

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 15-04**

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CROCUS INVESTMENTS, LLC AND CROCUS, FZE

(Complainants)

v.

MARINE TRANSPORT LOGISTICS, INC. AND  
ALEKSANDR SOLOVYEV a/k/a ROYAL FINANCE GROUP INC.

(Respondents)

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**RESPONDENTS' OPPOSITION TO COMPLAINANTS' MOTION FOR LEAVE TO  
FILE A REPLY IN COMPLAINANTS' PETITION TO REOPEN PROCEEDINGS**

Respondents respectfully submit this Opposition to Complainants' November 26, 2016 Motion for Leave to File Reply to Petition to Reopen the Proceedings (hereinafter, the "Motion.") At the outset, it is noted that a moving party (i.e., Complainants as Petitioner) may not file a reply in a non-dispositive motion unless there is a showing of "extraordinary circumstances." 46 C.F.R. 502.71(c). As discussed herein, Complainants have not shown that "extraordinary circumstances" exist. Instead, Complainants' Motion –itself nearly a *de facto* reply – only introduces evidence known to Complainants before the filing of the initial Petition, all of which continues to ignore the real issue: that Complainants have failed to allege a Shipping Act claim for the three boats (i.e., a Formula, Monterey, and Chapparral Boat.)

**I. COMPLAINANTS’ “NEW EVIDENCE” IS NOT MATERIAL TO THE INITIAL DECISION OR THE LACK OF A SHIPPING ACT CLAIM.**

Instead of directly addressing the issue of jurisdiction, Complainants obfuscate matters and muddy the waters with bare allegations of racketeering or fraud concerning two cars (which are not part of the FMC Complaint) – none of which present a valid Shipping Act claim in this proceeding. For the reasons discussed next, Complainants failed to show that “extraordinary circumstances” exist or that any of their “evidence” is material to the Shipping Act. Accordingly, Complainants’ Motion – and Petition to Reopen Proceedings – should both be denied.

**A. Respondents did not operate as a carrier for the Dubai to U.S. carriage of the Monterey and Chapparral Boats.**

As a brief recap, the June 17, 2016 Initial Decision by Administrative Law Judge Clay G. Guthridge (the “ALJ”) determined, in relevant part, that Respondents did not operate as a common carrier with regard to the Dubai to U.S. carriage of the Monterey and Chapparral Boats.<sup>1</sup> Initial Decision, at p. 25. The Initial Decision *further* held that “even if MTL assumed responsibility for the transportation . . . the international transportation ended when the boats were delivered to MTL.”<sup>2</sup> Initial Decision, at p. 25. Consequently, the Initial Decision determined that Complainants had failed to prove that the Commission had jurisdiction over the Monterey and Chapparral Boats. Accordingly, the allegedly new evidence or extraordinary circumstances would be material only if either changes or affects the ALJ’s Initial Decision. As

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<sup>1</sup> The Initial Decision confirmed that Complainants did not claim any violation of the Shipping Act on the U.S. to Dubai transportation of the Monterey and Chapparral Boats. Initial Decision, at p. 21 (“Each boat was transported by water to Dubai . . . without problem. Complainants do not claim violations of the Act occurred when the boats were transported to Dubai.”) Accordingly, Respondents address Complainants’ failure to allege material evidence with respect only to the Dubai to U.S. shipment.

<sup>2</sup> To be clear, and to avoid Complainants misunderstanding Respondents’ position or Complainants misinterpreting the Initial Decision, the ALJ’s determination was a hypothetical in the *alternative* for arguments sake only; that is, even if Complainants had successfully shown that MTL assumed responsibility for the ocean carriage from Dubai to the U.S., which Complainants did not do, then Complainants still do not have a valid Shipping Act claim. Initial Decision, at p. 25.

addressed in Respondents' Response Opposing Complainants' Petition to Reopen Proceedings, and discussed more thoroughly in Section III and Section IV herein, Complainants' "new" evidence does not create a Shipping Act claim for the Monterey and Chapparral Boats and, thus, are not material.

