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BEFORE THE
FEDERAL MARITIME COMMISSION

FILED

NOV 7 2018

DOCKET NO. 15-04

Federal Maritime Commission
Office of the Secretary

CROCUS INVESTMENTS, LLC AND CROCUS, FZE

(Complainants)

v.

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

(Respondents)

RESPONDENTS' REPLY TO COMPLAINANTS'
PETITION TO REOPEN PROCEEDINGS

By: MONTGOMERY McCRACKEN
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PRELIMINARY STATEMENT

Respondents respectfully submit this brief in Reply under Rule 230(b) to Complainants' October 27, 2016 Petition to Reopen the Proceedings (Complainants' "Petition").¹ 46 C.F.R. 502.230.

Complainants' Petition seeks to reopen proceedings to "admit new evidence." Petition, p. 1, ¶ 1. For the reasons discussed herein, the Petition should be denied because the "new evidence" alleged by Complainants is (1) not new and (2) not material to either Administrative Law Judge Clay G. Guthridge's (the "ALJ") June 17, 2016 Initial Decision ("Initial Decision") or to any alleged violation of the Shipping Act. Consequently, there is no good cause shown to reopen proceedings or to remand proceedings to ALJ.

REPLY ARGUMENT

I. COMPLAINANTS DID NOT HAVE "GOOD CAUSE" FOR THEIR SEPTEMBER 5, 2016 MOTION FOR ENLARGEMENT OF TIME TO FILE EXCEPTIONS.

At the outset and before addressing the non-meritorious Petition, Respondents draw the Commission's attention to Complainants' counsel's gamesmanship and willingness to omit material facts to the Commission, which in turn affects the credibility and weight to be given Complainants' representations in the Petition.

On September 5, 2016, Complainants filed a *second* Motion to Enlarge Time for Filing Exceptions to the ALJ's June 17, 2016 Initial Decision. Complainants' counsel, Marcus A. Nussbaum Esq., represented therein to the Commission that good cause existed for the motion because he "was *recently* retained by complainants for the purpose of filing the exceptions"; the

¹ Rule 230 permits the non-moving party on a Petition to Reopen to file a Reply. Rule 230(b).

exceptions “[require] the review and analysis of hundreds of pages of documents, most of which are other in English”; and “it will take time to review the entire file *in preparation for the drafting and filing of the exceptions*” (emphasis added).² These representations, as next discussed, have proven to be untrue or, at best, deliberately misleading to the Commission, in light of Complainants’ admissions in the Petition.

A. Complainants’ counsel has been in communication with Complainants since at least April 2016.

First, Complainants’ counsel represented to the Commission good cause existed for an enlargement of time because he was *recently* retained. “Recently” was not defined in the Complainants’ motion – for reasons that will become obvious, Complainants’ counsel was not specific on the date – but the implication to the Commission was that the recency of Complainants’ counsel’s retention deprived him of time to *learn* the facts of the case and the full benefit of the 22 days under Rule 228 to prepare and file exceptions.

But surprisingly, the Petition reveals that Complainants’ counsel (Mr. Nussbaum, then-acting on behalf of the plaintiff in MAVL Capital, Inc. v. Marine Transport Logistics, Inc.³) has been in communication with Complainants and Complainants’ former counsel (Ms. Louiza

² Complainants’ September 5, 2016 Motion to Enlarge Time, attached as Exhibit 1 for the Commission’s reading convenience, ¶¶ 2, 7.

³ The undersigned represented Defendants in MAVL Capital, Inc., et al. v. Marine Transport Logistics, Inc., et al., in the U.S. District Court for the Eastern District of New York, 13-cv-7110 (SLT)(RLM). Complainants’ Petition seems to conceal that Mr. Nussbaum was *also counsel for the Plaintiff*, MAVL Capital, Inc., in above Federal Court matter: The Petition refers to MAVL Capital, Inc. as a “non-party to this matter” and makes an oblique reference to MAVL Capital, Inc.’s counsel (i.e., Complainants’ current counsel) as “plaintiff’s counsel in the Federal Court matter described above.” Petition at p. 2, ¶ 1; p. 3, ¶ 2. Just so there is no confusion, Mr. Nussbaum was the lawyer who contacted Complainants in (as early as) April 2016, as admitted in the Petition. To further support Respondents’ position, it may be helpful for the Commission to review the chronology and calendar docket of the Federal Court matter which is similar to the instant proceeding: an adverse decision against Mr. Nussbaum’s client (the Plaintiff) and an Order to Show Cause within 30 days why the Plaintiff’s Complaint Should Not be Dismissed in September 2015, followed by Mr. Nussbaum requesting extensions of time to respond to the Order to Show Cause, only to file a motion to reopen discovery in April 2016.

Tarrasova) regarding this proceeding since April 2016!⁴ If only for transparency and full disclosure, Complainants' counsel should have disclosed his involvement with this proceeding to the Commission, insofar as Complainants' counsel was familiar with the facts of the present FMC proceeding. Respondents, thus, submit that Complainants' counsel's involvement since April 2016 rendered his being "recently retained," if true, to be insufficient to show good cause for the enlargement of time, in particular since Complainants' counsel has more than sufficient time to file exceptions by September 12, 2016.

B. Complainants' counsel's claim that that review of Non-English documents was required in order to file Exceptions was untrue.

Second, Complainants' September 5, 2016 motion represented that good cause existed for the enlargement of time because the *exceptions* required "review and analysis of hundreds [sic] pages of documents, *most of which are other than in English*" (emphasis added.)⁵ This statement was either untrue or, at best again, intended to mislead the Commission. In this regard, English translations for all non-English documents were provided in the parties' pre-hearing Appendices – and, indeed, English translations were *required* by the ALJ. Whether "most of" the documents in the Appendices were originally "non-English" is not and never was material.

