's motion to dismiss the claim of violation of

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1 section 41104(2) of the Shipping Act.  
 2 JUDGE GUTHRIDGE: Well, I think when I  
 3 wrote that, I think what I was talking about  
 4 there, what they were claiming was dismissal  
 5 because there's no measure of damage. That  
 6 doesn't mean that there's not notice that there  
 7 was -- that that route wasn't included in the  
 8 tariff.  
 9 It was -- in Securities Services, Inc.  
 10 v. K-Mart Corp, 511 US 431, 1994, the Supreme  
 11 Court said, "Carriers and shippers alike are  
 12 charged with constructive notice and tariff  
 13 filings." Now, if Baltic was on notice of tariff  
 14 filing, it was also on notice of what is not in  
 15 the tariff; isn't that correct?  
 16 MR. NUSSBAUM: Your Honor --  
 17 JUDGE GUTHRIDGE: And in fact, Mr.  
 18 Nussbaum, if you -- when Ms. Supranos did her  
 19 audit, Exhibit X to the opposition of the motion,  
 20 she relied and attached to that audit tariff --  
 21 copies of tariff filings; isn't that right?  
 22 MR. NUSSBAUM: That's correct, Your

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1 Honor.

2 JUDGE GUTHRIDGE: And those filings on

3 which she relies -- actually some of them anyway

4 -- have across the top that they were filed in New

5 Jersey District Court in a case involving other

6 parties, November 18, 2009. So, and those are --

7 those were the tariffs, as I understand it, where

8 she was -- that proved or that suggested that

9 Empire did not have tariffs for the particular

10 route of the shipping.

11 MR. NUSSBAUM: Your Honor, with respect

12 to the one from 2009, it was just for that one

13 particular route.

14 JUDGE GUTHRIDGE: And that's the one she

15 relied for showing that Empire did not have a

16 route, wasn't it? It didn't have that route in

17 the tariff?

18 MR. NUSSBAUM: It wasn't.

19 JUDGE GUTHRIDGE: So that could have

20 been for any of them in 2009. In 2009, Empire --

21 I mean, Baltic could have gotten the tariff and

22 seen that there was no -- that Empire was charging

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1 -- allegedly charging -- carrying for routes which

2 did not have a tariff, which arguably is a

3 violation of the Shipping Act. And should have

4 known that -- and Baltic could have known that in

5 2009 and filed a case complaint at that time,

6 couldn't it?

7 MR. NUSSBAUM: That's correct. But at

8 the same time, Your Honor, it's Baltic's position

9 that it did not have all the information that it

10 needed to to conduct its audit later on which

11 eventually showed that there was a discriminatory

12 pricing scheme going on.

13 JUDGE GUTHRIDGE: It had constructive

14 notice of the tariff, isn't that correct?

15 MR. NUSSBAUM: Again, Your Honor, we're

16 arguing that there was no constructive notice

17 because those particular routes were never -- were

18 never filed.

19 JUDGE GUTHRIDGE: They had constructive

20 notice that the tariffs did not have those routes,

21 didn't it? Why wouldn't -- if it had constructive

22 notice of a tariff filing, why wouldn't it also

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1 have constructive notice of routes that are not

2 included in that tariff filing?

3 MR. NUSSBAUM: Your Honor, I concede to

4 the Commission on that point.

5 JUDGE GUTHRIDGE: Okay. So, you know,

6 if -- when Empire carried those shipments for

7 Baltic in 2007, 2008, 2009, 2010, Baltic knew what

8 it was being charged; right?

9 MR. NUSSBAUM: That's correct.

10 JUDGE GUTHRIDGE: And it had at least

11 constructive notice of the tariff at that time.

12 Had it gone and looked at -- had Baltic looked at

13 the tariff in, let's say 2010, because that would

14 be three years from 2007, it could have -- it

15 could have seen in 2010, that Empire did not have

16 those routes on the tariff -- in its tariff;

17 right?

18 MR. NUSSBAUM: It could have, Your

19 Honor, but Baltic was repeatedly assured that it

20 was being charged according to the tariff. As the

21 Commission may recall, Baltic is an NVOCC and does

22 have experience with service contracts, and in

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1 particular, service contracts with Mediterranean

2 Shipping Company, the same which Empire had.

3 JUDGE GUTHRIDGE: Are you saying Baltic

4 or Empire? Do you mean Baltic or Empire?

5 MR. NUSSBAUM: I'm saying Baltic right

6 now, Your Honor.

7 JUDGE GUTHRIDGE: So your client had --

8 MR. NUSSBAUM: I'm actually --

9 JUDGE GUTHRIDGE: I'm sorry?

10 MR. NUSSBAUM: I'm actually sitting with

11 a copy of a service contract in front of me right

12 now between -- this is between Empire and

13 Mediterranean Shipping Company, and there is a

14 certification in which Empire certifies that it

15 has provided Mediterranean Shipping Company -- it

16 certifies that it has a published tariff and has

17 provided evidence of financial security required

18 by the Commission's rules and regulations. So my

19 client, as an NVOCC, and understanding what is

20 contained inside these service contracts, which

21 was assured that due to the fact that Empire had

22 the same type of service contract, that Empire was

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1 charging the quotes with the tax.  
 2 JUDGE GUTHRIDGE: But as an NVOCC  
 3 itself, Baltic knew that those tariffs were  
 4 public; right?  
 5 MR. NUSSBAUM: Yes.  
 6 JUDGE GUTHRIDGE: And could access those  
 7 tariffs and verify whether or not it was being  
 8 charged, either amounts that are consistent with  
 9 the tariff or for routes for which Empire had a  
 10 tariff; isn't that right?  
 11 MR. NUSSBAUM: Yes, Your Honor.  
 12 JUDGE GUTHRIDGE: Okay. So I think -- I  
 13 think it would totally eviscerate the requirement  
 14 to publish a tariff if a shipper could just rely  
 15 on the fact, well, they told me they were charging  
 16 the tariff so I didn't have to check, and now  
 17 seven years later we can bring an action. I mean,  
 18 that seems to be inconsistent with the whole  
 19 reason for having a public tariff.  
 20 But the bottom line is Baltic could have  
 21 accessed that public tariff at any time between  
 22 2007 and 2011 and found out what route -- for what

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1 route Empire had a tariff and what those tariffs  
 2 were, couldn't it?  
 3 MR. NUSSBAUM: That's correct, Your  
 4 Honor, but it's Baltic's position that at no time  
 5 did it have any reason to believe, up until a  
 6 certain point in time, that it was being charged  
 7 anything other than the tariffs that were on file.  
 8 JUDGE GUTHRIDGE: Okay. I think I've  
 9 been sort of focusing -- I meant to focus on those  
 10 -- all those -- the shipments that were completed  
 11 before Baltic filed a complaint with the New  
 12 Jersey District Court.  
 13 Now, for the 167 or 162 shipments that  
 14 were the subject of the New Jersey case, and the  
 15 162 in particular that were included in the  
 16 settlement, again, those -- Empire notified Baltic  
 17 of what it was charging for each of those  
 18 shipments at the time of shipment; is that right?  
 19 MR. NUSSBAUM: That's correct.  
 20 JUDGE GUTHRIDGE: Okay. And again, with  
 21 those shipments, insofar as being charged  
 22 something other than something in a lawful tariff,

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1 Baltic could have found that information at the  
 2 time of the shipment, couldn't it?  
 3 MR. NUSSBAUM: Your Honor, I just wanted  
 4 to draw a distinction between tariffs and rates  
 5 and what was actually being alleged in the 2011  
 6 complaint. You know, in the 2011 complaint, it's  
 7 Baltic's position that this additional \$175,000  
 8 that was in dispute had nothing to do with ocean  
 9 freight. These were simply additional charges  
 10 that were conjured up by the Respondent after the  
 11 fact and after Baltic had advised the Respondents  
 12 that it no longer wanted to do business with the  
 13 Respondents in retaliation for Baltic not wanting  
 14 to do business with Respondent. Those were some  
 15 sort of miscellaneous fees, document fees, port  
 16 security fees. So it's Baltic's position that  
 17 that had nothing to do with the tariffs.  
 18 JUDGE GUTHRIDGE: That's still not  
 19 answering the question.  
 20 Baltic knew what the tariffs were at  
 21 that time. They had constructive notice of what  
 22 the tariffs were at that time; right?

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1 MR. NUSSBAUM: That's correct.  
 2 JUDGE GUTHRIDGE: Okay. And so any time  
 3 -- and Empire agreed to carry the shipments for  
 4 the next three years. Baltic should have found  
 5 out what the tariff was, had constructive notice  
 6 of what the tariff was. Feel like it could get  
 7 access to those tariffs but it chose not to check  
 8 it, check the tariffs. And at any time in the  
 9 three years after the shipments began. Isn't that  
 10 right?  
 11 MR. NUSSBAUM: Yes, Your Honor. That  
 12 makes logical sense.  
 13 JUDGE GUTHRIDGE: For the Commission  
 14 complaint, paragraph 5C alleges -- that's arguably  
 15 what we've essentially been talking about now --  
 16 Baltic's contention that Empire violated 40501(a)  
 17 by failing to keep open the public inspection and  
 18 its tariff system.  
 19 What Baltic is claiming there, if I  
 20 understand you correctly, Mr. Nussbaum, is that  
 21 you're not contending that Empire had no tariff;  
 22 what you're contending is it did not have a tariff

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1 covering the routes for which it was carrying  
2 shipments for Baltic; is that right?  
3 MR. NUSSBAUM: That's correct, Your  
4 Honor. For the routes and for the specific  
5 commodities and 40-foot high cube containers.  
6 JUDGE GUTHRIDGE: Okay. And again, for  
7 all those, as we've been discussing, it had  
8 constructive notice of that.  
9 MR. NUSSBAUM: Correct, Your Honor.  
10 JUDGE GUTHRIDGE: Okay. And it had  
11 constructive notice more than three years before  
12 Baltic filed its Commission complaint; is that  
13 right?  
14 MR. NUSSBAUM: Bear with me for one  
15 moment, Your Honor. I just want to check my  
16 notes.  
17 Correct, Your Honor.  
18 JUDGE GUTHRIDGE: Now, paragraph 5A of  
19 the Commission complaint alleges that Empire  
20 violated the act -- violated the act by charging  
21 complainant rates greater than those it charged  
22 other shippers.

1 Why aren't those barred by the statute  
2 of limitations, Mr. Nussbaum?  
3 MR. NUSSBAUM: Because the information  
4 that -- regarding the rates that Empire was  
5 charging other shippers was not available in  
6 certain cases up until 2013. So it's Baltic's  
7 contention that the discovery rule applies here.  
8 Baltic really had no way of knowing what Empire  
9 was charging other shippers until lawsuits were  
10 filed and actually, rates were already produced  
11 covering those matters.  
12 JUDGE GUTHRIDGE: Has the lawsuit I  
13 referred to earlier, is that one of the lawsuits  
14 that you're talking about, where the tariff came  
15 from?  
16 MR. NUSSBAUM: I believe it was the 2012  
17 lawsuit or the 2013 lawsuit.  
18 JUDGE GUTHRIDGE: What was the 2009  
19 lawsuit about, the one that I referred to -- or  
20 that -- case number 09-DV-04714-ENV-NVG?  
21 Mr. Doyle, do you know what that case is  
22 about?

1 MR. DOYLE: At this point, Your Honor, I  
2 have no idea.  
3 JUDGE GUTHRIDGE: Okay. Mr. Nussbaum,  
4 you're not sure?  
5 MR. NUSSBAUM: I do not, Your Honor.  
6 JUDGE GUTHRIDGE: Was the Plaintiff in  
7 that suit charged rates different from what Baltic  
8 would charge?  
9 MR. DOYLE: Your Honor, I was not part  
10 of that matter.  
11 JUDGE GUTHRIDGE: Okay. Why wouldn't --  
12 why isn't -- well, you do agree that a plaintiff  
13 or a complainant -- the statute of limitation bars  
14 any complainant from what, you know, with due  
15 diligence it could have -- it could have gotten  
16 the information; is that right?  
17 MR. DOYLE: Yes.  
18 JUDGE GUTHRIDGE: But, I mean, if a  
19 shipper knows or had constructive notice that it  
20 is being charged something other than the tariff  
21 rate, why wouldn't it be on notice that other  
22 shippers could be charged different amounts and

1 that it might be less than it's being charged? Is  
2 that something that with due diligence a  
3 complainant or plaintiff would realize?  
4 MR. DOYLE: I don't dispute that, Your  
5 Honor.  
6 JUDGE GUTHRIDGE: So -- so for all of  
7 those then, all the shipments that were delivered  
8 prior to the 2011 New Jersey case, Baltic knew, or  
9 with reasonable diligence could have known, that  
10 it was being charged different from other  
11 shippers; isn't that right?  
12 MR. DOYLE: That's correct, Your Honor.  
13 JUDGE GUTHRIDGE: And then for all the  
14 ones -- that's the same for all the ones that are  
15 subject to the settlement agreement; isn't that  
16 right?  
17 MR. DOYLE: That's correct, Your Honor.  
18 JUDGE GUTHRIDGE: Okay. Let me ask you  
19 this, Mr. Nussbaum. If the New Jersey 2011 --  
20 just your thoughts on this -- had the New Jersey  
21 2011 complaint caption been changed to the Federal  
22 Maritime Commission caption and the causes of

1 action alleged in the New Jersey case been taken  
2 out and part five of Baltic's Federal Maritime  
3 Commission complaint been inserted, what would --  
4 what would the -- what would that complaint -- the  
5 complaint that looked like that -- be lacking that  
6 was included in the FMC complaint that was filed  
7 in 2014?

8 Do you understand my question? I know  
9 it kind of went on for a while there.

10 MR. NUSSBAUM: I understand the  
11 question, Your Honor. But I would say that it's  
12 Baltic's position that there's much more going on  
13 in the instant matter than there was in 2011.

14 JUDGE GUTHRIDGE: I'm talking about the  
15 factual allegations. What factual allegations are  
16 present in the Federal Maritime Commission  
17 complaint that were not included in the New Jersey  
18 case for 2011?

19 MR. NUSSBAUM: They are very similar,  
20 Your Honor.

21 JUDGE GUTHRIDGE: Had that caption been  
22 changed and part 5 put in there, we would have

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1 essentially the same case that we had when you  
2 filed the Federal Maritime Commission complaint in  
3 2014; do you agree with that?

4 MR. NUSSBAUM: Your Honor, can I take a  
5 moment to think about that?

6 JUDGE GUTHRIDGE: Okay.

7 MR. NUSSBAUM: Because that's a  
8 difficult question.

9 JUDGE GUTHRIDGE: Sure.

10 MR. NUSSBAUM: Your Honor, again, I  
11 respectfully submit that there is much more going  
12 on in the instant matter regarding individual  
13 specific activities that although they may be  
14 generally described in the complaint, there's much  
15 more going on here.

16 JUDGE GUTHRIDGE: What do you mean by  
17 "much more going on"? I mean, that's kind of  
18 vague.

19 MR. NUSSBAUM: Okay. Well, for  
20 instance, the alteration. The unilateral  
21 alteration of the shipping documents, the --

22 JUDGE GUTHRIDGE: What do you mean by

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1 that?

2 MR. NUSSBAUM: The shipping instructions  
3 that were sent by Baltic to Empire, when we  
4 compared those against -- and this is discussed in  
5 my brief -- when we compared those against the  
6 shipping instructions that were actually set by  
7 Empire, Mediterranean Shipping Company, there were  
8 numerous instances where my client's instructions  
9 for express relief were changed once the telex  
10 released. There are other details that are  
11 specifically described.

12 JUDGE GUTHRIDGE: Well, let's back up a  
13 minute here. What you're talking about there,  
14 though, is a whole different business  
15 relationship. You're talking about the  
16 relationship between Empire and shipper, and MSC  
17 as carrier. Isn't that right?

18 MR. NUSSBAUM: That's correct.

19 JUDGE GUTHRIDGE: And I think -- I think  
20 I recall reading in your brief something about --  
21 they say switch Baltic as the shipper and put  
22 Empire as the shipper. Is that what you said you

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1 in your brief?

2 MR. NUSSBAUM: It's not only those  
3 things, Your Honor. There were other --

4 JUDGE GUTHRIDGE: But wasn't that one of  
5 the things you said in your brief? I seem to  
6 recall reading that.

7 MR. NUSSBAUM: Yes.

8 JUDGE GUTHRIDGE: Okay. Well, isn't  
9 that what an NVOCC is supposed to do? An NVOCC --  
10 and I think you said at some point that Empire --  
11 that Empire had a service contract with MSC;  
12 right?

13 MR. NUSSBAUM: That's correct.

14 JUDGE GUTHRIDGE: If MSC permitted  
15 Baltic to be the shipper on Empire's service  
16 contract with MSC, Empire would be violating the  
17 Shipping Act by doing that. In fact, the other  
18 judge in my office said Worth had a case recently  
19 where they -- an NVOCC let somebody else use its  
20 service contract to be identified as the shipper,  
21 and the civil penalty was, I think, in the  
22 hundreds of thousands of dollars. I think there

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1 are some shipments, or there are some settlements  
 2 by NVOCCs that were announced on the Commission  
 3 website right now and I think that was playing  
 4 there also, that an NVOCC permitted another entity  
 5 to use its service contract and be identified as  
 6 the shipper. So that's the way those things work.  
 7 Of course, Empire was identified as the shipper on  
 8 the MSC service contract.

