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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).

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<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)

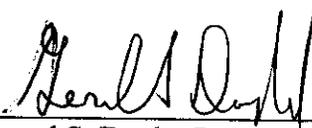
<sup>2</sup> "With respect to the 21 shipments identified in Attachment A, it will be necessary for Baltic to provide us with correspondence or documentation, such as shipping instructions, requests for the bookings, responses to the booking requests, Master Bill of Lading from Baltic to Empire United, 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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## 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)