

**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.

**COMPLAINANT’S BRIEF IN OPPOSITION TO THE MOTION BY
RESPONDENTS FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM IN
OPPOSITION TO COMPLAINANT’S MOTION TO AMEND, AND FOR AN
EXTENSION OF THE BRIEFING SCHEDULE**

Pursuant to Rules 69 and 71 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (46 C.F.R. 502 *et seq.*), Complainant, through its Counsel, Marcus A. Nussbaum, Esq. respectfully submits this brief in opposition to the motion by respondents which seeks the following relief:

1. Leave to file and serve a Supplemental Memorandum in opposition to the Complainant's Motion to Amend the Complaint;
2. An extension of time to respond to the Complainant's Motion for Reconsideration and to Reply to Complainant's opposition to Respondents' Motion for Partial Summary Decision¹; and
3. A telephone conference.

¹ The undersigned has consented to the extension of time for respondents to file a reply brief on the motion for partial summary decision, such extension being to May 26, 2015.

For the reasons already set forth, *ad nauseam*, in the undersigned's recent brief in opposition of May 1, 2015, the undersigned's brief in opposition of May 6, 2015 (both of which are incorporated herein by reference) and for the following reasons, it is submitted that a telephonic conference is unnecessary. Furthermore, respondents' multiple requests for extensions of time should be denied, the sole exception being the extension of time for respondents reply on the motion for partial summary decision.

Up front, respondents' instant motion is procedurally improper in that the respondents *have already filed* an opposition to complainant's motion to amend the complaint. There is no second bite at the apple. Respondents' instant motion also fails to explain how the undersigned's letter to Magistrate Judge Falk in the District of New Jersey has any bearing on the motion to amend the complaint, currently before this Commission. Mr. Doyle incorrectly asserts, among other things that "Complainant is wrongfully using the Motion to amend the Complaint herein, *solely* to provide a basis for the disqualification of Respondents' counsel in the New Jersey lawsuit..." (emphasis added). The undersigned has explained, in writing² to the respondents by their counsel Mr. Werner, *for months*, that Mr. Werner's frivolous motion practice in two Federal Courts, including a frivolous motion for sanctions against the undersigned under Federal Rule of Civil Procedure Rule 11³, is a violation of the Shipping Act 46 U.S.C. §41103(3). Mr. Werner and the respondents should now be held accountable before this Commission for their actions. If the Commission grants leave to amend the complaint, it is a *natural consequence* of that decision that Mr. Werner will

² The opposition papers to Mr. Werner's multiple frivolous motions explain that respondents' filing of baseless motions is retaliation for complainant having filed a complaint with the Commission.

³ Attached for the Commission's reference are the two FRCP Rule 11 warning letters from Mr. Werner. Although he does not represent the respondents before the Commission, he makes demand that the undersigned "dismiss with prejudice [the undersigned's] claims against Empire United Lines, Co., Inc. and Michael Hitrinov before the Federal Maritime Commission within 21 days of the date of this letter." The cover email to the March 18, 2015 warning letter explains "There will not be another warning."

have to relieve himself as counsel in the two separate Federal Actions (in the District of New Jersey and the Eastern District of New York). Therefore, there is no basis for Mr. Doyle's allegation that the undersigned had ulterior motives for amending the complaint. The undersigned did not choose to go down a path of harassment and threats in lieu of litigating this case on the merits...that was the *respondents'* strategy, which has apparently backfired.

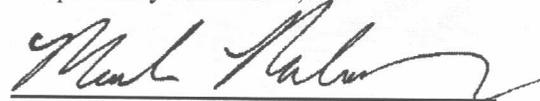
Respondents instant motion also now attempts to backpedal on the issue of Mr. Hitrinov's alleged unavailability between May 8, 2015 and May 18, 2015 (as previously stated by Mr. Doyle in support of respondents' motion for an extension of the briefing schedules), now explaining that the basis for that statement is that Mr. Hitrinov's attendance at the May 15, 2015 settlement conference before Magistrate Judge Falk "is the specific reason for Respondent Hitrinov's unavailability in this proceeding.." It simply makes no sense as to how Hitrinov's one day attendance at a settlement conference means that he is unavailable between May 8, 2015 and May 18, 2015. It makes no sense as to how Hitrinov's attendance at the conference necessitates an extension of the scheduling of the various motions in play before the Commission.