9 MR. NUSSBAUM: I understand that, Your  
 10 Honor, but --

11 JUDGE GUTHRIDGE: How is that a  
 12 violation of the Shipping Act or something  
 13 nefarious?

14 MR. NUSSBAUM: It's a violation with  
 15 regard to the other changes -- changing express  
 16 relief instructions, the telex instructions.

17 JUDGE GUTHRIDGE: That was for the  
 18 relationship between Empire -- it seems to me,  
 19 Empire and MSC; not between Empire and Baltic.  
 20 Why did those have to be exactly the same? As  
 21 long as Empire releases to Baltic via telex, what  
 22 difference does it make how the release occurs

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1 between MSC and Empire?

2 MR. NUSSBAUM: Your Honor, it's Baltic's  
 3 position because those were not the instructions  
 4 that were provided to Empire.

5 JUDGE GUTHRIDGE: Okay. But again,  
 6 those instructions occurred for most of the  
 7 shipments anyway. Let's set aside the ones that  
 8 are in the settlement agreement for now. To that  
 9 extent that occurred, it occurred more than three  
 10 years before Baltic filed the Commission  
 11 complaint; right?

12 MR. NUSSBAUM: That did occur more than  
 13 three years, Your Honor, but at no time was Baltic  
 14 ever provided with the copies of Empire's shipping  
 15 instructions.

16 JUDGE GUTHRIDGE: I want to go back to  
 17 clarify the discussion we had quite a while ago  
 18 about -- that Baltic knew that at the time of each  
 19 shipment. Isn't that right?

20 MR. NUSSBAUM: I don't understand the  
 21 question, Your Honor.

22 JUDGE GUTHRIDGE: To the extent Baltic

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1 -- Empire was not giving Baltic the documents that  
 2 it should have for each shipment, it was doing  
 3 that at the time of those shipments.

4 MR. NUSSBAUM: That's correct, Your  
 5 Honor.

6 JUDGE GUTHRIDGE: Okay.

7 MR. NUSSBAUM: Your Honor, I just want  
 8 to note that Empire never, at any time, rejected  
 9 Baltic's shipping instructions to it as being  
 10 incorrect or improper. So again, it's Baltic's  
 11 position that it had no way of knowing shipping  
 12 instructions were being changed.

13 JUDGE GUTHRIDGE: Again, that's the  
 14 shipping relationship between Empire as shipper  
 15 and MSC as carrier, isn't it? So again, I ask why  
 16 does that have to be exactly the same as the  
 17 instructions between Baltic and shipper and Empire  
 18 as carrier? Why do they have to be exactly the  
 19 same? Or why -- let me ask it a different way.

20 Why is it a violation of the Shipping  
 21 Act for them not to be exactly the same?

22 MR. NUSSBAUM: Your Honor, I don't have

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1 an answer right now.

2 JUDGE GUTHRIDGE: Now, in your -- in  
 3 your opposition to the motion, Mr. Nussbaum,  
 4 Baltic contends that Empire delayed releases, I  
 5 think, of the shipment -- the shipments that were  
 6 subject, or at least some of the shipments, if not  
 7 all of it. I mean, I have a document that I'll  
 8 identify and send him, but Empire delayed the  
 9 release of the containers in violation of the  
 10 Shipping Act I guess is what Baltic is contending;  
 11 is that right?

12 MR. NUSSBAUM: That's correct.

13 JUDGE GUTHRIDGE: And there is --  
 14 Exhibit P, as in Papa --

15 MR. NUSSBAUM: T?

16 JUDGE GUTHRIDGE: P as in Papa --  
 17 attached to Mr. Presniacova's affidavit or  
 18 declaration. There's a couple of pages of  
 19 shipments identified and the title is "Empire's  
 20 untimely release of containers."

21 Now, I looked at this. I mean, I think  
 22 Empire -- I mean, Baltic is contending they were

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1 untimely under -- even under the settlement  
2 agreement; is that right?  
3 MR. NUSSBAUM: Your Honor, can you  
4 repeat the question one more time? That they were  
5 untimely?  
6 JUDGE GUTHRIDGE: I'm identifying the  
7 document first, Exhibit Papa, attached to  
8 Presniacova's --  
9 MR. NUSSBAUM: Yes.  
10 JUDGE GUTHRIDGE: -- affidavit.  
11 MR. NUSSBAUM: Yes, Your Honor. I  
12 understand. Yes, they were untimely under the  
13 settlement agreement as well.  
14 JUDGE GUTHRIDGE: They were untimely --  
15 okay, the ones that the release is here.  
16 And I see, for instance, shipment 455664  
17 on the first page there says, "Final tariff paid  
18 7-30-2011; select release date 12-1-2012." Is  
19 that what you mean, it was a year? Okay.  
20 MR. NUSSBAUM: Bear with me for one  
21 moment, Your Honor. I just want to double check  
22 that.

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1 Your Honor, can you repeat the last four  
2 digits of the booking at issue?  
3 JUDGE GUTHRIDGE: 455664.  
4 MR. NUSSBAUM: Okay.  
5 JUDGE GUTHRIDGE: And it says the final  
6 tariff was paid 11-30-2011. Select release date  
7 was 12-1-2012, a year and a day later. Is that  
8 what Baltic is contending?  
9 MR. NUSSBAUM: Your Honor, it's -- I  
10 would have to go back and double check the  
11 specific telex release for this particular  
12 shipment. I believe they were provided to the  
13 Commission as well, as part of an exhibit to the  
14 Presniacova affidavit.  
15 JUDGE GUTHRIDGE: Are you suggesting  
16 that that might not be a typo, a year and a day?  
17 MR. NUSSBAUM: It may or may not be a  
18 typo. But I'll go with whatever date is actually  
19 listed on the telex release.  
20 JUDGE GUTHRIDGE: Then below that is  
21 final tariff paid 11-30-2011, and on another date,  
22 12-1-2011.

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1 MR. NUSSBAUM: It may have been a typo,  
2 Your Honor.  
3 JUDGE GUTHRIDGE: Okay. The one below,  
4 we'll put aside that 455664, for the one below  
5 that -- 079, tariff was paid on 11-30 and the  
6 release date was one day later.  
7 Are you contending -- is it Baltic's  
8 position that that violates the Shipping Act?  
9 MR. NUSSBAUM: Yes, Your Honor.  
10 JUDGE GUTHRIDGE: A one-day delay? The  
11 agreement between the parties?  
12 MR. NUSSBAUM: Your Honor, I'm actually  
13 referring to the settlement agreement right now.  
14 I just need a moment, Your Honor. I'm  
15 trying to --  
16 JUDGE GUTHRIDGE: Yeah.  
17 MR. NUSSBAUM: Okay.  
18 JUDGE GUTHRIDGE: Okay.  
19 MR. NUSSBAUM: Okay, Your Honor, I just  
20 note that paragraph 2 of the 2011 settlement  
21 agreement states that Empire shall immediately  
22 release 23 containers identified in Exhibit A,

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1 Baltic.  
2 JUDGE GUTHRIDGE: Well, my records, when  
3 I went through this, indicate that 4556 -- I mean,  
4 the one where we don't have -- 486079 was in  
5 Exhibit B, as in Bravo. It was Exhibit B, Bravo  
6 71.  
7 MR. NUSSBAUM: Okay.  
8 JUDGE GUTHRIDGE: It was payments -- it  
9 was one for which it had to make the payment.  
10 MR. NUSSBAUM: Okay.  
11 JUDGE GUTHRIDGE: It's not one of the 23  
12 that had already been paid.  
13 MR. NUSSBAUM: Okay. So if that's the  
14 case, then that would fall under paragraph 3 of  
15 the 2011 settlement agreement. It states that the  
16 container shall be released by Empire to Baltic  
17 upon arrival and payment by Baltic.  
18 JUDGE GUTHRIDGE: So it's Baltic's  
19 contention that a one-day delay between payment  
20 and release violates the settlement agreement?  
21 MR. NUSSBAUM: Yes, Your Honor.  
22 JUDGE GUTHRIDGE: And why isn't that for

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1 the court to consider, the Commission? The court  
 2 entered this settlement agreement. That, indeed,  
 3 is what was meant. A one-day delay was a  
 4 violation of the settlement agreement. This  
 5 should be in front of the court, shouldn't it?  
 6 MR. NUSSBAUM: Your Honor, it's Baltic's  
 7 position, again, that this is a violation of the  
 8 Shipping Act.  
 9 JUDGE GUTHRIDGE: You said it was a  
 10 violation of the settlement agreement. Now you're  
 11 saying that a one-day delay, one day between  
 12 payment and release is a violation of the Shipping  
 13 Act?  
 14 MR. NUSSBAUM: Yes, Your Honor, because  
 15 this was retaliation that was done on purpose of  
 16 Baltic's accrued storage charges.  
 17 JUDGE GUTHRIDGE: Well, the settlement  
 18 agreement which you've been referring to says in  
 19 paragraph three, "To the extent that Empire causes  
 20 a delay in the release of the containers  
 21 identified in Exhibit C, if this results in the  
 22 accrual of storage or demurrage charges, Empire

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1 will be responsible for payment of such charges.  
 2 Otherwise, such charges will be the responsibility  
 3 of Baltic."  
 4 Are you saying that Baltic accrued  
 5 demurrage charges or storage charges by that  
 6 one-day delay?  
 7 MR. NUSSBAUM: That's correct, Your  
 8 Honor.  
 9 JUDGE GUTHRIDGE: And so under the  
 10 settlement agreement, Empire is liable for that;  
 11 is that right? Is that what you're saying?  
 12 MR. NUSSBAUM: That's correct, Your  
 13 Honor.  
 14 JUDGE GUTHRIDGE: Paragraph 10 says --  
 15 provides for attorney's fees for violation. And  
 16 says, "In addition, the court will retain  
 17 jurisdiction over the enforcement of this  
 18 settlement."  
 19 So the court is retaining enforcement of  
 20 the settlement. Why does the Commission have the  
 21 right to get in there and enforce the settlement?  
 22 MR. NUSSBAUM: Well, it says, Your

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1 Honor, it says, "In addition to any other remedies  
 2 available at law or inequity." And again, it's  
 3 Baltic's position that these acts are -- they're  
 4 inherent violations of the Shipping Act. And  
 5 again, I refer to --  
 6 JUDGE GUTHRIDGE: But you're saying that  
 7 a one-day delay in the release of a shipment is an  
 8 inherent violation of the Shipping Act. Is that  
 9 what you're saying?  
 10 MR. NUSSBAUM: Your Honor, it's not just  
 11 the one-day delay though. There were other things  
 12 that were happening.  
 13 JUDGE GUTHRIDGE: I'm talking about  
 14 shipment. Is that what Baltic is saying, is that  
 15 a one-day delay in release of a container is in  
 16 violation of the Shipping Act?  
 17 MR. NUSSBAUM: Yes, Your Honor.  
 18 JUDGE GUTHRIDGE: And what -- on this  
 19 particular shipment, 486079, what charges is  
 20 Baltic -- is there any evidence in the record that  
 21 Baltic incurred storage or demurrage charges on  
 22 that shipment as a result of that one --

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1 MR. NUSSBAUM: No, Your Honor. We  
 2 haven't exchanged that in discovery yet.  
 3 JUDGE GUTHRIDGE: Baltic knows whether  
 4 it had to pay demurrage, doesn't it?  
 5 MR. NUSSBAUM: It does, but that was not  
 6 part of the discovery exchanged between the  
 7 parties.  
 8 JUDGE GUTHRIDGE: And actually, come to  
 9 think of it, the settlement was signed on the 29th  
 10 but not entered by the court until the 7th of  
 11 December; isn't that right?  
 12 MR. NUSSBAUM: Your Honor, I do not have  
 13 that court document in front of me, but to the  
 14 extent --  
 15 JUDGE GUTHRIDGE: I wrote it down.  
 16 That's what I have as the date.  
 17 MR. NUSSBAUM: Okay. Okay, I won't  
 18 dispute that.  
 19 JUDGE GUTHRIDGE: I was looking at the  
 20 stipulation earlier. Judge Hochberg signed the  
 21 order 7-20-11. Most -- the first two pages on  
 22 most of the shipments were actually released

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1 according to Baltic's records prior to the time  
 2 that the settlement was entered, prior to the time  
 3 that the parties signed the settlement it looks  
 4 like. The second page, November 9, November 25.  
 5 This was all before the settlement was even  
 6 signed. Is it Baltic's contention, for instance,  
 7 on -- I'm sorry, I was looking at the containment  
 8 date. I was looking at the wrong date.  
 9       Until that issue date for -- on the  
 10 second page, Empire's shipment 475739, the issue  
 11 date was November 28, 2011.  
 12       MR. NUSSBAUM: I see that.  
 13       JUDGE GUTHRIDGE: And the next day the  
 14 parties signed the agreement. It was signed on  
 15 the 29th. So 475739 was released on the 28th of  
 16 November, the day before the parties filed the  
 17 settlement agreement. Are you contending that  
 18 that was a violation of the settlement agreement?  
 19       MR. NUSSBAUM: Yes, Your Honor. And  
 20 just to putt a little context on these things,  
 21 even in the matters where there was a one-day  
 22 difference between the date that the payment was

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1 made and the release was issued, these containers  
 2 -- the reason why this is a violation of the  
 3 Shipping Act is because these containers were, in  
 4 some cases, on hold for approximately one month  
 5 while, you know, this dispute was ongoing, which  
 6 again caused Baltic's customers to walk away.  
 7       JUDGE GUTHRIDGE: So the telex release  
 8 date on that shipment, it's still Baltic's -- it's  
 9 Baltic's contention that 475739 violated the  
 10 settlement agreement. The container was released  
 11 before the settlement was signed. Is that right?  
 12       MR. NUSSBAUM: Yes, Your Honor, because  
 13 it was on hold for one month because the  
 14 Respondent failed to release it.  
 15       JUDGE GUTHRIDGE: Okay. Well, let's  
 16 assume that Baltic can still file a complaint for  
 17 a violation of the Shipping Act for that delay;  
 18 all right? We'll assume that.  
 19       MR. NUSSBAUM: Yes.  
 20       JUDGE GUTHRIDGE: Paragraph 5 of the  
 21 settlement agreement, did Baltic release any  
 22 claims for damages related to the delay in

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1 releasing said cargo from the beginning of the  
 2 time up to the date of the release?  
 3       MR. NUSSBAUM: Up to the date of the  
 4 release, Your Honor.  
 5       JUDGE GUTHRIDGE: That container was  
 6 released before the settlement agreement.  
 7       MR. NUSSBAUM: No, Your Honor. Just to  
 8 clarify, we're talking about two different types  
 9 of releases. One is the release of the container,  
 10 and the other release -- it's Baltic's contention  
 11 that the release discussed in paragraph 5, we're  
 12 talking about the date of this mutual general  
 13 release, which was November 29.  
 14       JUDGE GUTHRIDGE: Again, on 475739, the  
 15 telex release date was November 28, 2011.  
 16       MR. NUSSBAUM: That's correct.  
 17       JUDGE GUTHRIDGE: So Baltic had the  
 18 telex release of its container; right? So how  
 19 could -- even if it's assumed that Baltic -- that  
 20 Empire violated the Shipping Act, why hasn't  
 21 Baltic released any claims for damages relating to  
 22 the delay when the container was released to

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1 Baltic per the settlement agreement?  
 2       MR. NUSSBAUM: Bear with me for one  
 3 second, Your Honor.  
 4       Your Honor, just to clarify, the time  
 5 they released the containers was just limited to  
 6 that first page of Exhibit P. If I recall, it's  
 7 Attachment C, which is the one we're talking about  
 8 right now.  
 9       JUDGE GUTHRIDGE: So that's not part of  
 10 the page that begins before Empire's untimely  
 11 releases?  
 12       MR. NUSSBAUM: It's not. It's not, Your  
 13 Honor. The untimely release issue was just  
 14 limited to that first page.  
 15       JUDGE GUTHRIDGE: I do not see it.  
 16       MR. NUSSBAUM: Yeah. I just further  
 17 note for your reference, Your Honor, the remaining  
 18 pages actually talk about this. At the bottom of  
 19 the page, you'll note that it says Attachment C or  
 20 Attachment D or Attachment E. And those are being  
 21 discussed for other various reasons.  
 22       JUDGE GUTHRIDGE: What are they being

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1 discussed for? What are they being discussed for?  
2 MR. NUSSBAUM: They were being referred  
3 to regarding other Shipping Act violations,  
4 whether it had something to do with the tariffs or  
5 some other issue -- double paying and those sorts  
6 of issues.  
7 Your Honor, I just wanted to ask, is it  
8 possible just to take a five-minute break for the  
9 restroom?  
10 JUDGE GUTHRIDGE: Is Mr. Nussbaum asking  
11 that?  
12 MR. NUSSBAUM: Yes.  
13 JUDGE GUTHRIDGE: Any objection, Mr.  
14 Doyle?  
15 MR. NUSSBAUM: No, Your Honor.  
16 JUDGE GUTHRIDGE: Okay. But I don't  
17 want to lose the connection. We'll just stay on  
18 the line and we promise not to talk.  
19 MR. DOYLE: Will do.  
20 MR. NUSSBAUM: Thank you.  
21 JUDGE GUTHRIDGE: And let us know when  
22 you get back, Mr. Nussbaum.