C. Complainants never intended to file Exceptions by October 27, 2016.

In view of the foregoing, it is clear that Complainants *never* intended to file Exceptions by October 27, 2016, contrary to their representations to the Commission in their September 5, 2016 motion. Indeed, Complainants' September 5, 2016 motion was *unequivocal* in representing

⁴ Petition, p. 3, ¶ 2

⁵ Exhibit 1, ¶ 7.

that the enlargement of time was for the filing of exceptions.⁶ In this regard, it should not be lost that Complainants actually requested an enlargement of time of *160 days* to February 12, 2017 to “file exceptions” and the exceptions *still* have not been filed.⁷ The real motivation of Complainants’ September 5, 2016 motion was to delay the filing date of Exceptions and, consequently, the date on which Complainants would file the Petition to Reopen and thereby further delay the Final Decision. Presumably, had Complainants obtained their requested extension, the instant Petition would’ve been filed in February 12, 2017. Complainants should not be rewarded for their gamesmanship and efforts to frustrate and delay this proceeding.

II. COMPLAINANTS HAVE NOT SHOWN THAT NEW OR MATERIAL FACTS OCCURRED SINCE THE CONCLUSION OF ANY HEARING.

Before addressing the immateriality of Complainants “newly obtained evidence,” the Commission should recognize that the evidence is *neither* new nor newly discovered. In this regard, Complainants argue that their (allegedly) “new facts *could not have been known* to Complainants” before April 2016. Petition, p. 2, ¶ 1 (emphasis added).⁸ This argument, in effect, forms the foundation upon which Complainants’ *entire* Petition rests. However, a close examination of the factual background reveals that this argument is merely a charade. The “new evidence” does not reflect a material change of fact or law alleged to have occurred since the

⁶ Exhibit 1, ¶¶ 4 (“Complainants now seek an extension of time . . . to file their Exceptions”); ¶ 7 (“it will take time to carefully review the entire file in preparation for the drafting and filing of the exceptions”).

⁷ Exhibit 1, ¶ 4. The Petition requests, in effect, an indefinite extension to file exceptions followed by an *additional* 20 days. This request should be denied.

⁸ The “newly obtained evidence” from Complainants involves “two automobiles at issue in the Federal Court litigation,” a “2006 Mercedes SL65” and a “2011 Porsche Panamera.” Petition, p. 2, ¶ 1; FN3.

conclusion of any hearing or the June 17, 2016 Initial Decision and the Petition should be denied.
Rule 230(a),(d).

A. Any “new evidence” was known to Complainants since at least December 2015, and likely since 2013.

First, it cannot be disputed that Complainants knew about the two vehicles (2006 Mercedes SL65 and 2011 Porsche Panamera) since *at least* December 2015. During the December 3, 2015 deposition of Complainant (Alexander Safonov), Complainant answered questions about the two vehicles and testified, *inter alia*, that he did have an agreement with Respondent concerning overseas storage for the two vehicles.⁹ Complainants cannot now “play dumb” and argue that they did not know about the vehicles or were deprived an opportunity to obtain evidence regarding those vehicles. The fact that Complainants were able to testify about the two vehicles, on its own, disproves Complainants’ *entire argument* to the Commission that the facts could not have been known before April 2016.

B. The two vehicles at issue were at Complainants’ company in 2013.

Second, if the foregoing were not enough, it is undisputed that the two vehicles were sent to *Complainants’* company, Middle East Asia, in 2013.¹⁰ How can Complainants reasonably argue that they “could not have known until April 2016” of *any* facts concerning the two vehicles, when their own company had the vehicles in 2013 and Respondent *testified* about the vehicles in 2015?

⁹ Safonov Dep. Tr. at 72:2-9, Exhibit 2.

¹⁰ Petition, at p. 3, ¶ 2 (describing the vehicles as having been “shipped to Complainants’ facility [i.e. Middle East Asia] in Dubai”); ALJ Findings of Fact in the Initial Decision, 5 (“Safonov is the co-owner of Middle East Asia . . . and had decision-making rights for the company.”)

C. **Complainants did not move to reopen the proceeding prior to the June 17, 2016 Initial Decision.**

Third, the parties submitted their pre-hearing briefs in January 2016 (Complainants) and February 2016 (Respondents), and it should not be lost that on April 12, 2016, the ALJ served an Order on Complainants to Supplement the Record.¹¹ The Order specifically requested “documents,” but that did not prevent Complainants from submitting a Certification of Alexander Safonov on April 22, 2016 adding *no documents whatsoever*, but merely alleging conclusory and inconsistent testimony.¹² Whatever “new evidence” Complainants now complain should have been provided with Complainants’ April 22, 2016 Certification. It was not.

Moreover, the ALJ held a hearing on May 13, 2016, well after Complainants, by their own admission, had possession of this allegedly material “new evidence.” Again, had Complainants legitimately believed that they had good cause for re-opening discovery, an application should have been made, and notwithstanding that such application would nevertheless have failed under Rule 230(a) because it would not have alleged “material changes of fact or of law alleged to have occurred since the conclusion of the hearing.” Rule 230(a).

For all the foregoing reasons, Respondents submit that irrespective of the immateriality of the “new evidence,” the Commission should deny Complainants’ Petition because it is simply a last-ditch effort at extending proceedings following the adverse Initial Decision.

III. **COMPLAINANTS’ PRIOR-COUNSEL’S ALLEGED INEXPERIENCE IS NOT GROUNDS FOR REOPENING THE PROCEEDING.**

The Commission should also reject Complainants’ excuse-shifting blame of Complainants’ *prior* attorney. Petition, at p. 4 (“Former counsel was not a maritime attorney”);

¹¹ Order to Supplement the Record, Exhibit 3.