**B. There was no "agreement . . . to provide transportation by water of . . . cargo between the United States and a foreign country" of the Formula Boat.**

As a brief recap, the June 17, 2016 Initial Decision determined, in relevant part, that Complainants failed to prove an "agreement to 'provide transportation by water of . . . cargo between the United States and a foreign country'" with respect to the Formula Boat. Initial Decision, at p. 26. The ALJ's determination was based on Complainants' testimony and instructions to ship the Formula Boat from New Jersey to Miami, Florida. Initial Decision, at p. 26; ALJ Findings of Facts 91. Accordingly, the allegedly new evidence or extraordinary circumstances would be material only if either changes or affects the ALJ's determination that there was no agreement to ship the Formula Boat to a "foreign country." It follows, as addressed in Respondents' Response Opposing Complainants' Petition to Reopen Proceedings, and discussed more thoroughly in Section III and Section IV herein, that Complainants' "new evidence" does not change or affect the ALJ's determination that the Formula Boat was not part of an international export shipment. In simple terms: the evidence is not material.

**C. Complainants' allegations concerning two cars, which are not part of this proceeding, do not belong in this proceeding and are not material to the lack of a Shipping Act claim for the three boats.**

Further on this point, the Commission should recognize that Complainants' counsel (M. Nussbaum, Esq.) also represents non-party MAVL Capital, Inc. in a Complaint filed by MAVL before the Federal Maritime Commission concerning the two cars (i.e., a Mercedes and Porsche). See MAVL Capital, Inc., et al. v. Marine Transport Logistics, Inc. and Dimitry Alper, FMC

Docket No. 16-16. Complainants' counsel (M. Nussbaum, Esq.) also represents MAVL in a Federal Court case against MTL, alleging, *inter alia*, RICO and fraud for the same two cars (i.e., the Mercedes and Porsche). See MAVL Capital, Inc., et al. v. MTL, et al., E.D.N.Y. 13 Civ. 7110. The significance for pointing this out is that, to the extent that MAVL may, *arguendo*, have a RICO, fraud, or even a Shipping Act claim for the two cars, which Respondents deny, Complainants' counsel is already separately pursuing those claims in separate proceedings on behalf of MAVL.<sup>3</sup> But, the Complainants in this proceeding (Crocus FZE and Crocus Investments, LLC) do not have standing for those claims and any allegations concerning those claims are immaterial to a Shipping Act claim for the three *boats*. These separate actions should not be conflated, and Complainants' repeated attempts to do so serves only to muddle the issues, presumably so that Complainants can avoid the adverse Initial Decision, increase the costs of Respondents' defense to try and force an unreasonable settlement, and to obtain an unjustified second "bite" at the apple.

**II. COMPLAINANTS HAVE NOT DEMONSTRATED "EXTRAORDINARY CIRCUMSTANCES" JUSTIFYING THE FILING OF A REPLY TO A NON-DISPOSITIVE MOTION.**

In conjunction with Section I, above, Complainants' "extraordinary circumstances" only justify the filing of a reply to a non-dispositive motion if they are "extraordinary" or material to a Shipping Act claim. As next discussed, neither of those are true.

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<sup>3</sup> For purposes of this pending Petition to Reopen Proceedings and opposing of Complainants' Motion only, Respondents bring the separate and already-filed actions to the Commission's attention to show that the claims are being litigated by MAVL. But, Respondents and Respondents' counsel do not waive any defenses in any of the aforementioned actions, including, but not limited to, the defense of a lack of Shipping Act claim with respect to the two cars.