1 JUDGE GUTHRIDGE: And copies to  
2 Respondent?  
3 MR. NUSSBAUM: That's correct, Your  
4 Honor. We did have that discussion earlier on  
5 this morning about the --  
6 JUDGE GUTHRIDGE: Yes. Okay.  
7 MR. NUSSBAUM: -- confidentiality of the  
8 documents.  
9 JUDGE GUTHRIDGE: Okay. Mr. Nussbaum,  
10 Baltic hasn't shipped with Empire since -- when is  
11 the last time it shipped -- had anything to do  
12 with a shipment with Empire?  
13 MR. NUSSBAUM: Well, Your Honor, we're  
14 arguing that those 21 bookings that came from  
15 Savannah belonged to Baltic. Those went into --  
16 if I recall correctly, those went into 2012.  
17 JUDGE GUTHRIDGE: Okay. So that was the  
18 last time? There were no shipments in 2013, no  
19 shipments in 2014?  
20 MR. NUSSBAUM: No.  
21 JUDGE GUTHRIDGE: No shipments in 2015?  
22 MR. NUSSBAUM: Those 21 were the last.

1 MR. NUSSBAUM: Thank you.  
2 (Recess)  
3 MR. NUSSBAUM: Your Honor, I'm back.  
4 Thank you.  
5 JUDGE GUTHRIDGE: All right. Regarding  
6 the shipments that are included in the 21 that  
7 were counter documents, what did you say was  
8 Baltic's status on those shipments -- role in  
9 those shipments?  
10 MR. NUSSBAUM: Baltic's role in those  
11 shipments, Your Honor, was either as the merchant  
12 or as the NVOCC.  
13 JUDGE GUTHRIDGE: What do you mean by  
14 "the merchant"?  
15 MR. NUSSBAUM: The merchant as in it  
16 owns the vehicle itself outright or it was  
17 shipping those vehicles on behalf of one of its  
18 customers.  
19 JUDGE GUTHRIDGE: And you have documents  
20 that will show what those relationships were?  
21 MR. NUSSBAUM: That's correct, Your  
22 Honor. We will send those out by FedEx.

1 JUDGE GUTHRIDGE: Okay. The only  
2 release that Baltic explicitly prays for in its  
3 complaint is a reparation award. Is that right?  
4 MR. NUSSBAUM: Yes.  
5 JUDGE GUTHRIDGE: Looking at paragraph  
6 7B of the complaint.  
7 MR. NUSSBAUM: Yes.  
8 JUDGE GUTHRIDGE: And then it says, "In  
9 such other and further orders -- order or orders  
10 be made as the Commission determines to be  
11 proper."  
12 What other relief, if any, should the  
13 Commission be entering if this case were to go  
14 forward and Baltic were to prevail?  
15 MR. NUSSBAUM: Your Honor, the other  
16 relief that we're requesting would be that the  
17 Respondent be ordered to turn over the shipping  
18 documents that we had requested. This way there's  
19 no more question as to which shipments belong to  
20 whom.  
21 JUDGE GUTHRIDGE: And is that all?  
22 MR. NUSSBAUM: Yes, Your Honor.

1 JUDGE GUTHRIDGE: Okay.  
 2 MR. NUSSBAUM: Shipping documents,  
 3 invoices, house bills of lading.  
 4 JUDGE GUTHRIDGE: For the primary relief  
 5 though that Baltic is seeking is the reparation  
 6 award, isn't it?  
 7 MR. NUSSBAUM: Yes, it is.  
 8 JUDGE GUTHRIDGE: All right. Mr. Doyle,  
 9 I told you a long time ago that you'd have an  
 10 opportunity to speak. Your turn. Mr. Doyle, does  
 11 Baltic have tariffs on file during this whole  
 12 time? I see some documents that look like tariffs  
 13 go back as far as 1999.  
 14 MR. DOYLE: Yes, I understand they had  
 15 tariffs on file.  
 16 JUDGE GUTHRIDGE: Okay. All right. So,  
 17 all right. Mr. Doyle, what do you have to say?  
 18 MR. DOYLE: Well, I learned a lot more  
 19 facts this morning that I didn't know about  
 20 before. But I think it's clear that any  
 21 complaints or claims that Baltic may have had were  
 22 certainly outside the statute of limitations

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1 period. I think we see no evidence to rebut the  
 2 in camera submission about the 21 shipments not  
 3 being Baltic's, and it seems like they ought to be  
 4 time barred. And Baltic knew everything it knows  
 5 now back at the time of the filing of the New  
 6 Jersey lawsuit. Nothing is new here.  
 7 And in addition, I think it's further  
 8 quite clear that subsequent to the settlement  
 9 agreement, all the deliveries were made in an  
 10 orderly fashion. Notice of arrival was given.  
 11 Payments were wired. I don't know what time of  
 12 the day they were wired, but these had to do with  
 13 release of the shipments over in the Baltic. So  
 14 it's highly conceivable that the confirmation of  
 15 payment was not received during business hours  
 16 over in Europe, and I think delivery the next day  
 17 sounds like proper behavior in any trade lane of  
 18 the world. So since nothing happened after --  
 19 nothing happened untoward after the settlement  
 20 agreement was entered into, and the settlement  
 21 agreement was more than three years ago, we go  
 22 home.

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1 JUDGE GUTHRIDGE: Well, actually, the  
 2 settlement agreement was less than three years  
 3 after the -- after the Commission complaint was  
 4 filed.  
 5 MR. DOYLE: I stand corrected. The  
 6 settlement agreement was executed. Then, clearly,  
 7 the settlement was reached. Nothing untoward  
 8 happened within three years of the filing of the  
 9 complaint. And certainly, we don't see any  
 10 Shipping Act violations really even alleged.  
 11 And I apologize, Your Honor, that having  
 12 known more facts at the time of making this  
 13 motion, it might have been a three-part motion.  
 14 Not only should the complaint be dismissed because  
 15 it's time barred; not only should this complaint  
 16 be dismissed because it's been settled and  
 17 released; but also, it fails to state Shipping Act  
 18 violations. But we lost that opportunity and I  
 19 regret that.  
 20 Other than that, I've got nothing more  
 21 to say, Your Honor.  
 22 JUDGE GUTHRIDGE: At least the Complaint

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1 does allege Shipping Act violations.  
 2 MR. DOYLE: Oh, no. I'm saying it  
 3 alleges that there were Shipping Act violations;  
 4 it doesn't allege sufficient facts to make one  
 5 out.  
 6 JUDGE GUTHRIDGE: I think --  
 7 MR. DOYLE: This motion is limited -- I  
 8 can see this motion is limited to the statute of  
 9 limitations and settlement agreement.  
 10 JUDGE GUTHRIDGE: Okay.  
 11 MR. DOYLE: Which is venting. I  
 12 apologize.  
 13 JUDGE GUTHRIDGE: Okay. Now, the 21  
 14 shipments that Mr. Nussbaum talked about, the ones  
 15 that were subject to the earlier order --  
 16 MR. DOYLE: Yes, sir.  
 17 JUDGE GUTHRIDGE: -- those are shipments  
 18 that began at some point after -- as I recall,  
 19 they all were after -- well, after -- strike that  
 20 -- less than three years after Baltic filed its  
 21 complaint; is that right?  
 22 MR. DOYLE: Less than three years before

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1 it filed a complaint? I believe so, Your Honor.  
 2 JUDGE GUTHRIDGE: Okay. Hold on a  
 3 second. I'm looking at -- the first one I have is  
 4 a Baltic Auto Shipping -- it says Baltic Savannah  
 5 listed as -- identified as the shipper. And it  
 6 has date of sailing, 12-16- 2011.  
 7 MR. DOYLE: Yes, Your Honor.  
 8 JUDGE GUTHRIDGE: What is -- what is  
 9 Empire's position if it turns out that Baltic is  
 10 somehow connected with those shipments -- Baltic,  
 11 the Complainant, is connected to those shipments?  
 12 Mr. Nussbaum says there were either the NVOCC or  
 13 the owner of the cargo.  
 14 MR. DOYLE: I don't believe we're  
 15 sitting on any allegations with respect to those  
 16 shipments. There are no allegations of improper  
 17 delay in deliver. There's no allegations of some  
 18 demand and refusal to provide documents. We've  
 19 seen nothing in the record --  
 20 JUDGE GUTHRIDGE: Wouldn't they be built  
 21 into the allegation of charging rates other than  
 22 those in a tariff?

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1 are. I don't see any right to reparation, because  
 2 as I understand it, the actual published tariff  
 3 was a weight measurement tariff, and if that had  
 4 been applied to these shipments, Empire would have  
 5 paid far more in freight charges.  
 6 JUDGE GUTHRIDGE: Because you had a  
 7 weight measurement, not a by auto, not by car?  
 8 MR. DOYLE: Per container; correct.  
 9 JUDGE GUTHRIDGE: If that's the  
 10 allegation, that might have to go forward. I'm  
 11 not sure at this point. I'm not making a ruling.  
 12 I'm not making a ruling on anything right now.  
 13 MR. DOYLE: I understand, Your Honor.  
 14 JUDGE GUTHRIDGE: But what -- does  
 15 Baltic know at this point whether -- I'm sorry, I  
 16 mean, does Empire know what Baltic's involvement  
 17 in those shipments were?  
 18 MR. DOYLE: Baltic Chicago, the  
 19 Complainant?  
 20 JUDGE GUTHRIDGE: Baltic --  
 21 MR. DOYLE: We have no idea. We dealt  
 22 strictly with Savannah. We -- Empire dealt with

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1 MR. DOYLE: Well, I think the discussion  
 2 is on constructive notice, and Baltic's own  
 3 practice of negotiating rates indicates that those  
 4 aren't violations, I don't think.  
 5 JUDGE GUTHRIDGE: Well, let me ask it  
 6 this way, Mr. Doyle. The December 16 shipment,  
 7 December 16, 2012 shipment I just referenced, it's  
 8 within three years of the filing of the complaint.  
 9 MR. DOYLE: Yes, Your Honor.  
 10 JUDGE GUTHRIDGE: If -- if, you know,  
 11 I'm not sure that -- I guess that Baltic would  
 12 have to show that it -- Baltic, the complainant,  
 13 not Baltic Savannah -- would have to show that it  
 14 is somehow connected to the shipment. I'm not  
 15 sure how that works. But suppose it could show  
 16 that. And if on that December 16th shipment  
 17 Baltic charged for carrying the shipment on a  
 18 route for which it did not have a tariff, would  
 19 that be a Shipping Act violation, within the last  
 20 three years?  
 21 MR. DOYLE: It sounds like a Shipping  
 22 Act violation, but I don't see what the damages

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1 Baltic Savannah, Baltic -- when there was a doubt  
 2 of who it was dealing with, they tried to clear it  
 3 up at that time, and Baltic Savannah was quite  
 4 adamant that we have nothing to do with Baltic  
 5 Chicago. It was entirely different. And from  
 6 that point on, Empire treated Baltic Savannah in  
 7 that manner. But so far as Empire is concerned,  
 8 it was always dealing with an entirely separate  
 9 entity.  
 10 JUDGE GUTHRIDGE: Okay. Some of the --  
 11 some of those 21 bills of lading -- not -- the  
 12 shipping documents -- I forget what they were --  
 13 identified an entity other than Baltic Savannah as  
 14 the shipper. Who was Empire dealing with on those  
 15 shipments? Was it dealing with Baltic Savannah on  
 16 those shipments even though some other entity was  
 17 identified as the shipper?  
 18 MR. DOYLE: Yes, Your Honor. To my  
 19 knowledge, that's exactly what happened.  
 20 JUDGE GUTHRIDGE: Okay. Do you have  
 21 anything else right now, Mr. Doyle?  
 22 MR. DOYLE: No. No, I don't, Your

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1 Honor.

2 JUDGE GUTHRIDGE: Okay. Mr. Nussbaum,

3 let me -- there's something I forgot to ask you

4 about. You say in your papers, in your

5 observations of the motion, reference arguments

6 about these being continuing violations. What did

7 you mean by that?

8 MR. NUSSBAUM: One moment, Your Honor.

9 I'm just going to open up my brief.

10 JUDGE GUTHRIDGE: You make references to

11 the Seatrain --

12 MR. NUSSBAUM: Bear with me for just a

13 moment, Your Honor.

14 Okay. I see what you're talking about,

15 Your Honor. I'm making reference to page 21 of my

16 brief in opposition. I was setting forth just the

17 general case law and the standard regarding what

18 constitutes, you know, when a cause of action

19 accrues. And I cited Seatrain for that, for the

20 general proposition that the cause of action

21 accrues and the statute of limitations begins to

22 run when the act -- the actual act that causes the

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1 injury happens. But then I refer to the discovery

2 rule. So I'm -- I talk about the -- I rely upon

3 Seatrain for the instances alleged elsewhere in

4 the complaint where we're talking about continuing

5 violations. And off the top of my head, we had

6 alleged that the Respondents' continued refusal to

7 turn over the shipping documents is a continuing

8 violation. The continued failure to keep a tariff

9 on file for routes being serviced by the

10 Respondent is a continuing violation. That was

11 the --

12 JUDGE GUTHRIDGE: Say that second one

13 again.

14 MR. NUSSBAUM: The Respondent's

15 continued failure to keep a tariff on file for the

16 -- for instance, for the route serviced by it for

17 the port-to-port shipment of 40-foot high cube

18 containers containing the commodities shipped by

19 my client. That's a continuing violation. So

20 that's, you know, whether it was that --

21 JUDGE GUTHRIDGE: What is the effect --

22 what does Baltic contend is the effect of that --

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1 I mean, because to me, continuing violations in at

2 least one sense means that something started and

3 continues, and in some situations, one can go back

4 for claims for damages to the time it began, the

5 first one happened. But I don't see that -- I

6 don't see Seatrain standing for that. That's the

7 reason I'm bringing this up now.

8 MR. NUSSBAUM: Sure. Sure, Your Honor.

9 Just to clarify, and this is something that was

10 referred to in the audit. The continuing

11 violation allows the Respondent to basically

12 manipulate the market and engage in it in a

13 discriminatory pricing scheme. If they're not

14 keeping tariffs on file, nobody knows what they're

15 supposed to be charging.

16 JUDGE GUTHRIDGE: But all that occurred

17 more than three years before the complaint was

18 filed?

19 MR. NUSSBAUM: It continues to occur,

20 Your Honor. That's why we had asserted that

21 doctrine. Basically, Empire still allows at this

22 point to manipulate the market and charge whatever

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1 it wants.

2 JUDGE GUTHRIDGE: Do you have evidence

3 of that? There's no evidence of that in the

4 record. Are you contending that Baltic has

5 evidence that at this time Empire does not have a

6 tariff on file?

7 MR. NUSSBAUM: Your Honor, the evidence

8 that we're relying on is the evidence that was in

9 the audit. And the only other thing --

10 JUDGE GUTHRIDGE: I'm talking about

11 today.

12 MR. NUSSBAUM: Today, Your Honor, the

13 only response that I have to your question is that

14 Empire has not produced copies of tariffs in

15 opposition, you know, in support of its motion for

16 summary judgment.