CONCLUSION

In light of the foregoing, complainant respectfully requests that the Commission deny respondents' motion accordingly.

Dated: May 7, 2015
Brooklyn, NY

Respectfully Submitted,

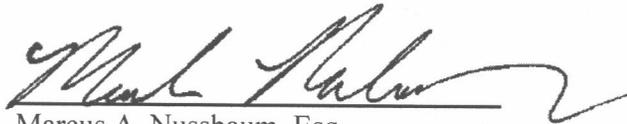


Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANT'S BRIEF IN OPPOSITION TO THE MOTION BY RESPONDENTS FOR LEAVE TO FILE A SUPPLEMENTAL MEMORANDUM IN OPPOSITION TO COMPLAINANT'S MOTION TO AMEND, AND FOR AN EXTENSION OF THE BRIEFING SCHEDULE** upon:

Respondents' Counsel, The Law Office of Doyle & Doyle, with the address of 636 Morris Turnpike, Short Hills, NJ 07078 by first class mail, postage prepaid, and by email (gdoyle@doyelaw.net).



Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Tel: 888-426-4370
Fax: 347-572-0439
Attorney for Complainant
marcus.nussbaum@gmail.com

Dated: May 7, 2015 in Brooklyn, New York.

Exhibit “A”



JON WERNER
E-Mail: jwerner@lyons-flood.com

ADMITTED IN NEW YORK,
NEW JERSEY

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

January 5, 2015

BY MAIL and EMAIL

marcus.nussbaum@gmail.com

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

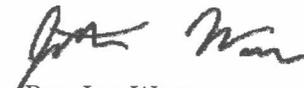
Re: *Baltic Auto Shipping, Inc. v. Hitrinov et al.*
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)
Our File No.: 2697002

Dear Mr. Nussbaum,

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

Very truly yours,

Lyons & Flood, LLP


By: Jon Werner

Encls.

U:\FLOODDOC\2697002\Correspondence\Nussbaum 02 ltr.doc

Marcus A. Nussbaum, Esq.

From: Jon Werner <jwerner@lyons-flood.com>
Sent: Wednesday, March 18, 2015 9:38 AM
To: marcus.nussbaum@gmail.com
Subject: Empire United Lines Co., Inc. v. Baltic Auto Shipping, Inc., 15 Civ. 355 (CCC) (MF)
Attachments: Nussbaum 03 ltr.pdf; NOM-sanctions2.pdf; MH-Certification2.pdf; MH-Certification2 - Exhibits.pdf; MOL-sanctions2.pdf

Mr. Nussbaum,

Please see the enclosed letter and the attached motion papers. If you do not withdraw the pleadings as requested by April 8 we will file the motion with the Court. There will not be another warning.

Regards,

Jon Werner

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



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



JON WERNER
E-Mail: jwerner@lyons-flood.com

ADMITTED IN NEW YORK,
NEW JERSEY

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

March 18, 2015

BY EMAIL

marcus.nussbaum@gmail.com

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

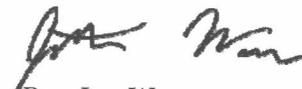
Re: *Baltic Auto Shipping, Inc. v. Hitrinov et al.*
U.S.D.C. – D.N.J., 11 Civ. 6908 (FSH) (PS)
Our File No.: 2697002

Dear Mr. Nussbaum,

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

Very truly yours,

Lyons & Flood, LLP



By: Jon Werner

Encls.

U:\FLOODDOC\2697002\Correspondence\Nussbaum 03 ltr.doc