¹² Complainants’ Response to Supplement the Record, Exhibit 4.

p. 6 (“ . . . it would be unjust for the Initial Decision to stand ‘as is’ as a result of prior counsel’s inexperience . . .”) Not only is this argument inappropriate, but inexperienced counsel does not and would not qualify as a “mistake, inadvertence, surprise, or excusable neglect” for relief under Fed. R. Civ. P. 60 [as cited by Complainants]. Petition, at p. 6, ¶ 1. As courts addressing Rule 60 have held, “mere dissatisfaction in hindsight with choices deliberately made by counsel is not grounds for finding the mistake, inadvertence, surprise or excusable neglect necessary to justify Rule 60 relief”; and “a person who selects counsel cannot thereafter avoid the consequence of the [counsel’s] acts or omissions.” See, e.g., U.S. v. O’Neil, 709 F.2d 361, 372 (5th Cir. 1993); Link v. Wabash Railroad Co., 370 U.S. 626, 633-34, 82 S.Ct. 1386, 1390 (1962); See also Teltronics Services, Inc. v. LM Ericsson Telecommunications, 642 F.2d 31, 36 (2nd Cir. 1981)(“no case has been cited or discovered where relief from *res judicata* principles has been granted simply because the plaintiff was represented by inexperienced counsel. To sanction this exception would be to encourage endless litigation . . .”)

IV. COMPLAINANTS HAVE NOT SHOWN GROUNDS FOR REOPENING THE PROCEEDING OR REMANDING THE PROCEEDING TO THE ALJ

Finally, with regard to the lack of materiality of the “new evidence,” Respondents respectfully submit to the Commission that this “new evidence” does not disturb the well-reasoned conclusions of the ALJ in the June 17, 2016 Initial Decision.¹³ Although Complainants adopt a scattergun approach in the Petition, the alleged “new evidence” can be broadly categorized into the following allegations: (A) allegations concerning the import of the Monterey Boat and Chapparal Boat from Dubai to the U.S.; (B) allegations that the Formula Boat was intended for international export; (C) allegations of a failure to provide NVOCC services for the

¹³ Complainants’ arguments are arguably a filing of exceptions without actually filing the exceptions, and Respondents Reply addresses it as such.

Formula Boat; and (D) allegations concerning ownership of Respondent MTL for purposes of piercing the corporate veil. Petition, at pp. 7; pp. 9-10. As already discussed, this “new evidence” is not new. But, perhaps more importantly as next discussed, even if the Commission accepts Complainants’ evidence, it would not affect the ALJ’s determination that there is no Shipping Act jurisdiction.

A. Complainants’ new evidence does not create carrier responsibility by a consignee.

Respondents begin with the allegations concerning the import of the Monterey Boat and Chapparral Boat from Dubai to the U.S. At the outset, Respondents point out that the Petition does not include *any* argument for re-opening proceedings on the Monterey Boat or Chapparral Boat. The only Shipping Act claim mentioned in the Petition is the purely conclusory allegation in the Petition’s opening “Brief Statement” of an alleged failure to enforce just and reasonable regulations “relating to or connected with . . . the Monterey, and the Chapparral.” Petition, at p. 4. In summary, the ALJ found that Complainants failed to prove that MTL assumed responsibility for the transportation of the [two boats] from Dubai to the U.S. or operated as a NVOCC on the shipment.¹⁴

In its attempt to reopen proceedings and avoid the unfavorable Initial Decision, Complainants make the conclusory allegation, without more, that Respondent Solovyev acted as an ocean freight forwarder with respect to the Dubai-to-U.S. Shipment of the two boats. Compl. Proposed Findings of Fact, p. 28. This argument is extremely doubtful at *best*, and the Commission should further recognize that Complainants have already previously tried this

¹⁴ ID, at p. 24, ¶ 3

argument – despite the documents and correspondence *directly contradicting* this argument.¹⁵

Lastly, Complainants do not cite to any FMC decision or law for its proposition that MTL, as a *consignee*, is a “regional” “ocean freight forwarder” [whatever this means] who assumes responsibility for the *ocean transportation* of the cargo. Compl. Proposed FF and Brief, p. 19. This argument has no legs to stand on whatsoever. Re-opening proceedings would not change this result.

B. The Commission does not have jurisdiction over a boat that was not booked for international shipment and did not move internationally.

Complainants make only one argument with regard to the 2010 Formula Boat: that the Formula “was intended for export.” Petition, p. 9, ¶ 3. However, Complainants do not *actually* submit any new evidence and contrary to their allegations, seek only to reargue the ALJ’s findings.

To begin with, the “new evidence” does not contradict or dispute the ALJ’s findings that Complainants “never paid . . . for loading and shipping the Formula to Dubai or the \$500 for Commission and \$500 for documentation.” Initial Decision, p. 26, Part B. Moreover, Complainants *misapplies* the facts and holding in State of Texas v. Anderson, Clayton & Co. et

¹⁵ In Respondent’s opinion, the ALJ quite charitably did not draw too much attention to the clear factual contradictions made by Complainants, under oath, in Complainants’ efforts to fashion a Shipping Act claim where none exists. It is sufficient, at this stage, to point out that Complainants submitted a sworn Certification, dated April 21, 2016 alleging that Respondent Solovyev gave Complainants a “better offer” for “\$1,500.00” for the Dubai-to-U.S. shipment of the 2011 Monterey Boat and 2008 Chapparral Boat. Initial Decision, at p. 22. However, this sworn allegation is directly contradicted by e-mail correspondence produced *by Complainants* as well the VOCC B/L, where no such offer was identified and the actual freight charged by the VOCC (American President Lines) was \$3,593.46. Initial Decision, at p. 20, ALJ Findings of Fact in the Initial Decision, 59, 60, 61.

al., 92 F.2d 104 (5th Cir. 1937).¹⁶ In Anderson, the Fifth Circuit examined whether the “temporary and slight” stoppage of cotton shipments at Houston, en route from Houston to other states and foreign countries, rendered the movement intrastate. Id. At 107. The Fifth Circuit held that the “intention existing at the time movement starts governs and fixes the character of shipment. Id. Complainants are correct, thus far. However, in the *very next sentence* of the decision, which Complainants omitted, the Fifth Circuit held that:

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, but temporary stoppage within the state, made necessary in furtherance of the interstate carriage, does not change its character.

Id. (Emphasis added).