17 JUDGE GUTHRIDGE: Okay. By using

18 continuing violations, is Baltic contending, like,

19 for instance, if within the three-year period,

20 Empire charged -- or let's use the greater than

21 that reflected in its tariffs. Three years is the

22 complaint, Empire charged Baltic amounts greater

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1 than its tariff, does that mean that all 2,000 or  
2 3,000 shipments before that, the statute of  
3 limitations does not bar recovery?  
4 MR. NUSSBAUM: That's my understanding  
5 of the violation doctrine, Your Honor.  
6 JUDGE GUTHRIDGE: That's what -- and you  
7 base that on the Seatrain?  
8 MR. NUSSBAUM: I do not have Seatrain in  
9 front of me right now, so I don't want to  
10 misspeak.  
11 JUDGE GUTHRIDGE: Because Seatrain is  
12 what you cited. Let me see if I can -- what page  
13 of your brief was that on?  
14 MR. NUSSBAUM: It's page 21, Your Honor.  
15 And I think I had also cited that just for the  
16 proposition that continuing violation is  
17 applicable to causes of action for reparations  
18 under the Shipping Act because in the -- on the  
19 other form in the District -- it was in the  
20 District of New Jersey, I had a difference of  
21 opinion as to -- with Respondent's other counsel,  
22 Mr. Warner, as to whether or not continuing

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1 doctrine was applicable to reparations because in  
2 that form, he made the legal argument that  
3 continuing injury was only applicable to the  
4 Commission's own enforcement proceedings.  
5 JUDGE GUTHRIDGE: Okay. Well, what  
6 Seatrain does say insofar as continuing  
7 violations, I mean, Seatrain was a case where the  
8 Complainant filed a complaint on the 31st of July  
9 of 1976. I mean, at that time there was a  
10 two-year statute of limitations. And what the  
11 decision said -- the violations had begun like six  
12 or seven years before that. So what they said --  
13 what the judge said in that case is damages for  
14 unlawful acts prior to July 26 -- 29, 1976, but  
15 because of Saturday-Sunday kind of stuff, damages  
16 for unlawful acts prior to July 29, 1976, are, of  
17 course, barred by the statute of limitations.  
18 So I do not read Seatrain as being a  
19 case that stands for the proposition that if  
20 there's one violation within the statute of  
21 limitations, the statute of limitations does not  
22 bar claims for all the violations occurring

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1 outside the statute of limitations period.  
2 MR. NUSSBAUM: I understand, Your Honor.  
3 JUDGE GUTHRIDGE: Okay. So where are we  
4 here? You have some documents, Mr. Nussbaum, that  
5 you're going to submit to us dealing with the 21  
6 shipments.  
7 MR. NUSSBAUM: Yes.  
8 JUDGE GUTHRIDGE: All right. Do you  
9 have any intention or any interest in filing a  
10 post-hearing supplemental brief?  
11 MR. NUSSBAUM: Your Honor, that's  
12 something that I said I would like the opportunity  
13 just to discuss with my client. The answer is  
14 maybe at this point.  
15 JUDGE GUTHRIDGE: All right. Why don't  
16 you let me know within -- how long will it take  
17 you to find out?  
18 MR. NUSSBAUM: I guess one business day.  
19 Can I let you know by Monday?  
20 JUDGE GUTHRIDGE: Sure. Okay. But with  
21 this caveat, that it would be limited to 3,500  
22 words -- 3,500 words.

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1 MR. NUSSBAUM: Okay.  
2 JUDGE GUTHRIDGE: Because you would need  
3 to focus on it and not repeat a lot of the facts,  
4 only, you know, certain facts as may be necessary  
5 for your argument.  
6 MR. NUSSBAUM: Your Honor, I didn't want  
7 to ask --  
8 JUDGE GUTHRIDGE: I beg your pardon?  
9 MR. NUSSBAUM: I just didn't want to ask  
10 how much time we would actually have to actually  
11 submit such a brief.  
12 JUDGE GUTHRIDGE: Well, that's -- it may  
13 very well be that you would want a copy of the  
14 transcript before doing that; is that correct?  
15 MR. NUSSBAUM: Absolutely.  
16 JUDGE GUTHRIDGE: Is the court reporter  
17 available?  
18 THE REPORTER: Yes. Yes, Your Honor.  
19 JUDGE GUTHRIDGE: Okay. How long will  
20 -- is it going to -- for cheapest service, because  
21 that's all I can pay for -- how long is it going  
22 to take to get a transcript?

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1 THE REPORTER: Regular delivery is 10  
2 business days, so it would be on June 26th.  
3 JUDGE GUTHRIDGE: Okay. And I guess  
4 Baltic would have to arrange with you about  
5 getting a copy of the transcript. I'm not sure  
6 how those relationships work.  
7 So how long would you need after that?  
8 It shouldn't be very long because I think, you  
9 know, you know basically what we talked about, you  
10 were part of it. And so how long would you need  
11 -- if the transcript is the 26th -- actually, I'll  
12 be gone. The 10th of July?  
13 MR. NUSSBAUM: That's enough time, Your  
14 Honor.  
15 JUDGE GUTHRIDGE: Mr. Doyle, I suppose  
16 you're going to respond?  
17 MR. DOYLE: I hope not, Your Honor. If  
18 it is, it couldn't possibly be very long. I don't  
19 think I'll need much time.  
20 JUDGE GUTHRIDGE: A week?  
21 MR. DOYLE: Sure.  
22 JUDGE GUTHRIDGE: Okay. All right.

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1 Then Mr. Nussbaum, you'll let me know Monday  
2 whether you want to file a brief. If you want to  
3 file a brief, it'll be due, let's say July 10.  
4 MR. NUSSBAUM: Yes, Your Honor.  
5 JUDGE GUTHRIDGE: And reply July 17th.  
6 Okay? All right. Is there anything else counsel,  
7 either side? Mr. Nussbaum? No, Your Honor.  
8 JUDGE GUTHRIDGE: Mr. Doyle?  
9 MR. DOYLE: Yeah. On this briefing  
10 schedule, that's it; right? One shot each? Or  
11 other replies or what?  
12 JUDGE GUTHRIDGE: One shot each.  
13 MR. DOYLE: Excellent.  
14 JUDGE GUTHRIDGE: And Mr. Doyle, you  
15 also will be limited to 3,500 words.  
16 MR. DOYLE: Thank you, Your Honor.  
17 JUDGE GUTHRIDGE: Okay? Anything else?  
18 MR. NUSSBAUM: I guess, Your Honor, I'm  
19 not sure this is a proper question until we go any  
20 further, but at this point is it possible for us  
21 to request copies of the bills of lading and  
22 invoices for this attachment -- for Attachment B?

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1 JUDGE GUTHRIDGE: I'm not following you.  
2 MR. NUSSBAUM: For the other -- for the  
3 other -- for the other shipments at issue.  
4 JUDGE GUTHRIDGE: The 21 shipments? I  
5 thought you said you already had those documents.  
6 Doesn't your client have those documents? I mean,  
7 they were involved in the shipments, the 21  
8 shipments, how could it have been involved without  
9 its own documents?  
10 MR. NUSSBAUM: Your Honor, I'm  
11 specifically referring to Empire's house bills of  
12 lading and invoices.  
13 MR. DOYLE: I believe we've gone on  
14 record -- this is Doyle -- several times saying  
15 (a) there are no invoices, if we're talking about  
16 an individual piece of paper per shipment. That  
17 was never, ever created. They don't exist.  
18 Insofar as house bills of lading were concerned,  
19 they were never issued. This was all done  
20 electronically. It's the beauty of modern  
21 commerce. They don't need a lot of paper anymore.  
22 JUDGE GUTHRIDGE: I think, Mr. Nussbaum,

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1 you'll have to rely on your documents for that --  
2 your client's documents.  
3 MR. NUSSBAUM: Understood, Your Honor.  
4 JUDGE GUTHRIDGE: Okay. Anything else,  
5 counsel?  
6 MR. NUSSBAUM: No.  
7 MR. DOYLE: No, Your Honor.  
8 JUDGE GUTHRIDGE: Okay. Well, then this  
9 hearing is adjourned at 12:10. Thank you for  
10 calling in.  
11 MR. DOYLE: Thank you very much, Your  
12 Honor.  
13 MR. NUSSBAUM: Thank you.  
14 (Whereupon, at 12:10 p.m., the  
15 PROCEEDINGS were adjourned.)  
16 \* \* \* \* \*  
17 \* \* \* \* \*  
18 \* \* \* \* \*  
19 \* \* \* \* \*  
20 \* \* \* \* \*  
21 \* \* \* \* \*  
22 \* \* \* \* \*

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1	CERTIFICATE OF NOTARY PUBLIC
2	DISTRICT OF COLUMBIA
3	I, Carleton J. Anderson, III, notary
4	public in and for the District of Columbia, do
5	hereby certify that the forgoing PROCEEDING was
6	duly recorded and thereafter reduced to print under
7	my direction; that the witnesses were sworn to tell
8	the truth under penalty of perjury; that said
9	transcript is a true record of the testimony given
10	by witnesses; that I am neither counsel for,
11	related to, nor employed by any of the parties to
12	the action in which this proceeding was called;
13	and, furthermore, that I am not a relative or
14	employee of any attorney or counsel employed by the
15	parties hereto, nor financially or otherwise
16	interested in the outcome of this action.
17	
18	
19	(Signature and Seal on File)
20	-----
21	Notary Public, in and for the District of Columbia
22	My Commission Expires: March 31, 2017

# APPENDIX “2”

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Eleanor J. Doyle  
Gerard S. Doyle, Jr.  
David Donald Gabel

February 18, 2015

Via email: [judges@fmc.gov](mailto:judges@fmc.gov) [secretary@fmc.gov](mailto:secretary@fmc.gov)

Federal Maritime Commission  
800 North Capitol Street, N.W  
Washington, D.C. 20573

Att: The Honorable Clay G. Guthridge,  
Administrative Law Judge

RE: Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov, Empire  
United Lines Co., Inc.  
Docket No: 14-16  
Respondents' Status Report

Honorable Sir:

Counsel for the parties are unable to submit a Joint Report at this time because of schedule conflicts. Accordingly, please accept this as Respondents' Status Report and recommendations as to how to proceed with discovery, litigation and Respondents' Summary Judgment motion to dismiss the Complaint on the grounds that the claims are time-barred. Counsel have conferred and agreed on this procedure.

### Respondents' Status Report and Recommendation as to how to proceed

As requested, counsel for the parties have been in discussions as to how to proceed with respect to the "glaring issue" of time-bar.

Unfortunately, the parties disagree on the operative facts, relevant documentation and the applicable law.

During the telephone conference (5 February), Mr. Nussbaum stated that he might need "a few documents" from Respondent Empire United Lines (see recording of conference at about 5:00 - 5:48).

Mr. Nussbaum then sent an email with five (5) attachments (Exhibits A-E), each listing container numbers – for a total of some 600 (+/-) containers. Mr. Nussbaum requested 4 pieces of information about each shipment.

Even though Empire United thought the request was burdensome and harassing, it will shortly comply with Complainant's document request.

Complainant has now satisfied Respondents' request for a more definite statement, as, with the exception of the 21 shipments identified in Mr. Nussbaum's Exhibit A, it is now apparent that the shipments complained of are exactly the shipments involved in the 2011 New Jersey lawsuit – which itself claimed violations of the Shipping Act as "Count 1"<sup>1</sup>. (An analysis of the containers identified in Exhibits B-E and how they relate to the 2011 New Jersey lawsuit is attached as Exhibit 1.)

Accordingly, there is no need to do extensive discovery – as all of the facts known about such shipments were known at the time of the 2011 New Jersey lawsuit. And, as all of the operative facts were known at that time (or earlier), and since the lawsuit was filed more than three years before the FMC Complaint was filed, the claims are now time-barred.

With respect to the 21 shipments identified in Exhibit A, they are not the Complainant's shipments, and therefore have no bearing on the FMC Complaint. After receiving Mr. Nussbaum's Exhibit A Empire United Lines asked Mr. Nussbaum for any other information or communication about the 21 shipments so that Empire United could confirm that they were actually Complainant's shipments. Mr. Nussbaum refused<sup>2</sup>, so Empire United Lines made its own investigation. They are not Complainant's shipments.

If there is any question about this, Respondents will make available the relevant shipping documents in support of this finding. Respondents will not make them available to Baltic's counsel as such might be a violation of 46 USC 41103 (a).

---

<sup>1</sup> "Furthermore, the imposition of false and excessive shipping charges, both prospectively and retroactively, and the unlawful seizure of Plaintiff's cargo is a violation of the Shipping Act of 1984, as amended, as well as [the] rules and regulations promulgated by the Federal Maritime Commission." (2011 DNJ Complaint, ¶ 61)

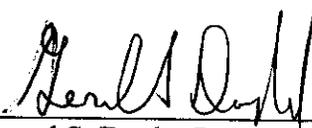
<sup>2</sup> "With respect to the 21 shipments identified in Attachment A, it will be necessary for Baltic to provide us with correspondence or documentation, such as shipping instructions, requests for the bookings, responses to the booking requests, Master Bill of Lading from Baltic to Empire United, evidence of any payments, etc. so that Empire United might be able to confirm that these are the Complainant's shipments. Please note that we are not asking for all of these documents – just something that we can use to confirm that these are the Complainant's shipments." (Doyle to Nussbaum, email, 2/13/2015)

"However, with respect to the 21 Containers identified in Attachment "A", it is your client's request for additional information that seems disingenuous." (Nussbaum to Doyle, email, 2/17/2015)

As there are no factual issues to be resolved, Respondent's recommend that a briefing schedule be set for Respondents' motion to dismiss Baltic's claims on the grounds of time-bar. Under the circumstances, should the motion be denied, Respondents should be permitted to make a subsequent motion for the dismissal of the FMC Complaint on the grounds that the Complaint is barred by the Settlement Agreement and Stipulation of Dismissal.

Respondents specifically reserve their right to seek additional relief from the delaying and harassing tactics employed by Complainant.

Respectfully submitted,



Gerard S. Doyle, Jr.

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**Michael Khitrinov, and**

**Empire United Lines, Co., Inc.**

Cc: via email

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Office of the Secretary, Federal Maritime Commission

[secretary@fmc.gov](mailto:secretary@fmc.gov)

## RESPONDENTS' EXHIBIT 1

Mr. Nussbaum's Exhibits: Original Source, comments

**Exhibit B:** This is the same list as appears as Exhibit F in the 2011 DNJ Complaint.

**Exhibit C:** All of these containers (with two exceptions) are found in Exhibits A and B of the 2011 Settlement Agreement, to wit:

MSCU9836410		line 3 from Exhibit "A" (Settlement)
MEDU841042 6		line 5 from Exhibit "A" (Settlement)
MSCU8385029		line 4 from Exhibit "A" (Settlement)
DFSU6834642		line 8 from Exhibit "A" (Settlement)
MEDU810201 7		line 10 from Exhibit "A" (Settlement)
MSCU7031490		line 9 from Exhibit "A" (Settlement)
MEDU806510 3		line 20 from Exhibit "A" (Settlement)
MSCU8278289		line 17 from Exhibit "A" (Settlement)
MSCU8766323		line 16 from Exhibit "A" (Settlement)
MSCU7217843		line 14 from Exhibit "A" (Settlement)
MSCU7098343		line 81 from Exhibit "B" (Settlement)
MEDU888354 2		line 44 from Exhibit "B" (Settlement)
MSCU7109622		line 93 from Exhibit "B" (Settlement)
INKU6711625		line 36 from Exhibit "B" (Settlement)
TCNU8182268		line 39 from Exhibit "B" (Settlement)
FCIU8794102		line 43 from Exhibit "B" (Settlement)
MSCU9181914		line 40 from Exhibit "B" (Settlement)
MEDU832100 0		line 117 from Exhibit "B" (Settlement)
MSCU7087570		line 121 from Exhibit "B" (Settlement)
TRIU9717891		line 83 from Exhibit "B" (Settlement)
MEDU702680 1		line 50 from Exhibit "B" (Settlement)
FSCU6185019		line 75 from Exhibit "B" (Settlement)
CARU9786244		line 71 from Exhibit "B" (Settlement)

The two exceptions are:

INKU6592151

MSCU8669874

These were not Empire United shipments, but were booked by Baltic directly with MSC.

**Exhibit D:** All of the containers identified in Exhibit D can be found in Exhibit F of the 2011 New Jersey Complaint. Specifically:

038EUL454229	CAXU9312810	page 52 from Exhibit "F" (Original complaint)
038EUL454218	DFSU5466440	page 52 from Exhibit "F" (Original complaint)
038EUL455665	GLDU7669853	page 53 from Exhibit "F" (Original complaint)
038EUL455667	MSCU7104533	page 53 from Exhibit "F" (Original complaint)
038EUL486081	MSCU8159340	page 53 from Exhibit "F" (Original complaint)

**Exhibit E:** All of the telex releases from Exhibit E can be found in the 2011 Settlement Agreement, to wit:

	Page #	
MEDU8876878	1	line 24 from Exhibit "B" (Settlement)
MSCU7080679	2	line 160 from Exhibit "B" (Settlement)
MSCU7189891	3	line 158 from Exhibit "B" (Settlement)
MSCU9360600	4	line 161 from Exhibit "B" (Settlement)
MSCU7185535	5	line 80 from Exhibit "B" (Settlement)
MSCU8791054	6	line 94 from Exhibit "B" (Settlement)
INKU6735186	7	line 97 from Exhibit "B" (Settlement)
TGHU7524157	8	line 79 from Exhibit "B" (Settlement)

# APPENDIX “3”

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

---

Docket No.: 14-16

---

**BALTIC AUTO SHIPPING, INC.,**

*Complainant,*

– vs. –

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

*Respondents.*

---

**CERTIFICATION OF KAMIL SAWON**

Kamil Sawon, pursuant to 28 U.S.C. 1746, making the following Certification under penalty of perjury, in lieu of oath or affidavit says:

1. I submit this affidavit regarding the following five Empire United Lines Co. Inc. (“EUL”) booking and container numbers:

- |    |              |             |
|----|--------------|-------------|
| 1. | 038EUL454229 | CAXU9312810 |
| 2. | 038EUL454218 | DFSU6456440 |
| 3. | 038EUL455665 | GLDU7669853 |
| 4. | 038EUL455667 | MSCU7104533 |
| 5. | 038EUL486081 | MSCU8159340 |

2. With respect to these five bookings, I was personally involved in negotiating the release of the cargo for these five bookings, during which time M&E Baltic LLC (“M&E Baltic”) acted as a neutral third-party. M&E Baltic negotiated for the release of the cargo on behalf of exporter G&G Auto Sales. As such, I have personal knowledge of the facts stated herein.

