

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

BALTIC AUTO SHIPPING, INC.	)	
	)	
COMPLAINANT,	)	
	)	
v.	)	
	)	DOCKET NO. 14-16
	)	
MICHAEL HITRINOV a/k/a	)	
MICHAEL KHITRINOV,	)	
EMPITER UNITED LINES CO., INC.,	)	
	)	
RESPONDENTS.	)	
	)	

**RESPONDENTS' MOTION FOR A MORE DEFINITE STATEMENT**

Pursuant to Rule 67 of the Federal Maritime Commission's (the "Commission") Rules of Practice and Procedure ("Rules" or "Commission's Rules") (46 C.F.R. §502.67), Respondents Michael Hitrinov a/k/a/ Michael Khitrinov and Empire United Lines Co., Inc. ("Empire") (collectively, "Respondents"), through their attorney, hereby respectfully move the Commission for an Order requiring Complainant, Baltic Auto Shipping, Inc. ("Baltic") to provide a more definite statement of its Complaint.

Defect of the Complaint: The Complaint<sup>1</sup> makes conclusory allegations, without specific details (Rule 67; 46 CFR 502.67)

Complainant alleges that its Complaint concerns shipments "[f]rom approximately Novem-

---

<sup>1</sup> Attached in Appendix to Respondents' Motion for a More Definite Statement ("Appendix") (filed with this Motion), Item 1.

ber of 2007 through January 2012” of “containers with automobiles ... said containers contained in excess of 4000 used automobiles ...” (Complaint, ¶ 12).

Complainant claims that “due to concerns about the rates it was being charged by [Respondent Empire]” it “conducted an audit of shipping related documents” (Complaint, ¶ 13).

Complainant alleges that the Respondent Empire “charged Complainant for shipments in excess of the amounts set forth in [Empire’s] tariff ... Complainant was overcharged and the amount [Complainant] overpaid for shipments was in excess of \$200,000.00 for that time period [i.e., “[f]rom approximately November of 2007 through January 2012”]” (Complaint, ¶ 13).

Complainant alleges that Respondent Empire “engaged in an unfair and unjustly discriminatory practice by charging Complainant rates greater than those it charged other shippers” (Complaint, ¶ 19).

As the Commission must recognize, even with a few automobiles stuffed in a larger size container, the Complaint involves a large number of shipments with Respondent Empire. Yet even with the audit, Complainant has provided no factual statements supporting its claims – only conclusions, and then without any specificity as to what shipments, what rates, what tariffs and what “other shippers” which were more favored are the subject of the Complaint. Such pleading does not comport with either the Commission's Rules or the Federal Rules of Civil Procedure, and Respondents are without the ability to make a meaningful response or Answer – the Respondents simply do not know what the Complainant is specifically complaining of.

Details desired: The more definite statements being sought by Respondents (Rule 67; 46 CFR 502.67)

1. Complainant alleges that Respondent Empire “charged Complainant for shipments in excess of the amounts set forth in [Empire’s] tariff” (Complaint, ¶ 13; see section V. B.):

- a. What shipments were involved?
  - b. What were the dates of the shipments?
  - c. What tariffs were being interpreted by Complainant?
  - d. How much was the overcharge on the respective shipments?
  
2. Complainant alleges that Respondent Empire “billed Complainant in excess of \$200,000 for shipments for which it had no tariff on file” (Complaint, ¶ 15):
  - a. What shipments were involved?
  - b. What were the dates of the shipments?
  - c. What were the freight charges that were billed?
  
3. Complainant alleges that Respondent Empire “engaged in an unfair and unjustly discriminatory practice by charging Complainant rates greater than those it charged other shippers” (Complaint, ¶ 19; see Section V. A.):
  - a. What shipments were involved?
  - b. What were the dates of the shipments?
  - c. What rates were charged to Complainant?
  - d. What shipments for “other shippers” is Complainant referring to?
  
4. Complainant alleges that Respondent Empire “refused to release these containers” (Complaint, ¶ 19):
  - a. What shipments were involved?
  - b. What were the dates of the shipments?
  - c. What containers were involved?
  
5. Complainant alleges that Respondents Empire and Michael Hitrinov (“Hitrinov”) “failed to deal in good faith and provide proof of ownership with a correct original bill of lading

and contract of transport in a timely manner to Complainant” (Complaint, ¶ 21; see Section V.D.):

- a. What shipments were involved?
- b. What were the dates of the shipments?
- c. What was the bad faith? As this appears to be an allegation of fraud, it needs to be explained with particularity (*See* Fed. R. Civ. P. 9 (b)).

Duty to Confer (46 CFR 502.71(a))

On Thursday December 4, 2014 I spoke with Marcus Nussbaum, Esq., attorney for the Complainant and advised him that I needed additional information about the shipments complained of. I expressed to him my concern that the Complainant’s claims might be time-barred under the Commission’s Rules (*i.e.*, Rule 302; 46 CFR 502.301) (*see also* Rule 62; 46 CFR 502.62 (a) (4) (iii)) and/or covered by a Settlement Agreement in a 2011 suit in the New Jersey Federal District Court (which I provided to counsel Nussbaum). He undertook to contact his client to seek the additional information I had requested.