The Fifth Circuit’s holding in Anderson, thus, is entirely consistent with the ALJ’s determination that there is no Shipping Act claim with regard to the Formula Boat. The “stop” of the Formula Boat at New Jersey was not a “temporary stoppage.” To the contrary, even under the most favorable facts for Complainants, the facts in this proceeding closely tracks the above-quoted holding from Anderson: the Formula Boat stopped in New Jersey and thereafter was “disposed of” domestically, i.e., Complainants requested that the Formula Boat be transported from New Jersey to Florida. ALJ Findings of Fact in the Initial Decision, 91. Thus, regardless of whatever “intention” existed may have existed, the international character of this shipment was lost.

¹⁶ State of Texas v. Anderson, Clayton & Co. et al., 92 F.2d 104 (5th Cir. 1937), copy attached for the Commission’s convenience as Exhibit 5. See also Mapfre Tepeyac, SA v. Robbins Motor Transp., Inc., 2006 WL 3694502, FN14 distinguishing Anderson (“there appeared to be no dispute [in Anderson] that the goods were shipped on a through bill of lading.”) Here, however, again in contrast to Anderson, there was no bill of lading issued because Complainant never paid for or booked the shipment.

Complainants' additional argument that Respondents collected monies for services it failed to provide, is provably false. The ALJ found that Complainants did not pay for ocean freight or for documentation and that Complainants never booked the shipment for ocean carriage to Dubai. ALJ Findings of Fact in the Initial Decision, 88. Complainants' cited cases simply do not apply. Contra Alexander Kaminsky v. Keystone Limited, Informal Docket No. 1739(I); Corpco International, Inc. v. Straightaway, Inc., Docket No. 97-05. In contrast to those cases, Respondent MTL *did not* collect any money for freight or documentation and MTL did not "refuse to issue negotiable bill of lading." The "new evidence" alleged by Complainants, thus, does not alter the Initial Decision and there is no basis for remanding the proceedings to the ALJ for additional evidence.

C. The "Alter Ego" claim was never alleged in the FMC Complaint and, in any event, there is no nexus to justify piercing the corporate veil.

The final facts alleged by Complainants involve allegations of common ownership between MTL and non-party World Express Connection. Petition, p. 7. In this regard, Complainants disingenuously referred the ALJ as having "acknowledged the absence of discovery regarding the respondents' adherence to corporate formalities (or lack thereof) on the issue of whether or not Complainants were entitled to pierce the corporate veil." Petition, at p. 4. It is more accurate to point out that Complainants *never* properly alleged a claim of piercing the corporate veil in this proceeding. See Docket No. 15-04, May 13, 2016 Hearing, at 16:18 – 22 (JUDGE GUTHRIDGE: ". . . I did not see any allegation of piercing the corporate veil and my understanding is that has got to be in the complaint if you're going to raise it as a theory of liability.")

Even *if* Complainants' allegations were proven, which Respondents dispute and deny, the corporate veil cannot be pierced unless there is evidence of some fraud, wrongdoing, or

inequitable result to Complainants *as a result* of the misuse of the corporate form. DNB Exports, LLC, 2014 WL 5316332, Docket No. 11-07 (Initial Decision Jan. 24, 2014); see also Ariel Maritime Group, Inc., 24 S.R.R. 517 (1987); Wm. Passalacqua Builders, Inc. v. Resnick Developers S., Inc., 933 F.2d 131, 139 (2d Cir. 1991)(“to pierce the corporate veil under New York law . . . a plaintiff must prove . . . such control has been used to commit a fraud or other wrong; and the fraud or wrong results in an unjust loss or injury to plaintiff.”)[cited by Complainants]. This requirement of evidence can be described as requiring proof of “causation.” It is not, and should not, be sufficient for a Complainant (or plaintiff) pierce the corporate veil unless the corporate veil was used to *cause* the Complainant harm.

Having failed to allege alter ego, in the first instance, Complainants are, in effect, seeking to amend the Complaint *after* the Initial Decision. This is nothing more than a fishing expedition or intended harassment of Respondents, masquerading as “good cause.”

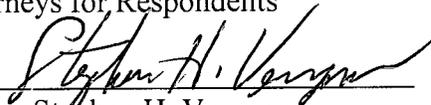
CONCLUSION

Section 502.230 requires that a successful petition to reopen proceedings set out sufficient grounds for doing so, including “material changes of fact or of law alleged to have occurred *since* the conclusion” of any relevant hearing or Initial Decision. Rule 230. Complainants have failed in this regard. For all of the foregoing reasons, Respondents respectfully request that the Commission deny the pending Petition to Reopen proceedings and further rule that Complainants’ filing of exceptions is untimely.

Dated: November 7, 2016
New York, NY

Respectfully submitted,
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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 November 7, 2016, I served a complete copy of Respondent's REPLY TO COMPLAINANTS' PETITION TO REOPEN PROCEEDINGS, in Docket No. 15-04 by

E-mail and FedEx to:

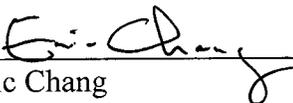
Secretary, Federal Maritime Commission
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(Original and 5 copies)

And by U.S. mail to:

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(Copy only)


Eric Chang

Dated: November 7, 2016
New York, New York

RESPONDENTS' REPLY TO COMPLAINANTS'

PETITION TO REOPEN PROCEEDINGS

EXHIBIT 1

**BEFORE THE
FEDERAL MARITIME COMMISSION**

DOCKET NO. 15-04

CROCUS INVESTMENTS, LLC AND CROCUS, FZE,

— vs. —

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

**COMPLAINANTS' MOTION TO ENLARGE TIME FOR FILING EXCEPTIONS TO
THE PRESIDING OFFICER'S INITIAL DECISION**

Complainants CROCUS INVESTMENTS, LLC and CROCUS, FZE ("Complainants"), by and through their attorney Marcus A. Nussbaum, Esq., hereby move for an Order pursuant to Rule 228 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.228, to enlarge Complainants' time for filing the Exceptions to the Presiding Officer's Initial Decision, up to and including February 12, 2017. On September 5, 2016, counsel for Complainants attempted to consult with counsel for respondents regarding this motion. Assumedly due to the long holiday weekend, the undersigned was unable to reach counsel for respondents. Good cause exists to grant this Motion for reasons that follow:

1. On June 17, 2016, the Presiding Officer issued the Initial Decision in this matter (the "Initial Decision") and dismissed the Complaint. Pursuant to Rule 227 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.227, Complainants were to file their Exceptions to the Initial Decision with the Commission "within twenty-two (22) days after the date of service of [the Initial Decision]."