3. I have been advised by counsel for the complainant that EUL and its principal, Mr. Michael Hitrinov, have stated under penalty of perjury, that these bookings do not belong to the complainant, Baltic Auto Shipping Inc. and that they instead belong to M&E Baltic. I make this affidavit for purposes of explaining to the Commission why the statements of EUL and Mr. Hitrinov are false.

4. With respect to the five bookings from EUL, the shipper/exporter for this cargo was an entity known as "G&G Auto Sales", which, upon information and belief, is a customer of Baltic Auto Shipping Inc. The only role that M&E Baltic and I had with respect to this cargo was to assist G&G Auto Sales with obtaining the release of the cargo.

5. Upon information and belief, these five bookings were ordered directly from EUL by Baltic Auto Shipping Inc.

6. During my tenure at M&E Baltic, and with regard to the five above referenced booking numbers, neither M&E Baltic nor I ever requested that EUL book these shipments on behalf of M&E Baltic or on behalf of G&G Auto Sales.

7. During my tenure at M&E Baltic, and with regard to the five above referenced booking numbers, neither M&E Baltic nor I ever received nor used these bookings from EUL. These bookings do not belong to M&E Baltic nor myself and are not for shipments from M&E Baltic. Neither M&E Baltic nor I ever forwarded shipping instructions or dock receipts/masters to EUL for these five bookings.

8. The reason that M&E Baltic and I became involved in this matter is because I previously had some contact with EUL regarding other matters. Therefore, I stepped in, at the request of the exporter G&G Auto Sales, to assist with getting this cargo released. At the request of G&G Auto Sales and the consignee, M&E Baltic and I forwarded payment to EUL to obtain

the release of the cargo related to the five bookings. A copy of my email correspondence with EUL and Mr. Hitrinov to that effect is annexed hereto as **Exhibit "A"**.

9. M&E Baltic was subsequently reimbursed by G&G Auto Sales for payment to EUL for the five bookings.

10. Subsequent to my contact with EUL regarding the release of the cargo for these bookings, and prior to the release of the cargo, I was contacted by phone by Mr. Hitrinov, who explained that the cargo would be released upon compliance with the following two conditions: (1) that the shipper/consignee pay an additional \$500 per container, over and above the \$3366.00 per container already paid by the consignee for ocean freight; and (2) that I provide EUL with an email from M&E Baltic, which was dictated to me by Mr. Hitrinov by telephone stating that Baltic Auto Shipping Inc. was not supposed to be listed as the shipper for these containers.

11. Per Mr. Hitrinov's request, I provided him with the email that he dictated to me. Regardless of the inaccuracy of the statement in the email regarding M&E Baltic's alleged involvement with these bookings, I agreed to forward the email to Mr. Hitrinov in order to procure the release of the cargo.

12. The statements made by me in the email and the overpayment of \$500 per container were made under duress and were coerced by Michael Hitrinov and Empire, who placed a hold on the containers and caused G&G Auto Sales and its consignee to incur storage and demurrage charges.

13. During my tenure at M&E Baltic, the only involvement that M&E Baltic had with respect to these five bookings arose when EUL directly contacted the consignee for these bookings and offered to release the cargo in exchange for the total amount of \$3866.00 per booking.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 24, 2015.

  
\_\_\_\_\_  
Kamil Sawon



## Marcus A. Nussbaum

---

**Subject:** FW: 2 California containers

**From:** Baltic Auto Shipping [mailto:[balticauto@sbcglobal.net](mailto:balticauto@sbcglobal.net)]  
**Sent:** Friday, June 19, 2015 11:53 AM  
**To:** Marcus Nussbaum  
**Subject:** Fw: 2 California containers

Baltic Auto Shipping Inc.  
5811 66th st.  
Bedford Park, IL 60638  
Cell +1(630)362-0568  
Tel +1(708)924-7474  
Fax +1(708)924-7480  
[www.balticautoshipping.com](http://www.balticautoshipping.com)

----- Forwarded Message -----

**From:** ME Baltic LLC <[mebaltic@hotmail.com](mailto:mebaltic@hotmail.com)>  
**To:** "[balticauto@sbcglobal.net](mailto:balticauto@sbcglobal.net)" <[balticauto@sbcglobal.net](mailto:balticauto@sbcglobal.net)>; "[info@balticautoshipping.com](mailto:info@balticautoshipping.com)" <[info@balticautoshipping.com](mailto:info@balticautoshipping.com)>; "[kamil.mebaltic@gmail.com](mailto:kamil.mebaltic@gmail.com)" <[kamil.mebaltic@gmail.com](mailto:kamil.mebaltic@gmail.com)>  
**Sent:** Friday, June 19, 2015 10:48 AM  
**Subject:** FW: 2 California containers

*Best regards!*

M&E Baltic LLC  
Wholesale auto shipping.  
145 Baekeland Ave  
Piscataway, NJ 08854

Office: (732)564 5734  
Fax: (732) 719-7865

[www.mebaltic.com](http://www.mebaltic.com)

---

**From:** [mebaltic@hotmail.com](mailto:mebaltic@hotmail.com)  
**To:** [michael@eulines.com](mailto:michael@eulines.com); [vlada@eulines.com](mailto:vlada@eulines.com); [yuliya@eulines.com](mailto:yuliya@eulines.com)  
**Subject:** FW: 2 California containers  
**Date:** Tue, 22 Nov 2011 13:55:18 -0500

Michael,

We just made a 18,330 today, and 1,000 was made on 11/18 . Please apply payments as below

038EUL454229	CAXU9312810	\$ 3,366.00 + \$500
038EUL454218	DFSU6456440	\$ 3,366.00 + \$500
038EUL455665	GLDU7669853	\$ 3,366.00 + \$500
038EUL455667	MSCU7104533	\$ 3,366.00 + \$500
038EUL486081	MSCU8159340	\$ 3,366.00 + \$500
	<b>Total</b>	<b>\$ 19,330.00</b>

*Best regards!*  
Kamil

M&E Baltic LLC  
Wholesale auto shipping.  
145 Baekeland Ave  
Piscataway, NJ 08854

Office: (732)564 5734  
Fax: (732) 719-7865

[www.mebaltic.com](http://www.mebaltic.com)

---

From: [mebaltic@hotmail.com](mailto:mebaltic@hotmail.com)  
To: [yuliya@eulines.com](mailto:yuliya@eulines.com); [michael@eulines.com](mailto:michael@eulines.com)  
CC: [vlada@eulines.com](mailto:vlada@eulines.com)  
Subject: RE: 2 California containers  
Date: Tue, 22 Nov 2011 13:20:42 -0500

We are going to make a deposit now for ammount : 18,330.00

Please let me know once you get it and issue releases for below containers.

038EUL454229 - CAXU9312810  
038EUL454218 - DFSU6456440  
038EUL455665 - GLDU7669853  
038EUL455667 - MSCU7104533  
038EUL486081 - MSCU8159340

*Best regards!*

Kamil

M&E Baltic LLC  
Wholesale auto shipping.  
145 Baekeland Ave  
Piscataway, NJ 08854

Office: (732)564 5734  
Fax: (732) 719-7865

[www.mebaltic.com](http://www.mebaltic.com)

From: [yuliya@eulines.com](mailto:yuliya@eulines.com)  
To: [Michael@eulines.com](mailto:Michael@eulines.com); [mebaltic@hotmail.com](mailto:mebaltic@hotmail.com)  
CC: [Vlada@eulines.com](mailto:Vlada@eulines.com)  
Date: Mon, 21 Nov 2011 10:59:05 -0800  
Subject: RE: 2 California containers

96132	038EUL454229	CAXU9312810	LONG BEACH, CA	KLAIPEDA	\$3,366.00	\$0.00	\$3,366.00	\$100 Dock fee + \$8 ISPS ECU
96121	038EUL454218	DFSU5466440	LONG BEACH, CA	KLAIPEDA	\$3,366.00	\$0.00	\$3,366.00	\$100 Dock fee + \$8 ISPS ECU
96410	038EUL455665	GLDU7669853	LONG BEACH, CA	KLAIPEDA	\$3,366.00	\$0.00	\$3,366.00	\$100 Dock fee + \$8 ISPS ECU
96412	038EUL455667	MSCU7104533	LONG BEACH, CA	KLAIPEDA	\$3,366.00	\$0.00	\$3,366.00	\$100 Dock fee + \$8 ISPS ECU
96650	038EUL486081	MSCU8159340	LONG BEACH, CA	KLAIPEDA	\$3,366.00	\$0.00	\$3,366.00	\$100 Dock fee + \$8 ISPS ECU

\$16,830.00

Best regards,  
Yuliya Mikhailkevich

Empire United Lines Co. , Inc  
2303 Coney Isl Ave  
Brooklyn, NY 11223  
Tel:(718) 998-6900  
Fax:(718) 998-7014  
e-mail: [yuliya@eulines.com](mailto:yuliya@eulines.com)

**From:** Michael Hitrinov  
**Sent:** Monday, November 21, 2011 1:56 PM  
**To:** EUL-Yuliya Mikhailkevich; ME Baltic LLC  
**Cc:** Vlada German  
**Subject:** RE: 2 California containers

Tell me the amount for each and total

Michael Hitrinov

Empire United Lines Co., Inc  
2303 Coney Isl Ave  
Brooklyn, NY 11223  
Tel 📞: 718 998 6900  
Fax 📠: 718 998 7014  
E-mail 📧: [Michael@eulines.com](mailto:Michael@eulines.com)

**From:** EUL-Yuliya Mikhailkevich  
**Sent:** Monday, November 21, 2011 1:54 PM  
**To:** Michael Hitrinov; ME Baltic LLC  
**Cc:** Vlada German  
**Subject:** RE: 2 California containers

Not yet

Best regards,  
Yuliya Mikhailkevich

Empire United Lines Co. , Inc  
2303 Coney Isl Ave  
Brooklyn, NY 11223  
Tel:(718) 998-6900  
Fax:(718) 998-7014  
e-mail: [yuliya@eulines.com](mailto:yuliya@eulines.com)

**From:** Michael Hitrinov  
**Sent:** Monday, November 21, 2011 1:53 PM  
**To:** ME Baltic LLC; EUL-Yuliya Mikhailkevich  
**Cc:** Vlada German  
**Subject:** RE: 2 California containers

Did they pay already any money for those containers ???

Michael Hitrinov

Empire United Lines Co., Inc  
2303 Coney Isl Ave  
Brooklyn, NY 11223  
Tel 📞: 718 998 6900  
Fax 📠: 718 998 7014  
E-mail 📧: [Michael@eulines.com](mailto:Michael@eulines.com)

**From:** ME Baltic LLC [<mailto:mebaltic@hotmail.com>]  
**Sent:** Monday, November 21, 2011 1:51 PM  
**To:** EUL-Yuliya Mikhailkevich; Michael Hitrinov  
**Cc:** Vlada German  
**Subject:** RE: 2 California containers

Michael,

Here is the list of all containers arriving from CA, let me know how much it will cost to get the releases for all of them:

038EUL454229 - CAXU9312810 11.13 arrived into Klaipeda  
038EUL454218 - DFSU6456440 11.13 arrived into Klaipeda  
038EUL455665 - GLDU7669853 11.19 arriving into Klaipeda  
038EUL455667 - MSCU7104533 11.19 arriving into Klaipeda  
038EUL486081 - MSCU8159340 11.19 arriving into Klaipeda

*Best regards!*

Kamil

M&E Baltic LLC  
Wholesale auto shipping.  
145 Baekeland Ave  
Piscataway, NJ 08854

Office: (732)564 5734  
Fax: (732) 719-7865

[www.mebaltic.com](http://www.mebaltic.com)

# APPENDIX “4”

**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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**CERTIFICATION OF GEDIMINAS GARMUS**

Gediminas Garmus, pursuant to 28 U.S.C. 1746, making the following Certification under penalty of perjury, in lieu of oath or affidavit says:

1. I am the owner of G&G Auto Sales, and I submit this affidavit regarding the following five booking and container numbers:

1.	038EUL454229	CAXU9312810
2.	038EUL454218	DFSU6456440
3.	038EUL455665	GLDU7669853
4.	038EUL455667	MSCU7104533
5.	038EUL486081	MSCU8159340

2. With respect to these five bookings, G&G Auto Sales was the shipper/exporter of record, and copies of the dock receipts for the five bookings are annexed hereto as **Exhibit "A"**. As such, I have personal knowledge of the facts stated herein.

3. I have been advised by counsel for the complainant that Empire United Lines Co., Inc. ("EUL") and its principal, Mr. Michael Hitrinov, have stated under penalty of perjury, that these bookings do not belong to the complainant, Baltic Auto Shipping Inc. and that they instead



belong to M&E Baltic. I make this affidavit for purposes of explaining to the Commission why the statements of EUL and Mr. Hitrinov are false.

4. With respect to the five above referenced bookings, G&G Auto Sales retained the services of Baltic Auto Shipping Inc. to export those five containers.

5. In late 2011, G&G Auto Sales and its consignee were contacted by EUL, who had placed a hold on the containers and refused to release them to the consignee, causing G&G Auto Sales and its consignee to incur storage and demurrage charges.

6. EUL subsequently offered to release the cargo directly to the consignee without involving Baltic Auto Shipping Inc. in exchange for payment of an additional \$500.00 per container, over and above the \$3366.00 per container already paid for ocean freight.

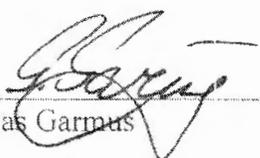
7. At my request, M&E Baltic assisted G&G Auto Sales with obtaining the release of the above referenced five containers.

8. The reason that M&E Baltic became involved in this matter is because they were familiar with EUL and its principal, Michael Hitrinov. Therefore, they stepped in and acted as a neutral third-party at my request, to assist with getting this cargo released. At the request of G&G Auto Sales and its consignee, M&E Baltic forwarded payment to EUL to obtain the release of the cargo related to the five bookings.

9. M&E Baltic was subsequently reimbursed by G&G Auto Sales for payment to EUL for the five bookings.

10. In early 2012, when Baltic Auto Shipping Inc. contacted me regarding payment for the shipment of the five containers, I notified them that the containers had been released directly by EUL.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on June 30, 2015.

  
Gediminas Garmus



SHIPPER/EXPORTER <b>G&amp;G AUTO SALES</b> <b>8 AVIATION CT</b> <b>SAVANNAH GA 31408</b> <b>PH 912 966 6820</b> <b>FAX 866 524 7765</b>	DOCUMENT NO <b>BOOKING # 038EUL454229</b>
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CONSIGNEE <b>TARPTAUTINIAI KONTAKTAI IR KO</b> <b>EZERO G.1</b> <b>KAUNAS, LITHUANIA</b> <b>PH: 370 612 86911</b>	FORWARDING AGENT
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NOTIFY PARTY	DOMESTIC ROUTING/EXPORT INSTRUCTIONS  <b>AES-ITN: X20110923069217</b> Schedule B or HTS Number 8703230090
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<b>OCEAN/VESSEL</b> <b>MSC MANDRAKI 22R</b> <b>FOR TRANSSHIPMENT</b>  SAILING DATE: <b>10/05/2011</b>	PORT OF LOADING <b>LOS ANGELES, CA</b>  PORT OF DISCHARGE <b>KLAIPEDA,</b> <b>LITHUANIA</b>	ONWARD INLAND ROUTING  <b>CSC , SEC , PREPAID</b>
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CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		
MARKS AND NUMBERS	NUMBER OF CARGO UNITS OR OTHER PACKAGES	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
CONTAINER # <b>CAXU9312810</b> SEAL#7826080		S.T.C.3 CARS  2011 MERCEDES BENZ C300 VIN# WDDGF5EB0BA527768 2011 MERCEDES BENZ E350 VIN# WDDHF5GB9BA294328 2010 LEXUS RX450H VIN# JTJBC1BA6A2401003  SIGNATURE..... <b>GAS HAS BEEN DRAINED, BATTERIES DISCONNECTED</b>  <b>FREIGHT CSC, SEC PREPAID</b> <b>TELEX RELEASE</b>	1540kg  1680kg  1890kg	

DELIVERED BY:  LIGHTER ..... TRUCK .....  ARRIVED--- DATE ..... TIME.....  UNLOADED-- DATE ..... TIME.....  CHECKED BY .....  IN SHIP PLACED ON DOCK LOCATION .....	RECEIVED THE ABOVE DESCRIBED GOODS OR PACKAGES SUBJECT TO ALL THE TERMS OF THE UNDESIGNED'S REGULAR FORM OF DOCK RECEIPT AND BILL OF LADING WHICH SHELL CONSTITUTE THE CONTRACT UNDER WHICH THE GOODS ARE RECEIVED, COPIES OF WHICH ARE AVAILABLE FROM THE CARRIER ON REQUEST AND MAY BE INSPECTED AT ANY OF ITS OFFICES  FOR THE MASTER  BY..... RECEIVING CLERK  DATE.....
---	---

SHIPPER/EXPORTER <b>G&amp;G AUTO SALES</b> 8 AVIATION CT SAVANNAH GA 31408 PH 912 966 6820 FAX 866 524 7765		DOCUMENT NO <b>BOOKING # 038EUL454218</b>		
CONSIGNEE <b>TARPTAUTINIAI KONTAKTAI IR KO</b> <b>EZERO G.1</b> <b>KAUNAS,LITHUANIA</b> <b>PH: 370 612 86911</b>		FORWARDING AGENT		
NOTIFY PARTY		DOMESTIC ROUTING/EXPORT INSTRUCTIONS  AES-ITN: X20110923069756 Schedule B or HTS Number 8703230090		
OCEAN/VESSEL <b>MSC MANDRAKI 22R</b> FOR TRANSSHIPMENT  SAILING DATE: <b>10/05/2011</b>		PORT OF LOADING <b>LOS ANGELES,CA</b>  PORT OF DISCHARGE <b>KLAIPEDA,</b> <b>LITHUANIA</b>	ONWARD INLAND ROUTING  <b>CSC , SEC , PREPAID</b>	
CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		
MARKS AND NUMBERS	NUMBER OF CARGO UNITS OR OTHER PACKAGES	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
CONTAINER # <b>DFSU5466440</b> SEAL#7826072		S.T.C.4 CARS  2008 VOLKSWAGEN PASSAT VIN# WVWJK73C98E108130 2008 AUDI A4 VIN# WAUDF78E48A168784 2008 TOYOTA PRIUS VIN# JTDKB20U383363324 2009 PONTIAC VIBE VIN# 5Y2SP67859Z435253  SIGNATURE..... <b>GAS HAS BEEN DRAINED,BATTERIES DISCONNECTED</b> <b>FREIGHT CSC,SEC PREPAID</b> <b>TELEX RELEASE</b>	1430kg  1480kg  1260kg  1280kg	
DELIVERED BY:  LIGHTER ..... TRUCK .....  ARRIVED--- DATE .....TIME.....  UNLOADED-- DATE .....TIME.....  CHECKED BY .....  IN SHIP PLACED ON DOCK LOCATION .....		RECEIVED THE ABOVE DESCRIBED GOODS OR PACKAGES SUBJECT TO ALL THE TERMS OF THE UNDESIGNED'S REGULAR FORM OF DOCK RECEIPT AND BILL OF LADING WHICH SHALL CONSTITUTE THE CONTRACT UNDER WHICH THE GOODS ARE RECEIVED, COPIES OF WHICH ARE AVAILABLE FROM THE CARRIER ON REQUEST AND MAY BE INSPECTED AT ANY OF ITS OFFICES  FOR THE MASTER  BY..... RECEIVING CLERK  DATE.....		