**A. The November 22, 2016 Eastern District of New York Order is not “extraordinary” or material to this proceeding.**

The first “circumstance” that Complainants mention is the November 22, 2016 Order by the Honorable Judge Townes in the Eastern District of New York matter captioned MAVL Capital, Inc., et al. v. MTL, et al.<sup>4</sup> However, Judge Townes’ Order is not “extraordinary” or material. Specifically, Judge Townes’ order did not make any assessment on the merits (or lack thereof) of Complainants’ “issues” (e.g., its RICO and fraud allegations concerning the two cars.) See Motion, at p. 3; Complainants’ Appendix “1” at pp. 2-3. Judge Townes’ order, to the contrary, states that, “[t]o the extent [plaintiff] seek leave to reopen discovery and amend their complaint and bolster their RICO claim . . . they implicitly seek reconsideration of the Court’s September 8 order dismissing those claims. Such relief is governed by FRCP 60(b)(2).” In other words, Judge Townes’ Order instructs MAVL’s counsel (M. Nussbaum Esq.) to file its motion under the *correct* Federal Rule because it was previously filed *incorrectly*. This is not an extraordinary circumstance or material to the three boats at issue.

**B. The ALJ’s determinations were also based on Complainants’ admissions, and any alleged inconsistent statements by Respondents are immaterial to the Initial Decision.**

The second “circumstance” that Complainants complain of allegedly involve a \$4,950 wire transfer invoice. Foremost to be kept in mind is that this invoice was submitted to the ALJ in Complainants’ January 14, 2016 Pre-Hearing Brief and Proposed Findings of Fact. In this regard, if this invoice is material, the ALJ relied on *Complainants’* representations and arguments. Initial Decision, at p. 5 (relying on CX 035); See also Complainants’ Pre-Hearing Brief, at p. 9 (“Complainants paid \$59,780 for the Formula Boat and \$4,950 for the trailer.”)

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<sup>4</sup> As already discussed, this is one of two proceedings in which Complainants’ counsel (M. Nussbaum, Esq.) represents non-party MAVL Capital, Inc. with regard to the two cars (i.e., a Mercedes and Porsche.)

Whether Respondents allegedly made inconsistent statements in this regard is immaterial because the ALJ relied upon *Complainants'* representations.

Second, even if the above critical point is ignored, Complainants still failed to show why this invoice or Respondents' representations are material. Complainants only make the vague allegation that it goes "directly to the issue of whether or not the [ALJ] had enough information to decide that the Commission did not have jurisdiction." See Motion at p. 3. But, how? How does this affect ALJ's determination that the Formula Boat was not part of an international export shipment? For obvious reasons, Complainants have nothing to say. Thus, the clearest proof that the invoice is immaterial is that Complainants do not have anything specific to present to the Commission other than vague generalities. Nevertheless, even if Complainants had a valid argument, it should have been made in the initial Petition; a "reply" is not the proper vehicle for introducing previously undisclosed arguments.<sup>5</sup>

Finally, Complainants' claim is not "extraordinary." Complainants, likewise, do not allege anything "new." The opposite is true, in fact, because Complainants admitted that they "discovered" this "evidence" in April 2016. See Motion, at p. 2. Thus, notwithstanding that this "evidence" is not material, Complainants also knew of it prior to filing the Petition. Complainants' failure to do so is not an "extraordinary circumstance" for Complainants to now file a reply.

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<sup>5</sup> To the extent that Respondents and their counsel can further address any inconsistent statements alleged by Complainants, the proper forum to do so, if one exists, is not the present proceeding because the ALJ and the Initial Decision did not rely solely on any of Respondents' representations concerning the invoice and Complainants do not dispute the fact of the payment. Accordingly, even if, *arguendo*, there are inconsistent statements, the correct forum to address those statements is a forum where the statements may be material. Respondents expressly reserve their right to refute Complainants' counsel's allegations in other proceedings.

C. **Complainants' unsubstantiated allegations of "fabricated" invoices have nothing to do with the lack of a Shipping Act claim.**

Complainants' third "extraordinary circumstances" is, apparently, allegations of fabricated documents. The allegedly fabricated documents are one invoice from Copart (a auto and boat auction house) dated August 7, 2013 for the Formula Boat, and two invoices from Copart dated June 7, 2013 and May 8, 2013, respectively, for two cars (i.e., a Mercedes and the Porsche). With respect to the two cars, their invoices obviously do not directly relate to the three *boats* at issue or the question of jurisdiction in this proceeding. For that reason, the ALJ obviously did not rely on the invoices for the two cars and their invoices are not material to the Initial Decision.