2. On June 29, 2016, Complainants' former counsel of record filed a motion to enlarge

the time for filing exceptions to the Initial Decision and then subsequently moved to withdraw as counsel on the same date. The motion for enlargement of time was granted by the Commission on July 6, 2016. The Order granting complainants' former counsel leave to withdraw was then granted on July 14, 2016.

3. Presently, Complainants must file their Exceptions to the Initial Decision with the Commission by September 12, 2016.

4. Complainants now seek an extension of time, up to and including February 12, 2017, to file their Exceptions.

5. Rule 228 of the Commission's Rules of Practice and Procedure, 46 C.F.R. § 502.228, permits a party to file a motion seeking an enlargement of time for filing of Exceptions. Such motions must set forth their reasons and be submitted at least seven (7) days before the scheduling date for filing. 46 C.F.R. § 502.228.

6. Complainants' Motion is timely submitted. Complainants' Exceptions to the Initial Decision are not due until September 12, 2016. Complainants file this Motion on September 5, 2016, more than seven days before the date on which currently they must file Exceptions.

7. Good cause exists for enlarging Complainants' time for filing Exceptions. The undersigned was recently retained by complainants for the purpose of filing the exceptions in this matter, which will require the review and analysis of hundreds pages of documents, most of which are other than in English. In light of the voluminous file in this matter, it will take time to carefully review the entire file in preparation for the drafting and filing of the exceptions.

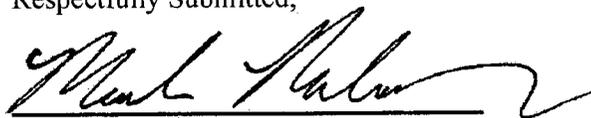
8. In light of the foregoing, it is respectfully submitted that an extension of time is necessary.

WHEREFORE, Complainants respectfully request that the Commission allow an extension, up

to and including February 12, 2017, to file their Exceptions to the Initial Decision.

Dated: September 5, 2016
Brooklyn, NY

Respectfully Submitted,

A handwritten signature in cursive script, appearing to read "Marcus A. Nussbaum", written over a horizontal line.

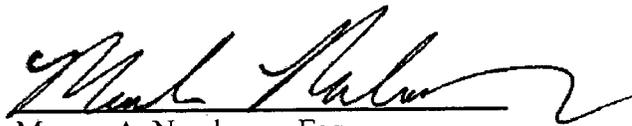
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Tel: 888-426-4370
Attorney for Complainants

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the **COMPLAINANTS' MOTION TO ENLARGE TIME FOR FILING EXCEPTIONS TO THE PRESIDING OFFICER'S INITIAL DECISION** upon Respondents' Counsel at the following address:

Montgomery, McCracken, Walker & Rhoads, LLP
437 Madison Ave., 29th Floor
New York, NY 10022
Attn: Stephen H. Vengrow, Esq.
Attn: Eric Chang, Esq.

by first class mail, postage prepaid, and by email (echang@mmwr.com and svengrow@mmwr.com).



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Dated: September 5, 2016 in Brooklyn, New York.

RESPONDENTS' REPLY TO COMPLAINANTS'

PETITION TO REOPEN PROCEEDINGS

EXHIBIT 2

Page 2

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 18
 19 Also Present:
 20
 21 Valentina Maydell, Russian Interpreter
 22
 23 Tatiana Timoshkina, wife of witness
 24
 25 Aleksandr Solovyev (with his attorney by
 speakerphone)

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1 (The interpreter was duly sworn to
 2 translate the proceedings from English to
 3 Russian, and Russian to English as follows:)
 4 THEREUPON,
 5 ALEXANDER SAFONOV,
 6 a witness herein, acknowledged after having been duly
 7 sworn, testified upon his oath as follows:
 8 THE WITNESS: I do.
 9 DIRECT EXAMINATION
 10 BY MR. CHANG:
 11 Q. Good afternoon, Mr. Safonov. My name is Eric
 12 Chang. I'm a lawyer for Marine Transport Logistics
 13 and Aleksandr Solovyev.
 14 A. Good afternoon.
 15 Q. Have you attended a deposition before?
 16 A. No.
 17 Q. Okay. What I'd like to do now is go over
 18 some basic rules for the deposition so you understand
 19 what is going to take place today. Is that all right?
 20 A. Yes.
 21 Q. Mr. Safonov, one of the things I would ask
 22 you to do is to make sure that you give a verbal
 23 response, because everything that we say is being
 24 written down by the court reporter, but she can't
 25 write down anybody's movements or body language.

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Page 5

1 A. I will do.
 2 Q. Thank you. What's going to happen today, I
 3 will ask you a series of questions, which you will be
 4 answering under oath to the best of your ability; the
 5 same as if a judge was asking you the questions.
 6 Do you understand?
 7 A. Understood.
 8 Q. If I ask a question and you don't understand
 9 my question, please let me know.
 10 A. I will do.
 11 Q. Otherwise, if you answer the question, we are
 12 going to assume that you understood what I was asking.
 13 A. Okay.
 14 Q. Okay. Also, if I ask a question and you do
 15 not remember the answer, you can say that, because
 16 this is not a test of your memory.
 17 A. Okay.
 18 Q. Lastly, if you need a break at any point,
 19 please let myself or your lawyer know. I would only
 20 ask that if there's a question pending, that you
 21 answer that question before we take a break.
 22 Is that understood?
 23 A. Okay.
 24 Q. Let's begin. Mr. Safonov, where are you
 25 currently residing?

