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January 20, 2016					
FEDERAL MARITIME COMMISSION					

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 15-02**

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**COMBUSTION STORE LIMITED**

**v.**

**UNIGROUP WORLDWIDE – UTS**

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**ORDER STRIKING OFFER OF JUDGMENT**

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On December 16, 2015, respondent UniGroup Worldwide, Inc. (UniGroup) served an Offer of Judgment pursuant to Federal Rule of Civil Procedure 68 on Complainant and filed the offer with the Secretary. UniGroup contends that because the Commission does not have a rule covering offers of judgment, Rule 68 should be followed to the extent that [it is] consistent with sound administrative practice.” 46 C.F.R. § 502.12.

The Offer of Judgment should not have been filed with the Secretary.

Federal Rule of Civil Procedure 68 states, in relevant part,

a party . . . may serve upon the adverse party an offer to allow judgment to be taken against the defending party for the money or property . . . specified in the offer . . . . If . . . the adverse party serves written notice that the offer is accepted, either party may then file the offer and notice of acceptance . . . .

\* \* \*

As one court has put it,

Rule 68 is really unambiguous – its first sentence provides only for the service of offers of judgment on the adverse party, while its second sentence calls for filing of the offer only if the adverse party accepts it within ten days after such service. By strong negative inference, that latter reference to filing if and when the offer is accepted confirms the plain meaning of Rule 68’s first sentence that no filing is permitted at the time of tender.

*Kason v. Amphenol Corp.*, 132 F.R.D. 197, 197 (N.D. Ill. 1997). The *Kason* court also recognized that the above rule “is the uniform view of the commentators.” *Id.* Upon further review, this Court agrees. According to Wright and Miller, for example,

[t]he defendant should not file the offer with the court, but if that is done . . . the remedy is to strike the offer from the court’s file. If the offer is accepted, the offer and acceptance will be filed. If it is not accepted, the offering party can prove it at the proper time to defeat costs.

12 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & RICHARD L. MARCUS, FEDERAL PRACTICE AND PROCEDURE § 3002 (2d ed. 1997) (footnotes omitted). Because the offer of judgment has not yet been accepted by Plaintiff, it is not properly before the Court, and inadmissible. Therefore, it must be stricken from the Court’s file. At the present time, the offer of judgment is a private matter between the parties.

*St. Paul Fire & Marine Ins. Co. v. City of Detroit*, No. 06-CV-14191, 2007 U.S. Dist. LEXIS 85169, \*6-5, 2007 WL 4126542 (E.D. Mich. Nov. 16, 2007).

Based on the foregoing, it is hereby

**ORDERED** *sua sponte* that the Offer of Judgment filed by respondent UniGroup Worldwide, Inc., on December 16, 2015, be **STRICKEN** from the docket.

  
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Clay G. Guthridge  
Administrative Law Judge