Complainants' argument is seemingly that the invoice for the Formula Boat was "fabricated" and that Respondents did not purchase the Formula Boat in 2013. But even assuming, *arguendo*, that Respondents did not purchase the Formula Boat in 2013, which is denied, what is the relevance to a Shipping Act claim? The reality is that it is undisputed by the parties that the Formula Boat was *not exported* to Dubai and that Complainants' own instructions were to ship the Formula Boat to Miami, Florida. Complainants' *own* cited case law in the Petition is directly on point on this issue: "If the shipment comes to rest within the state of origin and the goods are thereafter disposed of locally, the interstate character of the shipment is lost." State of Texas v. Anderson, et al., 92 F.2d 104, 107 (5th Cir. 1937).<sup>6</sup> Complainants' cited case, in

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<sup>6</sup> As discussed in Respondents' response to the Petition and contrary to Complainants' representation of the case to the Commission, the Fifth Circuit held only that a "temporary stoppage, made necessary in furtherance of the interstate carriage, does not change its character." *Id.* In other words, had the Formula Boat stopped *temporarily* in New Jersey, en route to Dubai and actually been exported to Dubai, then the temporary stop in New Jersey would not change the shipment from an international shipment to a domestic shipment. However, the undisputed facts in this proceeding, as held by the ALJ based on Complainants' testimony, are that the Formula Boat stopped *permanently* in New Jersey, and that Complainants requested for Respondents to ship the Formula *domestically* to Miami, Florida. It would defy logic and common sense for such a shipment to be considered an international shipment.

this regard, is nearly on all-fours with the facts of this proceeding, and the Fifth Circuit Court of Appeals decision supports the ALJ's determinations.

It should also not be lost that the "invoices" submitted by Complainants are unauthenticated and were not submitted under penalty of perjury. Moreover, Complainants admit that these invoices, assuming they were not created solely for litigation by Complainants, were in Complainants' possession in 2013, which is well before the June 17, 2016 Initial Decision. See Motion, at p. 7 ("invoices annexed hereto . . . were provided to Complainants by Solovyev at the time that Solovyev shipped the Mercedes and Porsche to Dubai.") Thus, these invoices are not "extraordinary," new or material.

Bare allegations of unauthenticated documents and wild-eyed claims of fabricated documents should not be considered by the Commission nor relied upon to justify reopening proceedings or the filing of a reply. Correspondingly, this should also not be interpreted as an invitation to reopen proceedings – which would, in effect, allow Complainants to achieve their goal on the basis of unsubstantiated claims and unauthenticated documents – because the invoices, above all else, are not material to the lack of a Shipping Act claim.

**D. Complainants remaining allegations are also not "extraordinary circumstances" or material to the Initial Decision.**

Finally Complainants' remaining allegations on a charge for the trailer and collection of \$500 for shipping documents, likewise, do not constitute an "extraordinary circumstance." These allegations and arguments were made to the ALJ and/or were known to Complainants before the June 17, 2016 Initial Decision. If Complainants believed that these documents or arguments would have changed the Initial Decision, which Respondents deny, the documents or arguments should have been raised by Complainants with the timely filing of Exceptions.

**III. DETERMINATION OF WITNESS CREDIBILITY IS WITHIN THE ALJ'S DISCRETION, AND WITNESS CREDIBILITY IS NOT JUSTIFICATION FOR REOPENING PROCEEDINGS OR FILING A REPLY IN A NON-DISPOSITIVE MOTION.**