Page 6

1 A. Boca Raton, Florida.
 2 Q. Could you give the building number and street
 3 address, please?
 4 A. 11484 Seagrass Circle.
 5 Q. Okay. How long have you lived at that
 6 address?
 7 A. From the summer, 2014.
 8 Q. Do you live alone at that address or is
 9 anyone else living with you currently?
 10 A. Alone.
 11 Q. Where did you live before the summer of 2014?
 12 A. Dubai.
 13 Q. Could you please state the address of your
 14 residence in Dubai prior to the summer of 2014?
 15 A. I don't remember exactly. It was Palm
 16 Jumeirah Street, but I do not remember the building
 17 number.
 18 Q. Is there any documents that you have -- not
 19 in front of you right now -- but that you have
 20 elsewhere that would help you remember the address?
 21 A. In general, I believe I do have some
 22 documents that will confirm my address.
 23 MS. TARASSOVA: Eric, I just want to
 24 interject really quick. I think Mr. Safonov,
 25 when he answered the question that he lives

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1 in the house alone, I think he misunderstood
 2 the question.
 3 Can you ask him that question again,
 4 because I think he forgot to mention that his
 5 wife lives with him?
 6 MR. CHANG: Okay.
 7 BY MR. CHANG:
 8 Q. Mr. Safonov, at your Seagrass Circle address
 9 in Florida, do you live there alone currently or with
 10 someone else?
 11 A. No. I live with my family.
 12 Q. Is that including Mrs. Tatiana Safonov?
 13 A. Tatiana Timoshkina; not Safonov.
 14 Q. With regard to your Dubai address that you
 15 were describing, how long did you live at that
 16 address?
 17 A. One-and-a-half years.
 18 Q. Where did you live prior to that?
 19 A. In Moscow.
 20 Q. I'm sorry. What was the answer?
 21 A. I lived -- prior to Dubai, I resided in
 22 Moscow.
 23 Q. Russia, correct?
 24 A. Russia.
 25 Q. Thank you. Mr. Safonov, are you the owner of

Page 8

1 a company called Crocus Investments, LLC?
 2 A. Yes, I am.
 3 Q. Did you start this company?
 4 A. No.
 5 Q. Who started the company, Crocus Investments,
 6 LLC?
 7 A. Yes, I am the one who started the company.
 8 Q. Okay. Mr. Safonov, did anyone assist you in
 9 starting Crocus Investments, LLC?
 10 A. I'm 100 percent owner of the company.
 11 Q. When did you start this company?
 12 A. In the summer of 2013.
 13 Q. Where is this company incorporated or formed?
 14 A. In Florida, Aventura.
 15 Q. In the summer of 2013, when you started this
 16 company, did this company have an office address?
 17 A. My company was registered by a law firm, and
 18 initially that law firm provided their address. After
 19 that, after the company was formed, we added a second
 20 address of the company, but I do not remember neither
 21 one, neither first or the later added.
 22 Q. Okay. Are you still the owner -- 100 percent
 23 owner -- of Crocus Investments, LLC, today?
 24 A. Yes, I am; 100 percent.
 25 Q. Does Crocus Investments have any offices

Page 9

1 today?
 2 A. Our company office is at our home.
 3 Q. When you said that you did not remember what
 4 the second address was in 2013, was that a different
 5 address than your home today?
 6 A. No. It wasn't my present address of my
 7 present home. It was, I believe, Pembroke or
 8 something town -- Pembroke Pines.
 9 Q. How many employees does Crocus Investments
 10 have today, including yourself?
 11 A. Just two of us; my spouse and I.
 12 Q. That would be referring to Tatiana; correct?
 13 A. Yes.
 14 Q. Other than yourself and Tatiana, does Crocus
 15 Investments have any other employees from 2013 through
 16 today?
 17 A. No.
 18 Q. Mr. Safonov, what is your official title with
 19 Crocus Investments?
 20 A. Owner.
 21 Q. Do you have any other job titles?
 22 A. Well, I would say general manager.
 23 Q. What kind of business does Crocus Investments
 24 do today?
 25 A. Online business.

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1 Q. What do you mean by, "online business"?

2 A. That is commercial secret.

3 Q. Okay. Does Crocus Investments provide

4 services to customers?

5 A. Not at this time. Not at present.

6 Q. At present, does Crocus Investments sell

7 goods to customers?

8 A. No. At present, we offer consultation only.

9 Consulting services.

10 Q. Does Crocus Investments have an online

11 website?

12 A. Yes.

13 Q. What is the website address?

14 A. There are a few website addresses, and that

15 is also a commercial proprietary -- or secret.

16 Q. Mr. Safonov, how do Crocus Investments

17 customers know who you are if you do not have a public

18 website?

19 A. Well, online business works by itself. We

20 don't have to look for clients. This is analytical

21 website.

22 Q. Did you say you have two websites for Crocus

23 Investments?

24 A. Yes.

25 Q. How long has Crocus Investments been

Page 11

1 operating these two websites?

2 A. Approximately half a year.

3 Q. Did Crocus Investments have any websites

4 prior to half a year ago?

5 A. Yes, Crocus Investments had, also, website.

6 Q. Did Crocus Investments have a website in 2014

7 and 2013?

8 A. Yes, correct.

9 Q. One website or more than one website?

10 A. One website.

11 Q. When did Crocus Investments start using that

12 one website?

13 A. In 2013.

14 Q. Is that since the beginning of the company?

15 A. Yes. When I opened the company, I also

16 prepared or made ready a website for the Crocus

17 Investments company, and the website was related to

18 boats -- motor boats -- rental -- renting motor boats.

19 MS. TARASSOVA: He said it wasn't up.

20 A. Yes; however the website was ready, but I

21 have never put -- connected it to internet.

22 BY MR. CHANG:

23 Q. Okay. Just so I understand, does that mean

24 that you never had a website address for your

25 motorboat website?

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1 A. I had the address. I registered it. I just

2 didn't open the site. I can even give the address --

3 registered address -- for my first website.

4 Q. Mr. Safonov, could you please provide us with

5 that registered address?

6 A. Crocusmarine.com.

7 Q. When you started Crocus Investments in 2013,

8 what type of business were you doing?

9 A. That was for motorboat rentals.

10 Q. Did you provide any consulting services in

11 2013?

12 A. No.

13 Q. What kind of business was Crocus Investments

14 doing in 2014?