SHIPPER/EXPORTER <b>G&amp;G AUTO SALES</b> <b>8 AVIATION CT</b> <b>SAVANNAH GA 31408</b> <b>PH 912 966 6820</b> <b>FAX 866 524 7765</b>		DOCUMENT NO <b>BOOKING # 038EUL455665</b>		
CONSIGNEE <b>TARPTAUTINIAI KONTAKTAI IR KO</b> <b>EZERO G.1</b> <b>KAUNAS,LITHUANIA</b> <b>PH: 370 612 86911</b>		FORWARDING AGENT		
NOTIFY PARTY		DOMESTIC ROUTING/EXPORT INSTRUCTIONS  <b>AES-ITN: X20111004055608</b> Schedule B or HTS Number 8703230090		
<b>OCEAN/VESSEL</b> <b>MSC FABIENNE 6R</b> <b>FOR TRANSSHIPMENT</b>  SAILING DATE: <b>10/11/2011</b>	PORT OF LOADING <b>LOS ANGELES,CA</b>  PORT OF DISCHARGE <b>KLAIPEDA,</b> <b>LITHUANIA</b>	ONWARD INLAND ROUTING  <b>CSC , SEC , PREPAID</b>		
<b>CARRIER'S RECEIPT</b>		<b>PARTICULARS FURNISHED BY SHIPPER</b>		
<b>MARKS AND NUMBERS</b>	<b>NUMBER OF CARGO UNITS OR OTHER PACKAGES</b>	<b>DESCRIPTION OF GOODS</b>	<b>GROSS WEIGHT</b>	<b>MEASUREMENT</b>
CONTAINER # <b>GLDU7669853</b> <b>SEAL#7826050</b>		<b>S.T.C.4 CARS</b>  2008 TOYOTA HIGHLANDER VIN# JTEES42A582067489 2011 BMW 328 VIN# WBADW7C54BE542866 2009 MERCEDES BENZ C350 VIN# WDDGF56X09R048160 2009 TOYOTA COROLLA VIN# JTDBL40E59J009707  SIGNATURE..... <b>GAS HAS BEEN DRAINED,BATTERIES DISCONNECTED</b> <b>FREIGHT CSC,SEC PREPAID</b> <b>TELEX RELEASE</b>	1820kg  1530kg  1540kg  1250kg	
DELIVERED BY:  LIGHTER ..... TRUCK .....  ARRIVED--- DATE .....TIME.....  UNLOADED-- DATE .....TIME.....  CHECKED BY .....  IN SHIP PLACED ON DOCK LOCATION .....		RECEIVED THE ABOVE DESCRIBED GOODS OR PACKAGES SUBJECT TO ALL THE TERMS OF THE UNDESIGNED'S REGULAR FORM OF DOCK RECEIPT AND BILL OF LADING WHICH SHELL CONSTITUTE THE CONTRACT UNDER WHICH THE GOODS ARE RECEIVED, COPIES OF WHICH ARE AVAILABLE FROM THE CARRIER ON REQUEST AND MAY BE INSPECTED AT ANY OF ITS OFFICES  _____ FOR THE MASTER  BY..... RECEIVING CLERK  DATE.....		

SHIPPER/EXPORTER <b>G&amp;G AUTO SALES</b> <b>8 AVIATION CT</b> <b>SAVANNAH GA 31408</b> <b>PH 912 966 6820</b> <b>FAX 866 524 7765</b>	DOCUMENT NO <b>BOOKING # 038EUL455667</b>
--	---

CONSIGNEE <b>TARPTAUTINIAI KONTAKTAI IR KO</b> <b>EZERO G.1</b> <b>KAUNAS,LITHUANIA</b> <b>PH: 370 612 86911</b>	FORWARDING AGENT
--	------------------

NOTIFY PARTY	DOMESTIC ROUTING/EXPORT INSTRUCTIONS  <b>AES-ITN: X20111005026001</b> Schedule B or HTS Number 8703230090,8711100000
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<b>OCEAN/VESSEL</b> <b>MSC FABIENNE 6R</b> <b>FOR TRANSSHIPMENT</b>  SAILING DATE: <b>10/11/2011</b>	PORT OF LOADING <b>LOS ANGELES,CA</b>  PORT OF DISCHARGE <b>KLAIPEDA,</b> <b>LITHUANIA</b>	ONWARD INLAND ROUTING  <b>CSC , SEC , PREPAID</b>
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CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		
MARKS AND NUMBERS	NUMBER OF CARGO UNITS OR OTHER PACKAGES	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
CONTAINER # <b>MSCU7104533</b> <b>SEAL#7826124</b>		<b>S.T.C.4 CARS 1 MOTORCYCLE</b>  2008 SATURN VUE VIN# 3GSCL33P28S567009 1984 FORD RANGER / REPLICA 1929 MERCEDES SSK GAZELLE VIN# 1FTBR10C2EUD59364 / B6336 1987 MERCEDES BENZ 560SL VIN# WDBBA48D7HA069941 2007 VOLVO C70 VIN# YV1MC68207J023472 2001 BMW K1200LT VIN# WB10555A31ZD75801  SIGNATURE..... <b>GAS HAS BEEN DRAINED,BATTERIES DISCONNECTED</b> <b>FREIGHT CSC,SEC PREPAID</b> <b>TELEX RELEASE</b>	1720kg  1370kg  1470kg  1420kg  290kg	

DELIVERED BY:  LIGHTER ..... TRUCK .....  ARRIVED--- DATE .....TIME.....  UNLOADED-- DATE .....TIME.....  CHECKED BY .....  IN SHIP PLACED ON DOCK LOCATION .....	RECEIVED THE ABOVE DESCRIBED GOODS OF PACKAGES SUBJECT TO ALL THE TERMS OF THE UNDESIGNED'S REGULAR FORM OF DOCK RECEIPT AND BILL OF LADING WHICH SHELL CONSTITUTE THE CONTRACT UNDER WHICH THE GOODS ARE RECEIVED, COPIES OF WHICH ARE AVAILABLE FROM THE CARRIER ON REQUEST AND MAY BE INSPECTED AT ANY OF ITS OFFICES  _____ FOR THE MASTER  BY..... RECEIVING CLERK  DATE.....
---	--

SHIPPER/EXPORTER <b>G&amp;G AUTO SALES</b> <b>8 AVIATION CT</b> <b>SAVANNAH GA 31408</b> <b>PH 912 966 6820</b> <b>FAX 866 524 7765</b>	DOCUMENT NO <b>BOOKING # 038EUL486081</b>
--	---

CONSIGNEE <b>TARPTAUTINIAI KONTAKTAI IR KO</b> <b>EZERO G.1</b> <b>KAUNAS,LITHUANIA</b> <b>PH: 370 612 86911</b>	FORWARDING AGENT
--	------------------

NOTIFY PARTY	DOMESTIC ROUTING/EXPORT INSTRUCTIONS  <b>AES-ITN: X20111012055088</b> Schedule B or HTS Number 8703230090,8711100000
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<b>OCEAN/VESSEL</b> <b>CSAV BRASILIA 3R</b> <b>FOR TRANSSHIPMENT</b>  SAILING DATE: <b>10/20/2011</b>	PORT OF LOADING <b>LOS ANGELES,CA</b>  PORT OF DISCHARGE <b>KLAIPEDA,</b> <b>LITHUANIA</b>	ONWARD INLAND ROUTING  <b>CSC , SEC , PREPAID</b>
--	---	---

CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		
MARKS AND NUMBERS	NUMBER OF CARGO UNITS OR OTHER PACKAGES	DESCRIPTION OF GOODS	GROSS WEIGHT	MEASUREMENT
CONTAINER # <b>MSCU8159340</b> <b>SEAL#7826107</b>		<b>S.T.C.4 CARS 1 MOTORCYCLE</b>  2009 NISSAN MURANO VIN# JN8AZ18W79W134544 2008 TOYOTA YARIS VIN# JTDDBT923681218865 2009 HONDA FIT VIN# JHMGE88259S073062 2008 HONDA FIT VIN# JHMGD38618S014243 2004 HARLEY DAVIDSON VIN# 1D9SS64D13H251339  SIGNATURE..... <b>GAS HAS BEEN DRAINED,BATTERIES DISCONNECTED</b> <b>FREIGHT CSC,SEC PREPAID</b> <b>TELEX RELEASE</b>	1830kg  1210kg  1190kg  1190kg  340kg	

DELIVERED BY:  LIGHTER ..... TRUCK .....  ARRIVED--- DATE .....TIME.....  UNLOADED-- DATE .....TIME.....  CHECKED BY .....  IN SHIP PLACED ON DOCK LOCATION .....	RECEIVED THE ABOVE DESCRIBED GOODS OR PACKAGES SUBJECT TO ALL THE TERMS OF THE UNDESIGNED'S REGULAR FORM OF DOCK RECEIPT AND BILL OF LADING WHICH SHELL CONSTITUTE THE CONTRACT UNDER WHICH THE GOODS ARE RECEIVED, COPIES OF WHICH ARE AVAILABLE FROM THE CARRIER ON REQUEST AND MAY BE INSPECTED AT ANY OF ITS OFFICES  FOR THE MASTER  BY..... RECEIVING CLERK  DATE.....
---	---

# APPENDIX “5”



- nied, otherwise Respondents admit the allegations in Paragraph 2 of the Complaint.
4. Denied to the extent that EUL also provides services as an ocean transportation intermediary as a licensed ocean freight forwarder, other Respondents admit the allegations in Paragraph 4 of the Complaint.
  5. Admitted To the extent that Respondent Michael Hitrinov is an officer of EUL, denied to the extent that “principal” is not a defined status under the Business Corporation Law of New York, and otherwise the allegations in Paragraph 5 of the Complaint are denied.
  6. Denied to the extent that the operations are conducted by Respondent Hitrinov, admitted to the extent that Respondent Hitrinov supervises EUL’s operations, otherwise denied.
  7. Admitted.

### **III. Jurisdiction**

8. Denied except that it is admitted that the FMC has subject matter jurisdiction with respect to the Shipping Act of 1984, as amended.
9. Respondents lack knowledge or information sufficient to form a belief about the truth of the allegations contained in Paragraph 9 of the Complaint.
10. Admitted to the extent that EUL is licensed, *inter alia*, as a non-vessel-operating common carrier, denied to the extent that EUL performs other work that is not that of a non-vessel-operating common carrier within the meaning of the Shipping Act.

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

11. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 11 of the Complaint, otherwise the allegations are denied.
12. Respondents admit that Complainant was a customer in the period in and prior to 2011, otherwise Respondents lack knowledge and information sufficient to form a belief as to

the truth of the allegations contained in Paragraph 12 of the Complaint, including but not limited to allegations as to multiple Complainants, or the number or value of vehicles involved in Complainant's Complaint.

13. Respondents admit that Complainant was a customer in the period in and prior to 2011, otherwise lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 13 of the Complaint, although they have requested copies of the alleged audit and have been refused.
14. Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 14 of the Complaint, although they have requested information about the specific shipments complained of and have been refused, otherwise the allegations are denied to the extent that they allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations..
15. Denied to the extent that the allegations in Paragraph 15 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations; Respondents admit that Complainant was a customer in the period 2009 - 2011; otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 15 of the Complaint.
16. Denied to the extent that the allegations in Paragraph 16 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations; Respondents admit that Complainant was a customer in the period 2009 - 2011; otherwise lack knowledge or information sufficient to form a belief as to the truth of the allegations contained in Paragraph 16 of the Complaint.
17. Respondents that Complainant was a customer in and prior to 2011; otherwise lack knowledge and information sufficient to form a belief as to the truth of the allegations

contained in Paragraph 17 of the Complaint, although they have requested copies of the alleged audit and have been refused, otherwise the allegations are denied.

18. Denied.

19. Denied to the extent that the allegations in Paragraph 19 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 19 of the Complaint.

20. Admitted to the extent that EUL lawfully exercised its contractual, maritime and creditor rights, otherwise denied to the extent that the allegations in Paragraph 20 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents admit that Complainant was a customer in and prior to 2011; otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 20 of the Complaint.

21. Denied to the extent that the allegations in Paragraph 21 of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Paragraph 21 of the Complaint.

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

A. Denied to the extent that the allegations in Section V., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information suffi-

cient to form a belief as to the truth of the allegations contained in Section V., paragraph A of the Complaint.

- B. Denied to the extent that the allegations in Section V., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section V., paragraph A of the Complaint.
- C. . Denied to the extent that the allegations in Section V., paragraph C of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section V., paragraph C of the Complaint.
- D. Denied to the extent that the allegations in Section V., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section V., paragraph A of the Complaint.

## **VI. Injury to Complainant**

- A. Denied to the extent that the allegations in Section VI., paragraph A of the Complaint allege that EUL has violated any provision of the Shipping Act or the Federal Maritime Commission's regulations, otherwise Respondents lack knowledge and information sufficient to form a belief as to the truth of the allegations contained in Section VI., paragraph A of the Complaint.

Respondents deny each and every allegation of the Complaint not specifically and expressly admitted herein.

## VII. Affirmative Defenses

Respondents hereby claim, assert and state the following affirmative defenses:

- accord and satisfaction, to wit, the Settlement Agreement and Mutual Release (attached) entered into among Baltic Auto Shipping, Inc., Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc, dated 11/29/2011 ; reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Settlement Agreement and Mutual Release (1/20/2015);
- estoppel, to wit the Settlement Agreement and Mutual Release entered into among Baltic Auto Shipping, Inc., Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc, dated 11/29/2011 ; reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Settlement Agreement and Mutual Release (1/20/2015) and Stipulation of Dismissal, with prejudice and Order of Dismissal, with prejudice (attached) of the U.S. District Court for the District of New Jersey, in the matter of *Baltic Auto Shipping, Inc. v. Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc. et al*, Docket number 11 cv 6908 (FSH) (PS); reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Stipulation of Dismissal, with prejudice and Order of Dismissal (1/20/2015);
- laches, to wit the Complainant's alleged "discovery" of alleged Shipping Act violations occurred in January 2012, but the Complaint in this Proceeding was not filed until late November 2014;
- release, to wit the Settlement Agreement and Mutual Release entered into among Baltic Auto Shipping, Inc., Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc, dated 11/29/2011 ; reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*,

(DNJ) 15 cv 355 (CCC) (MF) to enforce Settlement Agreement and Mutual Release (1/20/2015)

- res judicata, to wit, Stipulation of Dismissal, with prejudice and Order of Dismissal, with prejudice of the U.S. District Court for the District of New Jersey, in the matter of *Baltic Auto Shipping, Inc. v. Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc. et al*, Docket number 11 cv 6908 (FSH) (PS); reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Stipulation of Dismissal, with prejudice and Order of Dismissal (1/20/2015);
- Stipulation of Dismissal, with prejudice and Order of Dismissal, with prejudice of the U.S. District Court for the District of New Jersey, in the matter of *Baltic Auto Shipping, Inc. v. Michael Hitrinov, a/k/a Michael Khitrinov, and Empire United Lines, Co., Inc. et al*, Docket number 11 cv 6908 (FSH) (PS); reopened *sub nom. Empire United Lines et al. v. Baltic Auto Shipping, Inc.*, (DNJ) 15 cv 355 (CCC) (MF) to enforce Stipulation of Dismissal, with prejudice and Order of Dismissal (1/20/2015)
- statute of limitations, to wit the last of Complainant's bookings were made more than three years before the filing of the Complaint in this Proceeding;
- failure to state a claim upon which relief may be granted, to wit, when it paid freight charges the charges had been assessed as mutually agreed, along with the affirmative defenses hereinbefore claimed.