Complainants' final argument that "numerous findings of fact made by the [ALJ] were based solely upon the testimony of respondent Solovyev . . . who, upon information and belief is a convicted criminal" is completely inappropriate. See Motion, at p. 5, FN2. It is also misleading and misrepresents the proceeding before the ALJ. In this regard, *both parties were active participants* in this action. Complainants would have the Commission believe that only Respondent Solovyev gave testimony, but this is untrue. The facts allowing the ALJ to find in favor of Respondents were not based "solely on" Respondent Solovyev's testimony, but rather, included Complainants' own admissions. Complainants *also* presented testimony and presented evidence to the ALJ. Whether the ALJ chose not to believe Complainants' contrary testimony or refused to give weight to Complainants' evidence (to the extent that Complainants submitted any admissible evidence) is entirely within the ALJ's discretion.<sup>7</sup> Additionally, even if the ALJ found Respondent Solovyev not to be credible, as Complainant urges, the burden of persuasion is still on Complainants to prove a Shipping Act claim. Disregarding Respondent Solovyev's testimony does not mean the ALJ must accept Complainants' unconvincing testimony.

**IV. COMPLAINANTS HAVE BEEN IN POSSESSION OF THE "NEW EVIDENCE" SINCE APRIL 2016, PRIOR TO THE MAY 13, 2016 HEARING AND THE JUNE 17, 2016 INITIAL DECISION.**

Finally, Complainants misconstrued Respondents' arguments concerning Complainants' counsel's involvement in this proceeding since, at least, April 2016. The point missed by

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<sup>7</sup> It is possible that ALJ determined that *Complainants* were not credible and was influenced by the Complainants' submission of a April 22, 2016 Response to Supplement the Order and Certification, which included representations, under oath, which were *directly contradicted* by e-mail communications between Complainants' and their employees, all of which were provided in Complainants' own Appendix. See April 22, 2016 Response to Supplement the Order and Certification at ¶ 4, c.f. Complainants Pre-Hearing Appendix at CX 056-057.

Complainants is that, even assuming Complainants' counsel is being truthful in his representation, the allegedly "new evidence" was known to Complainants before Complainants submitted their Supplemental Documents (submitted on April 22, 2016); before the hearing with the ALJ (on May 13, 2016); and before the June 17, 2016 Initial Decision. The evidence is not and cannot be "new" and does not present "a material change of fact or law" after the Initial Decision, to justify reopening proceedings.

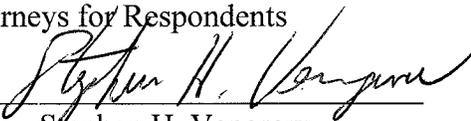
**CONCLUSION**

In sum, Complainants have not shown that "extraordinary circumstances" exist for the filing of a reply. Complainants "extraordinary circumstances" were known to Complainants before the filing of the Petition and, in any event, are immaterial to show that a Shipping Act claim exists or that the Commission should exercise jurisdiction. For all of the foregoing reasons, Complainants Motion should be denied.

Dated: December 5, 2016  
New York, NY

Respectfully submitted,  
MONTGOMERY McCracken  
WALKER & RHOADS, LLP  
Attorneys for Respondents

By:



Stephen H. Vengrow  
Eric Chang  
437 Madison Ave, 29<sup>th</sup> Floor  
New York, NY 10022  
212-867-9500

**CERTIFICATE OF SERVICE**

The undersigned declares under penalty of perjury that the following is true and correct:

1. I am over the age of eighteen years and I am not a party to this action.
2. On December 5, 2016, I served a complete copy of Respondent's RESPONDENTS' OPPOSITION TO COMPLAINANTS' MOTION FOR LEAVE TO FILE A REPLY IN COMPLAINANTS' PETITION TO REOPEN PROCEEDINGS, in Docket No. 15-04 by

E-mail and FedEx to:

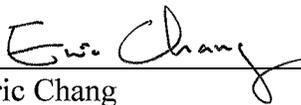
Secretary, Federal Maritime Commission  
800 N. Capital St., NW.  
Washington DC 20573-0001  
[secretary@fmc.gov](mailto:secretary@fmc.gov)

(Original and 5 copies)

And by U.S. mail and e-mail to:

Marcus A. Nussbaum, Esq.  
P.O. Box 245599  
Brooklyn, NY 11224  
[marcus.nussbaum@gmail.com](mailto:marcus.nussbaum@gmail.com)

(Copy only)

  
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Eric Chang

Dated: December 5, 2016  
New York, New York