15 A. Consulting. Hold on. 2014 -- if you mean in

16 year 2014, I believe we didn't offer any services in

17 2014. We started consulting from 2015.

18 Q. In 2013, for motorboat rentals, how many

19 boats did you own or lease?

20 A. Three here in United States. Are you asking

21 2013? Please repeat again.

22 Q. In 2013, how many motor boats did Crocus

23 Investments have, either owned or leased?

24 A. Crocus Investments had, in 2013, one boat;

25 and that one boat we bought from Mr. Solovyev.

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1 Q. Do you remember the year, make and model of

2 that one boat?

3 A. It was Formula 24, year 2010.

4 Q. This Formula boat was at Crocus Investments

5 in Florida?

6 A. No. Mr. Solovyev stole it.

7 Q. Okay. In 2013, did Crocus Investments

8 successfully rent any boats to any customers?

9 A. No, we did not rent one, because Solovyev

10 never gave us that boat.

11 Q. Is it correct that, in 2013, Crocus

12 Investments did not obtain any rental revenue from the

13 renting of motorboats?

14 A. Yes. The company, Crocus, has not received

15 any profit or, actually, income from renting of a

16 boat.

17 Q. In 2014, did Crocus Investments have any

18 motorboats either owned or leased?

19 A. Yes. In 2014, I shipped personally, from

20 Dubai, two boats as a property of Crocus Investments.

21 And these two boats, Solovyev did not -- these two

22 boats were shipped from Dubai to him, and he did not

23 ship it forward -- the shipping. So we have not

24 received the two boats we shipped from Dubai via

25 Mr. Solovyev.

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1 Q. Mr. Safonov, are you referring to the two
2 boats that are at issue in this case, a Chaparral and
3 a Monterey?
4 A. Yes, correct.
5 Q. So is it correct that, in 2014, Crocus
6 Investments did not make any income from motorboat
7 rentals?
8 A. That is correct. Not even -- in 2014, no.
9 Q. Other than motorboat rentals, did Crocus
10 Investments make any income in 2013?
11 A. No; no other income.
12 Q. Mr. Safonov, you understand, when I use the
13 word "income," I mean any money earned or obtained by
14 the company during that year. Do you understand?
15 A. The company or Crocus Investments did not
16 have any income.
17 Q. Okay. But, Mr. Safonov, you understand that
18 when I say, "income," it doesn't mean just profits.
19 It means any money earned.
20 A. I understand the difference between income
21 and profit. But in that year, this company, which is
22 Crocus Investments, no money went through, in or out.
23 Q. Okay. In 2014, did Crocus Investments have
24 any income?
25 A. No. It's the third time you asked.

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1 MS. TARASSOVA: Eric, the prior
2 questions, weren't they about 2014 as well?
3 MR. CHANG: I think it was just 2013.
4 MS. TARASSOVA: Oh, no. We understood
5 all the questions --
6 THE INTERPRETER: I'm writing it down.
7 MS. TARASSOVA: The interpreter wrote
8 down '14. So the answers as they were
9 answered, it was for the year 2014.
10 MR. CHANG: I apologize for that.
11 BY MR. CHANG:
12 Q. In 2013, did Crocus Investments have any
13 income?
14 A. No, no income. 2013, no.
15 Q. In 2015, did Crocus Investments have any
16 income?
17 A. As of today, none.
18 Q. Mr. Safonov, if I'm asking the same question
19 more than once and you answered more than once, please
20 feel free to let me know. Understood?
21 A. Okay.
22 Q. Thank you. In 2013, were you employed or
23 working with any other company other than Crocus
24 Investments?
25 A. Yes, I worked.

Page 16

1 Q. Where were you working other than Crocus
2 Investments in 2013?
3 A. Company in Dubai.
4 Q. What was the name of this company in Dubai?
5 A. Middle East Asia Alfa.
6 Q. I will refer to this company as "Middle
7 East." When did you begin working for Middle East?
8 A. There was also a second company. It was
9 Crocus FZE.
10 Q. Mr. Safonov, when did you begin working with
11 Middle East?
12 A. I'm co-founder of that company from
13 April 2013.
14 Q. Are you still a co-founder today of Middle
15 East? Let me take that back. Sorry. Were you a
16 co-owner of Middle East in 2013?
17 A. Yes; I was also co-owner with decision-making
18 rights for the company.
19 Q. Today, in 2015, are you still a co-owner of
20 Middle East?
21 A. I haven't been to Dubai for almost a year or
22 over a year, so I don't know if that Middle East
23 company still exists. I think it was closed.
24 Q. When was the last time that you were in
25 Dubai?

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1 A. In May. We moved here -- I misunderstood. I
2 think we moved here in May 2014, but the last time we
3 were in Dubai, it was August 2014.
4 Q. Were you still co-owner of Middle East in
5 August of 2014?
6 A. Yes.
7 Q. What kind of business does Middle East do?
8 A. Okay. Repair and sale of motorboats.
9 Q. Was that always Middle East's business since
10 it started in 2013 through August 2014?
11 A. Yes, that was the services that company
12 provided -- Middle East has provided from the
13 beginning.
14 Q. In April 2013, how many employees did Middle
15 East have, including any officers of the company?
16 A. Officially employed or also part-time or
17 under-the-table workers, yes -- so-called seasonal
18 workers.
19 MS. TARASSOVA: Let me correct that
20 translation. He never said,
21 "under-the-table." He meant, like,
22 contractors. There's nothing under the
23 table.
24 THE INTERPRETER: Seasonal workers.
25 MS. TARASSOVA: Can we strike that from

Page 18

1 the record, Eric?
2 MR. CHANG: Louiza, I'm going to ask the
3 court reporter to read back the answer. Did
4 he give a number of workers, or no?
5 THE WITNESS: Nine or ten people.
6 BY MR. CHANG:
7 Q. Who was the other co-owner of Middle East in
8 2013?
9 A. Oleg Bortsov.
10 Q. Do you know a person by the name of Andrey
11 Tretiakov?
12 A. I know.
13 Q. Did Andrey work for Middle East in 2013?
14 A. Yes.
15 Q. Mr. Safonov, what was your job title with
16 Middle East in 2013?
17 A. I didn't have any other than owner.
18 Q. Do you know what Oleg's job title was with
19 Middle East?
20 A. General manager.
21 Q. Do you know what Andrey's title was with
22 Middle East?
23 A. Associate. He was more like associate.
24 Q. Did Oleg have decision-making authority on
25 behalf of the company?