On Monday, December 8, 2014 I confirmed my request in writing (email<sup>2</sup>):

“Mr. Nussbaum:

This confirms my request for a more definite statement of Baltic Auto’s complaint – specifically, identifying the shipments in question. I would need dates, descriptions and bills of lading numbers.

This information is required because the allegations made are so vague or ambiguous that the Respondents cannot reasonably prepare a response (*see*, 46 CFR 502.67).

I need the specific dates of the shipments involved in view of the allegation in the Complaint that the shipments being complained of occurred “approximately [f]rom November of 2007 through January of 2012” (¶ 12). These shipments (or most of them) would seem to be time-barred under the Federal Maritime Commission’s 3-year statute of limitation (46 CFR 502.302). If I am correct, I need

---

<sup>2</sup> Attached in the Appendix, Item 2.

the dates to Answer or otherwise plead the time-bar defense.

A further need for the information is that these shipments may also be the subject of a certain "Settlement Agreement and Mutual Release" ("Mutual Release") entered into between Complainant and the Respondents (11/29/2011). If the shipments complained of are the subject of the Mutual Release, then the Respondents have the additional defenses of release, and accord and satisfaction, as the Mutual Release provides that "... the Parties hereby release ... each other and their officers ... from any and all manner of claims ... of any nature whatsoever ... growing out of the shipping charges ..." (emphasis added). I have attached a copy of the Mutual Release for your convenience.

If, in fact, the shipments complained of are time barred and/or covered by the Mutual Release, I request that you withdraw the Complaint forthwith.

Please understand that the information requested must be supplied as quickly as possible, as I am required to make a Motion for More Definite Statement within 15 days of receipt of the Complaint. Time is of the essence.

If there are any questions, please contact me. In the meantime I await your response."

I received no response to this email.

On Wednesday, December 10, 2014 I followed up on my request for information that would identify the shipments complained of. I sent<sup>3</sup> (by email and fax) Mr. Nussbaum a draft of this Motion and advised Mr. Nussbaum:

"If I do not receive a response from you, and in view of the tight time requirements established by the Federal Maritime Commission, I will have to file a Motion for A More Definite Statement shortly.

If I do not receive the requested information by the close of business today I will file such Motion tomorrow, Thursday, December 11, 2014."

In response, I received 11 emails after 9:00 PM, Wednesday, December 10, 2014 from Mr. Nussbaum. The emails simply forwarded correspondence exchanged between Complainant and Respondent Empire in 2011. Not one email specifically identified the shipments or practices

---

<sup>3</sup> Cover of fax transmission and Email are found in the Appendix, Item 3.

being complained of in this case.

As of the filing of this Motion Complainant has not supplied any information identifying the specific shipments complained of, nor has it set out the reasons why such shipments were in violation of the Commission's Rules or the Shipping Act., and therefore the Respondents are compelled to file this Motion for a More Definite Statement.

As stated above, I have provided counsel for the Complainant with a draft of this Motion prior to filing it (Rule 71; 46 CFR 502.71 (a)).

Legal Argument: Applicable Standards

Commission Rule 62 provides that a complaint

“ ... must contain ...

(iii) A clear and concise factual statement sufficient to inform each respondent with reasonable definiteness of the acts and practices alleged to be in violation of the law ...” (46 CFR 502.62 (a) (3) (iii)).

Rule 62 is substantially similar to Federal Rule of Civil Procedure 8 (a) (2) which provides that a pleading:

“ ... must contain ... a short and plain statement of the claim showing that the pleader is entitled to relief” (emphasis added).

As explained above, as the Complaint fails to allege specific facts about specific shipments, Complainant has failed to satisfy the requirements of either Commission Rule 62 or Federal Rule 8.

Fortunately, both the Commission's Rules and the Federal Rules provide a remedy – which is what is sought by this Motion.

Commission Rule 67 (46 CFR 502.67) provides that:

“If a pleading (including a complaint ...) to which a responsive pleading is permitted is so vague or ambiguous that a party cannot reasonably prepare a response, the party may move for a more definite statement before filing a responsive pleading ... The motion ... must point out the defects complained of and the details desired” (emphasis added).

Rule 67 is virtually identical to Rule 12(e) of the Federal Rules of Civil Procedure which provides that:

“A party may move for a more definite statement of a pleading to which a responsive pleading is allowed but which is so vague or ambiguous that a party cannot reasonably prepare a response. The motion ... must point out the defects complained of and the details desired” (emphasis added).

That the Federal Rules of Civil Procedure are to be used for guidance is made explicit by the Commission in its public statements and Rule 12 of its Rules of Practice and Procedure (46 CFR 502.12).

