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**BEFORE THE
FEDERAL MARITIME COMMISSION**

BALTIC AUTO SHIPPING, INC.,

Complainant,

— vs. —

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

Respondents.

Docket No.: 14-16

FILED

APR 9 - 2015

Federal Maritime Commission
Office of the Secretary

**COMPLAINANT’S BRIEF IN OPPOSITION TO RESPONDENT’S
MOTION FOR PRODUCTION OF COMPLAINANT’S EXHIBIT “H”
IN ITS NATIVE FORMAT**

Pursuant to Rules 67 and 71 of the Federal Maritime Commission’s (the “Commission”) Rules of Practice and Procedure (“Rules” or “Commission’s Rules”) (46 C.P.R. §§ 502.67 and 502.71), Complainant Baltic Auto Shipping, Inc. (“Baltic”) through its attorney, hereby submits this brief in opposition to the motion by Michael Hitrinov a/k/a/ Michael Khitrinov and Empire United Lines Co., Inc. (“Empire”) (collectively, “Respondents”), for an Order requiring Complainant to produce Complainant’s Exhibit “H” to the 2014 Audit produced by complainant as part of the discovery in this matter (the “Audit”).

BACKGROUND

As the Commission may recall, on March 13, 2015 Your Honor issued a written Order instructing that: “Complainant will endeavor to produce in Microsoft Excel format Attachment “H” to the audit previously produced in PDF format.” In accordance with that directive, the undersigned consulted with the Complainant who advised as follows, per the affidavit submitted contemporaneously with this brief in opposition:

1. The Audit was prepared in early July of 2014, on a laptop computer in Complainant's office. Upon the completion of the Audit, hard copies were prepared for signature and placed in file storage at Complainant's office.
2. Approximately one month later, due to the receipt of an infected e-mail, the laptop computer was infected by a virus which demanded payment of a ransom within three days in order to unlock the files.
3. As a result of Complainant's inability to access the files on the laptop, the hard drive was subsequently formatted so that the laptop could be used again.
4. In mid-October of 2014, complainant disposed of the laptop due to continued software errors and obsolete hardware.
5. Subsequent to the respondents' request for copies of the Exhibit "H" in its native format, Complainant caused a search of its office computers and email and can say with certainty that the original file was not emailed to anyone from the laptop during the course of its preparation. This is the reason why hard copies were forwarded to the undersigned for preparation of the complaint in this matter.

As the Commission may recall, the undersigned explained during the March 12, 2015 telephonic conference that it would be possible to produce a searchable PDF file for the respondent's use. In light of the foregoing, on March 15, 2015, in response to the requests by respondent's counsel for the excel file, the undersigned forwarded a searchable PDF file, which was created from a low resolution scan of the hard copies received from the complainant's office. The low resolution scan was created due to the fact that a higher quality file could not be emailed to counsel due to file size. At that time, the undersigned endeavored to comply with counsel's requests by making the PDF file searchable, however, due to the quality of the scan, I was unable to guarantee the accuracy of the file.

In an effort to resolve this issue and avoid the need for further waste of the Commission's time, the undersigned has created a searchable high resolution scan of the original Exhibit "H" to the audit, which is now submitted herewith. Due to the large file size of the searchable high resolution PDF, the file is being provided to the Commission and to counsel for the respondents on a DVD.

ARGUMENT

In sum and substance, the basis for respondent's motion is that the file previously provided was not "reasonably usable" and that it could be searched in order to verify the quality of the audit. Presumably, what the respondents are complaining of is their inability to input various container and/or booking numbers into the search box of the file and identify individual shipments. For all intents and purposes, the attached PDF file fulfills all of these functions, and is accurate, searchable, and can now easily be exported into an excel file by the respondents if they choose to do so.

As set forth above, the Complainant's failure to produce the native excel file was not deliberate, and the undersigned's previous effort to provide the respondents with a searchable file was hampered by the inability to email counsel a file in excess of 30 megabytes. The complainant has complied with the Commission's directive that complainant endeavor to produce the file in excel format. In light of the current production of a high resolution file that is reasonably usable and searchable, the respondent has not been prejudiced in its efforts to verify the quality of the audit.

CONCLUSION

In light of the foregoing, it is respectfully requested that Respondents' motion be denied in its entirety.

Respectfully Submitted,

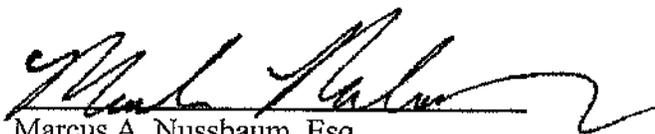


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Dated: April 9, 2015

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANT'S BRIEF IN OPPOSITION TO RESPONDENT'S MOTION FOR PRODUCTION OF COMPLAINANT'S EXHIBIT "H" IN ITS NATIVE FORMAT** 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).



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Attorney for Complainant
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☞ Dated: April 9, 2015 in Brooklyn, New York.

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.

AFFIDAVIT

STATE OF ILLINOIS)
)ss.
COUNTY OF COOK)

Andrejus Presniakovas, being duly sworn, deposes and says:

1. I am the principal and chief executive officer of Baltic Auto Shipping, Inc., ("Baltic Chicago") the Complainant in the above captioned action. As such, I have personal knowledge of the facts stated herein. I submit this affidavit in opposition to the motion by respondents seeking the production of Complainant's Exhibit "H" to the 2014 Audit produced by my office as part of the discovery in this matter (the "Audit").

2. The Audit was prepared by my employee, Laura Supronas in early July of 2014, on a laptop computer in my office at my direction and request. Upon the completion of the Audit, hard copies were prepared for signature and placed in file storage at my office.

3. Approximately one month later, due to the receipt of an infected e-mail, the laptop computer was infected by a virus which demanded payment of a ransom within three days

in order to unlock the files.

4. As a result of my inability to access the files on the laptop, the hard drive was subsequently formatted so that the laptop could be used again.

5. In mid-October of 2014, I disposed of the laptop due to continued software errors and obsolete hardware.

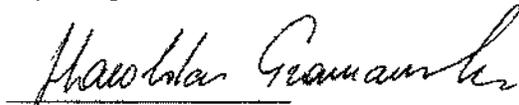
6. Subsequent to the respondents' request for copies of the Exhibit "H" in its native format, I caused a search of my office computers and email and I can say with certainty that the original file was not emailed to anyone from the laptop during the course of its preparation. This is the reason why hard copies were forwarded to my attorney for preparation of the complaint in this matter.

Dated: Bedford Park, Illinois
April 3, 2015

By:


Andrejus Presniakovas

Sworn to before me on the 3rd
day of April, 2015.


NOTARY