**COUNTERCLAIM FOR UNPAID CHARGES IN VIOLATION OF THE SHIPPING ACT, 46 USC 41102 (a) (1) (SECTION 10 (a) (1)) – COMPLAINANT HAS UNJUSTLY AND IN BAD FAITH OBTAINED OCEAN TRANSPORTATION FOR PROPERTY AT LESS THAN THE RATES AND CHARGES THAT WOULD OTHERWISE APPLY AND INDUCED RESPONDENT EMPIRE UNITED LINES CO., INC. TO RELINQUISH ITS POSSESSORY LIEN WITHOUT PAYMENT OF THE APPLICABLE FREIGHT CHARGES**

Respondent **Empire United Lines, Co., Inc.** ("Respondent EUL"), whose address is 2303 Coney Island Avenue, Brooklyn, NY 11222, [Michael@eulines.com](mailto:Michael@eulines.com) by its attorneys, The Law Office of Doyle & Doyle, as and for its Counterclaim against the Complainant herein, alleges on information and belief as follows:

1. Respondent EUL makes this Counterclaim to the extent that the Federal Maritime Commission sets aside or otherwise finds that the Settlement Agreement and Mutual Release and/or Stipulation of Dismissal, with prejudice and Order of Dismissal with prejudice described above, do not bar Complainant's claims in this Proceeding.
2. In the course of their business relationship Complainant and Respondent EUL agreed upon the freight charges to be assessed for the transportation Complainant's property.
3. All shipments made by Complainant with Respondent EUL were rated and charged the agreed upon rates.
4. In late 2011 Complainant, in bad faith instituted a lawsuit against Respondent EUL and others, alleging violations of the Shipping Act in order to force Respondent EUL to waive the possessory lien Respondent EUL was asserting on Complainant's cargo.
5. In response to such abuse of legal process, Respondent EUL agreed to a settlement of claims and released its lien.
6. Upon a review of its available books and records in connection with responding to Complainant's Complaint herein, Respondent EUL has concluded that Complainant has failed to pay for a number of shipments.

7. On information and belief, Complainant has failed to pay approximately \$200,000.00 in freight charges duly owing to Respondent EUL.
8. Avoiding paying freight charges by using the unjust tactic of filing a meritless Complaint in Federal Court is the bad faith sufficient to justify this Counterclaim.
9. Complainant has unjustly obtained transportation without paying the applicable charges is a violation of the Shipping Act – specifically Section 10 (a) (1) (46 USC 41102 (a)(1)) - to the detriment of the Respondent EUL, and damaged the respondent in an amount that can only be determined after obtaining discovery in regard to the shipments for which no payment was received.

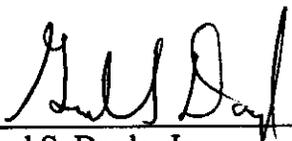
**Respondents' Prayer for Relief**

**WHEREFORE**, Respondents pray that:

1. The Complainant takes nothing by way of this action;
2. The Complaint be dismissed, with prejudice;
3. The Respondent EUL be awarded recompense for the full value of the wrongfully unpaid shipping charges;
4. Respondents be awarded costs of suit, attorneys' fees and any other relief which the Federal Maritime Commission deems just and proper.

Respectfully submitted,

By:

  
\_\_\_\_\_  
Gerard S. Doyle, Jr.

**THE LAW OFFICE OF DOYLE & DOYLE**  
636 Morris Turnpike  
Short Hills, NJ 07078  
973-467-4433 (Telephone)  
973-467-1199 (Facsimile)  
gdoyle@doylelaw.net  
**Attorneys for Respondents**  
**Michael Hitrinov, a/k/a**  
**Michael Khitrinov, and**  
**Empire United Lines, Co., Inc.**

Dated in Short Hills, NJ this 23<sup>rd</sup> day of January 2015.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the ANSWER AND COUNTERCLAIM OF RESPONDENTS MICHAEL HITRINOV AND EMPIRE UNITED LINES CO., INC. upon Complainant's counsel, Marcus A. Nussbaum, Esq., with the address of P.O. Box 245599, Brooklyn, NY 11224 by first class mail, postage prepaid, by fax (347-572-0439) and by email ([macus.nussbaum@gmail.com](mailto:macus.nussbaum@gmail.com)); and that the original and five (5) copies are being filed with the Secretary of the Federal Maritime Commission.



Gerard S. Doyle, Jr.  
**THE LAW OFFICE OF DOYLE & DOYLE**  
636 Morris Turnpike  
Short Hills, NJ 07078  
973-467-4433 (Telephone)  
973-467-1199 (Facsimile)  
gdoyle@doylelaw.net  
**Attorneys for Respondents**  
**Michael Hitrinov, a/k/a**  
**Michael Khitrinov, and**  
**Empire United Lines, Co., Inc.**

Dated in Short Hills, NJ. this 23<sup>rd</sup> day of January, 2015.

# APPENDIX “6”

Copies of Respondents' Tariffs Sent Directly to ALJ Guthridge

# APPENDIX “7”

# ***EUL*** ***EMPIRE UNITED LINES***

2303 Coney Island Avenue, Brooklyn, NY 11223  
 Tel: (718) 998-6900; Fax: (718) 998-7014

## **INVOICE # 58485-3**

DATE: 20/08/2009  
 VESSEL: MSC ROSSELLA 794 R

<b>CARGO DESCRIPTION</b>	<b>PARTICULARS</b>
<b>1 USED CAR</b>	<b>2006 LEXUS RX 330</b> <b>VIN#2T2HA31U06C109748</b>
<b>HOUSEHOLD GOODS AND PERSONAL EFFECTS</b>	10 BOXES OF PERSONAL GOODS; 2 HAND BAGS; 6 PACKS OF PAMPERS; 1 PACK BAUNTY; UMBRELLA; 1 CAR SEAT; 2 PCS CHILD SEAT SET; 1 ICE SCRUB; 2 SKIYING JACKETS; 2 PAIR SKIYING BOOTS; 2 PACKS OG CLOTH HANGES

**BILL TO:** EASY EXPORT INC,  
 1950 WYOMINS AVE  
 EXETER PA 18643  
 PHONE (570) 613 1255

SHIPED FROM ELIZABETH, NJ 07206 TO KLAIPEDA, LITHUANIA

<b>FREIGHT AND CHARGES</b>	<b>BASIS</b>	<b>RATE</b>	<b>PAYABLE AT</b>	
			<b>POL (PREPAID)</b>	<b>POD(COLLECT)</b>
<b>OCEAN FREIGHT</b>	1 CAR  2006 LEXUS RX330 VIN#2T2HA31U06C109748	\$650.00/CAR	\$650.00	\$150.00
	2.25 CBM OF HOUSEHOLD GOODS AND PERSONAL EFFECTS	\$700.00/CBM	\$1,575.00	
<b>TOTAL DUE :</b>			<b>\$2,225.00</b>	<b>\$150.00</b>

**THANK YOU FOR YOUR BUSINESS!**



# EMPIRE UNITED LINES

INTERNATIONAL BILL OF LADING  
(NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER)

SHIPPER/EXPORTER (2) (Complete Name and Address)  <b>EASY EXPORT INC.</b> 1950 Wyoming Ave. Exeter, PA 18643 (570) 613-1255	DOCUMENT NO. (5) <b>58363-3</b>	BOOKING NO. (2) <b>CHI266675</b>
CONSIGNEE: (3) (Complete Name and Address)  <b>TO THE ORDER OF SHIPPER</b>		EXPORT REFERENCES (6)  <b>OUR REF# 58363</b>
NOTIFY PARTY (4) (Complete Name and Address)		FORWARDING AGENT - REFERENCES (7)
PIER (10)		POINT AND COUNTRY OF ORIGIN (8)
OCEAN VESSEL (11) MSC ROSSELLA 794R	PORT OF LOADING (12) NEW YORK	DOMESTIC ROUTING/EXPORT INSTRUCTIONS
PORT OF DISCHARGE (13) KLAIPEDA	FOR TRANSSHIPMENT TO (14)	ONWARD INLAND ROUTING (15) PLACE OF DELIVERY

CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		
MARKS AND NUMBERS (16)	NO. OF CONT OR OTHER PKGS (17)	DESCRIPTION OF GOODS (18)	GROSS WEIGHT (19)	MEASUREMENT (20)
Part of CNT MSCU817636-9	1	2006 LEXUS RX 330 VIN # 2T2HA31U06C109748	1855 KG	16 CBM
	10	BOXES OF PERSONAL GOODS		
	2	HAND BAGS		
	6	PACKS OF PAMPERS		
	1	PACK BAUNTY		
	1	UMBRELLA		
	1	CAR SEAT		
	2	CHILD SEAT SET		
	1	ICE SCRUB		
	2	SKIYING JACKETS		
2	PAIR SKIYING BOOTS			
2	PACKS OF CLOTH HANGES	70 KGS	2.25 CBM	

**FREIGHT and CHARGES PAYABLE BY** (Complete Name and Address)

**AT**

IN CONNECTION WITH FREIGHT, SEE CLAUSES 14 AND 16 ON REVERSE SIDE OF THIS BILL OF LADING.				
	RATE		PREPAID	COLL.
Ocean Freight	\$650/car	1 car	\$650	\$150
Ocean Freight	\$700/cbm	2.25 cbm	\$1,575	
Ocean Freight Extra Charge for Declared Value of \$ per package				
<b>TOTAL</b>			<b>\$2,225</b>	<b>\$150</b>

IN ACCEPTING THIS BILL OF LADING, the Shipper, Consignee, Holder hereof, and Owner of the goods, agree to be bound by all of its stipulations, exceptions and conditions, whether written, printed or stamped on the front or back hereof, as well as the provisions of the above Carrier's published Tariff Rules and Regulations, as fully as if they were all signed by such Shipper, Consignee, Holder or Owner, and it is further agreed that Containers are stowed on Deck, as per Clause 6.

IN WITNESS WHEREOF, the Master of the said vessel has affirmed this Bill of Lading and authorized signature.

By: **EMPIRE UNITED LINES, Co., Inc.**

Number of originals issued 3  
(If more than one originals issued, the others stand void when ONE is accomplished)

**BILL OF LADING NO.**

**58363-3**

**DATED**

**August, 20 2009**

TERMS OF BILL OF LADING CONTINUED ON REVERSE SIDE

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

-----X  
EASY EXPORT, INC. and  
PETR MALKOVSKI,

Civ. Action No.:  
09-4714 (ENV)(MDG)

Plaintiffs,

-against-

MICHAEL HITRINOV a/k/a MICHAEL  
KHITRINOV, EMPIRE UNITED LINES  
CO., INC., MEDITERRANEAN SHIPPING  
COMPANY (USA), INC.,  
TRANSATLANTIC AUTO GROUP, INC.,  
LEV SHATSMAN and ALEXANDR  
KOVALEV,

Defendants.

-----X

AFFIDAVIT IN OPPOSITION TO AMENDED MOTION FOR  
PRELIMINARY INJUNCTIVE RELIEF

STATE OF NEW YORK)  
COUNTY OF KINGS ) ss.:

MICHAEL HITRINOV, being duly sworn, deposes and says:

1. I am a Defendant herein, and the President of Defendant, Empire United Lines Co., Inc. ("Empire"), and as such I am fully familiar with the facts.

2. I make this affidavit in opposition to Plaintiffs' amended motion for preliminary relief.

OVERVIEW OF CLAIM FOR PRELIMINARY RELIEF AND DEFENSES

3. By their amended and supplemental papers served at the return of this Court's Order to Show Cause dated November 5, 2009, Plaintiffs seek "the immediate release of the Shipment". Aff. of Juliean Galak at ¶14.

4. On or about August 17, 2009, Plaintiffs delivered a certain 2006 Lexus VIN 2T2HA31U06C109748 (the "Vehicle") and ten (10) boxes of personal goods and other personal effects (as described on the "inspection report" attached to the motion for preliminary injunction as "Exhibit 3"), measuring in all, approximately 2.25 cubic meters (the "Personal Goods"), to Empire for shipping to the Port of Klaipeda, Lithuania.

5. On August 20, 2009, a check for \$650. was received for the shipment of the Lexus.

6. No payment was ever received for the Personal Goods also shipped to the Port of Klaipeda, Lithuania.

7. Empire is an Ocean Transport Intermediary, duly licensed by the Federal Maritime Commission ("FMC") as a non vessel owning common carrier ("NVOCC").

8. Empire duly charged Plaintiff, EASY EXPORT, INC. its proper tariff rate for the Vehicle of \$650. and its proper tariff rate for the 2.25 cubic meters of Personal Goods at \$700 per cubic meter, for a total of \$1,575. A copy of said invoice is annexed hereto as Exhibit "A".

9. In due course, Empire duly issued a House Bill of Lading to Plaintiff, EASY EXPORT, INC. and retained all three originals thereof, pending payment of the ocean freight charges due in the amount of \$1,575. These charges have never been paid, nor tendered. A copy of the House Bill of Lading is annexed hereto as Exhibit "B".

10. Empire's tariffs are duly published. A copy of the relevant portion of Empire's tariff for Cargo N.O.S. (not otherwise specified), as respects the Personal Goods, is annexed hereto as Exhibit "C".

11. Empire is entitled to retain all items shipped under its House Bill of Lading until all proper charges therefor are paid. As they have been neither paid nor tendered, Empire claims and retains a maritime lien on all goods shipped under said Bill. Though Plaintiffs have demanded the release of the subject Vehicle and Cargo, as they have failed and refused to pay the proper and lawful shipping charges, they are not entitled to its release.

12. On August 28, 2009, Empire sent a letter to Plaintiff, Easy Export, Inc. together with its House Bill of Lading ("HBL") No. 58363-3 and its Invoice for shipping charges. A copy of the said letter is annexed hereto as Exhibit "D".

13. It should be noted that the consignee on the HBL is "to the order of Shipper". The letter, dated August 28, 2009, demands payment and also requests identification of the consignee, which has never been received.

14. About one month later, after the Cargo had arrived in Lithuania, Empire sent another letter demanding payment of the invoice, and advising that the Cargo was in the Port of Klaipeda. A copy of the said letter dated September 29, 2009 is annexed hereto as Exhibit "E".

15. Plaintiff, PETR MALKOVSKI called me directly and told me that he would not pay the shipping charges for the Personal Goods. I told him that Empire would not release the Cargo unless its invoice was paid in full.

16. Additionally, there appears to be another problem with the ownership of the Vehicle at issue in this case. It is not clear who the owner is, and accordingly, releasing the

Vehicle may expose Empire to multiple claims for mis-delivery for the same vehicle, if it is released to the Plaintiffs.

17. In the original Complaint filed herein, Plaintiffs' prior counsel attached a copy of an auction bill of sale for the subject Vehicle dated April 16, 2009, indicating Plaintiffs were the purchasers thereof. (In his current affidavit filed with this Court Plaintiff, PETR MALKOVSKI asserts that he purchased the vehicle on June 26, 2009).

18. The copy of the Title to the subject Vehicle from Pennsylvania as attached to the original Complaint filed herein indicates Plaintiff, EASY EXPORT, INC. as the owner thereof. The back of the copy of the Title submitted to this Court with the original Complaint is notably blank, indicating that at that time, Plaintiff, EASY EXPORT, INC. was still the owner, and had not transferred the Vehicle to any other person.

19. Yet, the copy of the Title to the Vehicle attached to Plaintiffs' Motion for Preliminary Injunction as "Exhibit 1", indicates on its "back", an un-sworn to signature of Plaintiff, PETR MALKOVSKI dated August 10, 2009, purportedly transferring the Vehicle to one "Inna Kladnitskaya", a person unknown to Empire. (In his current affidavit filed with this Court Plaintiff, PETR MALKOVSKI asserts that he transferred the Vehicle to his wife on August 10, 2009).

20. Notably, Inna Kladnitskaya is not a party to this suit, and if release of the Vehicle is made to Plaintiffs, Empire stands likely to be held liable to someone else who may claim to be the true owner of the Vehicle.

21. Additionally, over the past two months, I have been called directly, and separately by not less than three (3)

different people, each demanding that I release the Vehicle to them, and each asserting that they are the true owner of the Vehicle, as Plaintiffs supposedly sold the vehicle to them.