If a complaint is ambiguous or does not contain sufficient information to allow a responsive pleading to be framed, the proper remedy is a motion for a more definite statement under Rule 12(e). See 5 Wright & Miller, Fed. Practice & Procedure: Civil § 1356 at 590-591.

When a “defendant is unclear about the meaning of a particular allegation in the complaint, the proper course of action is not to move to dismiss but to move for a more definite statement.” *Potts v. Howard University*, 269 F.R.D. 40, 42 (D.D.C. 2010) (quoting *Am. Nurses’ Ass’n v. Illinois*, 783 F.2d 716, 725 (7th Cir. 1986)).

Although Rule 8 (a) “requires only a ‘short and plain statement of the claim showing that the pleader is entitled to relief,’ a “complaint must be detailed enough to ‘give the defendant fair notice of what the . . . claim is and the grounds upon which it rests[.]’” *Dorsey v. American Ex-*

*press Co.*, 499 F. Supp. 2d 1, 3 (D.D.C. 2007) (alteration in original) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (quotation marks omitted)).

A complaint, which contains a “bare bones” allegation that a wrong occurred and which does not plead any of the facts giving rise to the injury, does not provide adequate notice. *Walker v. South Cent. Bell Tel. Co.*, 904 F.2d, 275, 277 (5th Cir.1990).

As stated above, in this case the Respondents are being charged with incorrectly applying tariffs, charging with no underlying tariff provision and favoring some shippers over others. How are the Respondents to know what the Complainant is complaining of if the Complaint does not identify the specific shipments it is complaining of? Without such information Respondents have no idea of what the Complaint is specifically about.

The Complainant should be required to identify the shipments under which the charges were incorrectly calculated, and the tariff provisions that the Complainant is relying on. The Complainant should identify the shipments for which there was no tariff filing. The Complainant should be required to identify the shippers, their cargoes and the rates that were charged and to show that the rates were lower than those charged Complainant for the same kinds of shipments.

Without such information Respondent cannot know if it has committed a wrongdoing – and admit it; or dispute it after performing its own interpretation and application of the relevant tariff charges. Simply put, the Respondents are without information to even analyze the claims made by the Complainant.

Insufficient information deprives the Respondents of the ability to plead defenses

Beyond mere tariff interpretation, it appears, but without sufficient facts alleged it cannot be determined, that all of the Claimant’s claims are barred by the Commission’s statute of limita-

tions. But since the Complainant does not identify the particular shipments complained of, the Respondents cannot in good faith allege such defense.

Similarly, there may be a Settlement Agreement that pertains to these specific shipments – and which forbids any re-litigation of the claims asserted in this case. But since Complainant has not identified the shipments, Respondents are without the means to allege the defense of settlement, and accord and satisfaction.

The Respondent's should not be made to go through the time and expense of discovery in order to plead their defenses; there should be sufficient information in the Complaint for them to identify them immediately. This is in accord with the intent of the Commission's Rules of Practice and Procedure:

“The rules ... shall be construed to secure the just, speedy and inexpensive determination of every proceeding” (Rule 1; 46 CFR 502.1) (emphasis added).

Complainant has the information readily at hand – the audit

In seeking specific shipment information, the Respondents are not trying to shift any expense burden onto the Complainant. Indeed, the Complaint alleges that the information is already at hand – the Complainant had an audit done – which is the precise basis for the Complaint:

“Due to concerns about the rates it was being charged for transportation services provided by [Respondent Empire], Complainant conducted an audit of the shipping related documents provided to Complainant by [Respondent Empire] for the period from 2007 through January of 2012. The audit revealed that [Respondent Empire] ... overcharged and the amount [Complainant] overpaid for shipments was in excess of \$200,000.00 for that time period” (Complaint, ¶ 13)

(emphasis added).

In order to perform such an audit, each shipment must be reviewed and the freight charges calculated against a tariff. The audit would identify the particular shipments, the commodities, origin and destination ports and the dates of shipment. This is precisely the information that should have been pleaded in the Complaint – and which Respondents require to Answer or otherwise move for relief.

Conclusion

The Respondents only seek to be able to determine what shipments are being complained of, and what shippers were favored to Complainant's detriment. The Complainant is not being put to any great burden as it has the information readily at hand – and alleges as much in the Complaint.

To grant the Respondents' motion would be to satisfy the intent ("just speedy and inexpensive determination"; Rule 1) and letter ("so vague or ambiguous that a party cannot reasonably prepare a response"; Rule 67) of the Commission's Rules.

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**

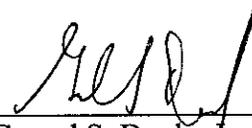
**Michael Khitrinov, and**

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

Dated in Short Hills, NJ this eleventh day of December 2014.

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served the RESPONDENTS' MOTION FOR A MORE DEFINITE STATEMENT 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, and by fax (347-572-0439), and by email ([marcus.nussbaum@gmail.com](mailto:marcus.nussbaum@gmail.com)).



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](mailto: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 eleventh day of December, 2014