22. Even more recently, I have been contacted by Andrius Razma, of Pamario Dvaras, the overseas unloading facility (see below), who has advised me that he was contacted by a "Mr. Sharunas", who claimed that the Vehicle at issue belonged to him, and threatened suit if it was released to anyone else.

23. Empire is entitled to some assurance that in the event Empire does release the Vehicle (and cargo), at least for the statutory period of one (1) year, Empire is protected from any claim of mis-delivery, by the posting of an appropriate Bond. Since Plaintiffs state that their damages are fifty thousand (\$50,000.) Dollars, presumably because the value of the Vehicle and goods are such amount, I ask that a bond in said amount be posted with this Court, and the unpaid ocean freight charges be paid, because Empire is directed to deliver the three (3) original House Bills of Lading to Plaintiffs.

THE SELECTION OF AN OVERSEAS UNLOADING FACILITY  
IS WITHIN EMPIRE'S DISCRETION

24. Plaintiffs make much of the fact that in Empire's original instruction to the vessel owning carrier, it identified a company named "UAB Skelme" as its consignee, and thereafter, directed the shipment to another overseas unloading facility, "Pamario Dvaras".

25. First, it should be noted that Plaintiffs are not even parties to the master bill of lading, and have absolutely no say in which overseas unloading facility Empire chooses to use.

26. Second, as Empire has every right to select or change its overseas agent, for any reason or for no reason, such change of agent can be no basis for complaint herein.

27. In fact, Pamario Dvaras was chosen as Empire's overseas unloading facility for the purposes of receiving and unpacking the Container in which the subject Vehicle and Cargo were shipped.

28. That container, No. MSCU817636-9, was loaded with not only the subject Vehicle and Cargo, but two other unrelated vehicles, shipped by co-defendants herein.

29. It was by reason of Plaintiffs' failure and refusal to pay the lawful charges imposed on the shipment of the Vehicle and cargo that caused the delay that Plaintiffs complain of herein.

30. Through this date, Plaintiff delay has cause Empire to incur demurrage and storage charges of 2,231.40 Euros (approximately \$3,340.) A copy of the invoice to Empire from Pamario Dvaras as of this date is annexed as Exhibit "F".

31. As of this date, Empire has invoiced Plaintiff, Easy Import, Inc. for said amount, which must be paid, if the Vehicle and Cargo is to be released. A copy of said invoice is annexed hereto as Exhibit "G".

32. By reason of the foregoing, Plaintiffs' motion for a preliminary injunction directing the immediate release of the subject Vehicle and Cargo should be denied.

33. Alternatively, if Empire is directed to deliver the three (3) original House Bills of Lading to Plaintiffs, it should receive the balance of the lawful tariff due it in the

amount of \$1,575., and, the Plaintiffs should be directed to post an appropriate Bond in the recommended sum of \$50,000., to cover any potential claims of mis-delivery herein, or await an appropriate determination upon interpleader.

34. Additionally, upon receiving the three (3) original House Bills of Lading, Plaintiffs will have to remit the appropriate charges for demurrage and storage to Pamario Dvaras, to the date of the release of the Vehicle and Cargo.

PLAINTIFFS WERE DISHONEST IN THEIR  
DESCRIPTION OF GOODS SHIPPED

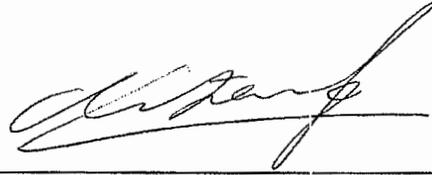
35. One other problem has been revealed by Plaintiffs' moving papers.

36. In his affidavit filed with this Court, Plaintiff, PETR MALKOVSKI assert that among the personal goods included in the shipment was baby formula. It should be noted that among the personal effects as described on the "inspection report" attached to the motion for preliminary injunction as "Exhibit 3", no mention is made of any foodstuffs

37. The overseas shipping of foodstuffs requires certification from the seller and other documents of origin, and without these documents, may even be considered contraband in Lithuania, and be subject to seizure or penalties.

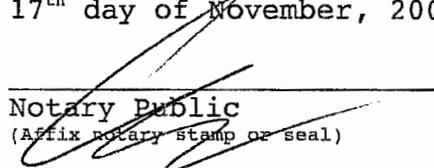
38. While the oversight might seem small, it is the responsibility of every Shipper to fully and accurately declare what is being shipped. Plaintiffs know this, as they have used Empire in the past for international shipments.

WHEREFORE, it is respectfully requested that Plaintiff's Order to Show Cause be denied in all respects, and for such other and further relief as to this Court may seem just and proper.



MICHAEL HITRINOV

Sworn to before me this  
17<sup>th</sup> day of November, 2009



\_\_\_\_\_  
Notary Public

(Affix notary stamp or seal)

MICHAEL T. SUCHER  
Notary Public, State of NY  
# 24-02 SU 4711475  
Qualified in Kings County  
Comm. Exp. May 31, 2010  
2010



# EMPIRE UNITED LINES

INTERNATIONAL BILL OF LADING  
(NOT NEGOTIABLE UNLESS CONSIGNED TO ORDER)

SHIPPER (1) (Complete Name and Address) <b>EASY EXPORT INC.</b> 1950 Wyoming Ave. Exeter PA 18643 (610) 613-1255		DOCUMENT NO. (5) <b>58363-3</b>	BOOKING NO. (4) <b>CHI266675</b>
CONSIGNEE (3) (Complete Name and Address) <b>TO THE ORDER OF SHIPPER</b>		EXPORT REFERENCES (6) <b>OUR REF# 58363</b>	
ADDITIONAL PARTY (A) (Complete Name and Address)		FORWARDING AGENT - REFERENCES (7)	
POINT OF ORIGIN (8)		DOMESTIC ROUTING/EXPORT INSTRUCTIONS	
PORT OF DISCHARGE (13) <b>MSC ROSSELLA 704R</b>		PORT OF LOADING (12) <b>NEW YORK</b>	ONWARD INLAND ROUTING (15) PLACE OF DELIVERY
FOR TRANSHIPMENT TO (14) <b>KLAIPEDA</b>			

CARRIER'S RECEIPT		PARTICULARS FURNISHED BY SHIPPER		
MARKS AND NUMBERS (16)	NO. OF POSTS OR OTHER PAGES (17)	DESCRIPTION OF GOODS (18)	GROSS WEIGHT (19)	MEASUREMENT (20)
Part of CNT MSCU817636-9	1	LCL 2006 LEXUS RX 330 VIN # 2T2HA31U06C109748	1855 KG	16 CBM
	10	BOXES OF PERSONAL GOODS		
	2	HAND BAGS		
	6	PACKS OF PAMPERS		
	1	PACK BAUNTY		
	1	UMBRELLA		
	1	CAR SEAT		
	2	CHILD SEAT SET		
	1	ICE SCRUB		
	2	SKIYING JACKETS		
	2	PAIR SKIYING BOOTS		
	2	PACKS OF CLOTH HANGES	70 KGS	2.25 CBM

FREIGHT and CHARGES PAYABLE BY (Complete Name and Address)				AT	
IN CONNECTION WITH FREIGHT, SEE CLAUSES 14 AND 16 ON REVERSE SIDE OF THIS BILL OF LADING				IN ACCEPTING THIS BILL OF LADING, the Shipper, Consignee, Master hereof, and Owner of the goods agree to be bound by all of its stipulations, exceptions and conditions, whether written, printed or stamped on the front or back hereof, as well as the provisions of the above Carrier's published Tariff Rules and Regulations, as fully as if they were a Party thereto, and it is further agreed that Containers are stowed on Deck, as per Charter party.	
	RATE	PREPAID	COLL.	I, _____, as Master of the said vessel, do hereby certify that the above is a true and correct copy of the original Bill of Lading and authorized signature.	
Ocean Freight	\$650/tear	1 car	\$650	By: <b>EMPIRE UNITED LINES, Co., Inc.</b>	
Ocean Freight	\$700/cbm	2.25 cbm	\$1,575	Number of originals issued: <b>3</b> (If more than one original is issued, the others stand void when ONE is accomplished.)	
Green Freight Extra Charge = Declared Value of per package				BILL OF LADING NO. <b>58363-3</b>	
<b>TOTAL</b>			<b>\$2,225</b>	DATED <b>August 20 2009</b>	

TERMS OF BILL OF LADING CONTINUED ON REVERSE SIDE



**Owner**  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

**Tariff ID**  
003

<b>Commodity ID</b>	<b>Description</b>	<b>Effective Date</b>
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

**TLI Number:** 0001

**Filed:** May 1, 1999  
**Effective:** May 1, 1999  
**TLI Expires:**

**From:** 001000 U.S. ORIGIN PORT GRP  
**via:**  
**To:** 000100 FOREIGN PORT DEST GRP  
**via:**

**Rate:** 700.00 USD  
**Amendment:**  
**Service:** OO  
**Basis:** WM  
**Ctr Size:**

**Hazard Code:**  
**Ctr Type:**  
**Ctr Temp:**  
**Packaging:**  
**Stow Code:**

**Note:**

**Owner**  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

**Tariff ID**  
003

<b>Commodity ID</b>	<b>Description</b>	<b>Effective Date</b>
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

**TLI Number:** 0002

**Filed:** May 1, 1999  
**Effective:** May 1, 1999  
**TLI Expires:**

**From:** 001000 U.S. ORIGIN PORT GRP  
**via:**  
**To:** 020100 FOREIGN POINT DEST GRP  
**via:** 000100 FOREIGN PORT DEST GRP

**Rate:** 700.00 USD  
**Amendment:**  
**Service:** OD  
**Basis:** WM  
**Ctr Size:**

**Hazard Code:**  
**Ctr Type:**  
**Ctr Temp:**  
**Packaging:**  
**Stow Code:**

**Note:**

**Owner**  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

**Tariff ID**  
003

<b>Commodity ID</b>	<b>Description</b>	<b>Effective Date</b>
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

TLI Number: 0003

Filed: May 1, 1999  
Effective: May 1, 1999  
TLI Expires:

From: 021000 U.S. ORIGIN POINT GRP  
via: 001000 U.S. ORIGIN PORT GRP  
To: 000100 FOREIGN PORT DEST GRP  
via:

Rate: 700.00 USD  
Amendment:  
Service: DO  
Basis: WM  
Ctr Size:

Hazard Code:  
Ctr Type:  
Ctr Temp:  
Packaging:  
Stow Code:

Note:

---

Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

Commodity ID	Description	Effective Date
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

TLI Number: 0004

Filed: May 1, 1999  
Effective: May 1, 1999  
TLI Expires:

From: 021000 U.S. ORIGIN POINT GRP  
via: 001000 U.S. ORIGIN PORT GRP  
To: 020100 FOREIGN POINT DEST GRP  
via: 000100 FOREIGN PORT DEST GRP

Rate: 700.00 USD  
Amendment:  
Service: DD  
Basis: WM  
Ctr Size:

Hazard Code:  
Ctr Type:  
Ctr Temp:  
Packaging:  
Stow Code:

Note:

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Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

Commodity ID	Description	Effective Date
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

TLI Number: 0005

Filed: May 1, 1999  
Effective: May 1, 1999  
TLI Expires:

From: 000100 FOREIGN PORT ORIGIN GRP  
via:  
To: 001000 U.S. DEST PORT GRP  
via:

Rate: 700.00 USD  
Amendment:  
Service: OO  
Basis: WM  
Ctr Size:

Hazard Code:  
Ctr Type:  
Ctr Temp:  
Packaging:  
Stow Code:

Note:

---

Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

Commodity ID	Description	Effective Date
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

TLI Number: 0006

Filed: May 1, 1999

Effective: May 1, 1999

TLI Expires:

From: 000100 FOREIGN PORT ORIGIN GRP

via:

To: 021000 U.S. DEST PORT GRP

via:

001000 U.S. DEST PORT GRP

Rate: 700.00 USD  
Amendment:  
Service: OD  
Basis: WM  
Ctr Size:

Hazard Code:  
Ctr Type:  
Ctr Temp:  
Packaging:  
Stow Code:

Note:

---

Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

Commodity ID	Description	Effective Date
0000-00-1000	CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS	May 1, 1999

TLI Number: 0007

Filed: May 1, 1999

Effective: May 1, 1999

TLI Expires:

From: 020100 FOREIGN PNT ORIGIN GRP

via: 000100 FOREIGN PORT ORIGIN GRP

To: 001000 U.S. DEST PORT GRP

via:

Rate: 700.00 USD  
Amendment:  
Service: DO  
Basis: WM  
Ctr Size:

Hazard Code:  
Ctr Type:  
Ctr Temp:  
Packaging:  
Stow Code:

Note:

Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

Commodity ID      Description      Effective Date  
0000-00-1000      CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS      May 1, 1999

TLI Number: 0008

Filed: May 1, 1999  
Effective: May 1, 1999  
TLI Expires:

From: 020100 FOREIGN PNT ORIGIN GRP  
via: 000100 FOREIGN PORT ORIGIN GRP  
To: 021000 U.S. DEST POINT GRP  
via: 001000 U.S. DEST PORT GRP

Rate: 700.00 USD  
Amendment:  
Service: DD  
Basis: WM  
Ctr Size:

Hazard Code:  
Ctr Type:  
Ctr Temp:  
Packaging:  
Stow Code:

Note:

Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

Commodity ID      Description      Effective Date  
0000-00-1000      CARGO, N.O.S., DANGEROUS OR NOT DANGEROUS      May 1, 1999

TLI Number: 0009

Filed: July 5, 2002  
Effective: July 5, 2002  
TLI Expires:

From: HILLSIDE NJ UNITED STATES 07205  
via: 001000 U.S. ORIGIN PORT GRP  
To: 002260 FINLAND DEST PORT GRP  
via:

Rate: 1,360.00 USD  
Amendment:  
Service: DO  
Basis: PC  
Ctr Size: 20

Hazard Code:  
Ctr Type: PC  
Ctr Temp:  
Packaging:  
Stow Code:

Note: ALL INCLUSIVE

Owner  
012052 - EMPIRE UNITED LINES CO., INC.  
WORLDWIDE WATER-INTERMODAL TARIFF

Tariff ID  
003

# APPENDIX “8”

**CLOSED**

**FOX ROTHSCHILD LLP**

By: Ely Goldin, Esq.  
Ernest E. Badway, Esq.  
Edward J. Mullins III, Esq.  
75 Eisenhower Parkway, Suite 200  
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(973) 992-4800  
egoldin@foxrothschild.com  
*Attorneys for Plaintiff*  
*Baltic Auto Shipping, Inc.*

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

**BALTIC AUTO SHIPPING, INC.**  
Plaintiff,

v.

**MICHAEL HITRINOV**  
a/k/a MICHAEL KHITRINOV,  
**EMPIRE UNITED LINES CO., INC.,**  
**MEDITERRANEAN SHIPPING COMPANY**  
**(USA), INC. and**  
**JOHN DOES 1 THROUGH 5**  
Defendants.

CIVIL ACTION NO. 2:11-cv-06908-FSH

**STIPULATION OF DISMISSAL**

Plaintiff Baltic Auto Shipping, Inc. ("Plaintiff") and defendants Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines, Co., Inc., and Mediterranean Shipping Company USA, Inc. ("Defendants"), by and through their respective attorneys, stipulate and agree that Plaintiff's Complaint against Defendants is dismissed with prejudice, each party to bear his/her/its own costs and attorneys' fees. It is further stipulated that the Court will retain enforcement jurisdiction over the settlement agreement.

/s/ Ely Goldin, Esq.  
Ely Goldin, Esquire  
FOX ROTHSCHILD LLP  
Attorney for Plaintiff

/s/ Jonathan Werner, Esq.  
Jonathan Werner, Esquire  
LYONS & FLOOD, LLP  
Attorney for Defendants

Dated: December 5, 2011

Dated: December 5, 2011

**STIPULATION AND ORDER  
DISMISSING ACTION  
PAGE TWO OF TWO**

**ORDER**

AND NOW, this 7<sup>th</sup> day of DECEMBER, 2011, it is hereby **ORDERED** and **DECREED** that the foregoing **STIPULATION** is hereby approved, that the action is hereby marked dismissed, with prejudice, and that the Court shall retain jurisdiction over the enforcement of any settlement agreement reached by the parties. *FAILURE TO CONSUMMATE THE SETTLEMENT WILL NOT RESULT IN THE REOPENING OF THIS MATTER BY THE COURT TO ADDRESS THE MERITS OF THE CASE; RATHER, IF THE SETTLEMENT IS NOT CONSUMMATED, THE COURT WILL ENTERTAIN AN APPLICATION SOUGHT TO ENFORCE THE TERMS OF THE SETTLEMENT AGREEMENT.*

SO ORDERED. 12/7/11

  
Hon. FAITH S. HOCHBERG, U.S.D.J.

# APPENDIX “9”

**NOT FOR PUBLICATION**

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

	:	
BALTIC AUTO SHIPPING, INC.,	:	Civil Case No. 11-6908
	:	(FSH)
Plaintiff,	:	
	:	<b><u>ORDER</u></b>
v.	:	
	:	
MICHAEL HITRINOV, et al.,	:	Date: January 16, 2015
	:	
Defendants.	:	
	:	

**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.**