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1 THE INTERPRETER: This is interpreter.
2 Could you repeat what authority? I didn't
3 hear exactly what you said.
4 MR. CHANG: Okay. Decision-making
5 authority.
6 Who is speaking right now? Is someone
7 else speaking other than Mr. Safonov? I'm
8 just hearing overlap.
9 MS. TARASSOVA: Tatiana was talking. Can
10 you repeat the question? Because I think
11 we're confused. Do you want the court
12 reporter to read back the question?
13 MR. CHANG: I'd like the interpreter to
14 translate what was just said, if that's
15 possible.
16 THE INTERPRETER: Yes. Once interpreter
17 asked to clarify what authority --
18 decision-making authority -- so Mr. Safonov
19 answered that, since he was the owner with
20 main decision-making package -- I assume he
21 had -- so he made all major decisions related
22 to the company business. It was Mr. Safonov.
23 But Oleg, as the general manager, his
24 decision making was limited to repairs,
25 maintenance or technical or sales.

Page 20

1 BY MR. CHANG:
2 Q. Do you know what Andrey's job duties were in
3 2013?
4 A. Also repair of boats; also to pick up or meet
5 the boats that arrived from Solovyev, or shipped by
6 Solovyev, to meet and pick up at the port. So Mr.
7 Tretiakov would go to the port, pick up or meet with
8 those who brought the boat, and was responsible to
9 deliver it.
10 Q. Deliver it to where?
11 A. To the warehouse, and, also, where the boat
12 maybe need to be repaired -- to the warehouse. Also,
13 he was in charge to find spare parts for repairs.
14 Q. Is that a warehouse owned by Middle East?
15 A. Yes, correct.
16 Q. Do you know when Middle East first started
17 using that warehouse?
18 A. I don't remember exactly, but I believe it
19 was from April 1st, 2013; and I was the one who rented
20 it -- the warehouse -- and I paid for it.
21 Q. Did you pay for the warehouse through August
22 of 2014?
23 A. No. I rented this warehouse for one year, so
24 I didn't pay til August of 2014; because we rented it
25 for a year, and then we moved into the office

Page 21

1 building.
2 Q. Okay. After April of 2014, did Middle East
3 rent or own any warehouse space?
4 A. Yes. We had at that time -- from April 1st,
5 we had office building and warehouse.
6 Q. Were you also the person who paid for the
7 rent of the new warehouse in April 2014?
8 A. Yes; I was the one who paid for that new.
9 Q. Okay. With regard to Middle East, were you
10 personally involved in the repair of motorboats?
11 A. No.
12 Q. Were you involved in -- were you personally
13 involved in the sale of motorboats by Middle East?
14 A. Yes, of course, I was. Without my decision,
15 nobody has right to sell anything. And I'm talking
16 about boats; because they had right to sell some cars,
17 but no authority to sell boats.
18 Q. Earlier, you mentioned that the business of
19 Middle East was for the repair and sale of motorboats;
20 is that correct?
21 A. Initially, and our intention was to sell
22 boats. That's what we did -- most of our business.
23 Just, somewhat late, Solovyev asked us to sell some
24 cars -- his cars. He asked us, actually, to help him
25 to sell his cars.

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1 Q. Do you remember how many cars Mr. Solovyev
2 asked you or Middle East to help him sell?
3 A. Two cars. He asked for help to sell off
4 quite a few cars. The amount of cars will be quite a
5 few, but he sent only two cars.
6 Q. Okay. Just so I understand, you're saying,
7 from 2013 through 2014, Middle East only helped
8 Mr. Solovyev sell two cars; is that correct?
9 A. Not exactly. The story is that his friend
10 actually stole those two cars, so I don't know exactly
11 what was going on -- what's the story with those cars.
12 One car, from what I know, he sold it without
13 my actually knowing -- it was in secrecy that he sold
14 one car -- and then sent money to Solovyev, and he did
15 it so I would not notice it or not find out about
16 that.
17 Q. When you say he sold the one car, who are you
18 referring to?
19 A. Andrey Tretiakov, the friend of Mr. Solovyev.
20 Q. Okay. Do you remember the make and model of
21 the one car that you say Andrey sold?
22 A. It was Mercedes SL65. I do not remember
23 year.
24 Q. How about the other of the two cars; do you
25 remember the make and model?

Page 23

1 A. The second one was Porsche Panamera.
2 Q. Other than these two cars, did Middle East
3 sell any other cars from 2013 to 2014?
4 A. I am not aware of any other cars. Maybe
5 they -- Andrey and his friend -- managed to bring and
6 sell some cars, but I am not aware of any other car.
7 Q. So other than these two cars, did Middle East
8 do any other business besides repair and selling of
9 motorboats?
10 A. No, nothing more.
11 Q. When did you first meet Oleg?
12 A. I'm not sure. February or March 2013.
13 Q. How did you meet Oleg in February-March 2013?
14 A. I think it was -- I saw advertisement, online
15 newspaper.
16 MS. TARASSOVA: I think he gave the
17 advertisement.
18 A. The answer is that I saw some advertisement.
19 It was in online newspaper at that time.
20 BY MR. CHANG:
21 Q. Do you remember the name of the online
22 newspaper?
23 A. No, I do not.
24 Q. What did the advertisement say?
25 A. The ad would say, more or less, like this:

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1 "Looking for investor to open plant or shop," so
2 looking for investor to open a business.
3 Q. How long after you saw this advertisement did
4 you meet Oleg?
5 A. The advertisement was placed by Tretiakov.
6 And I believe the same week that I read it or saw it,
7 we met.
8 Q. You met Oleg; is that correct?
9 A. No. Initially, we met with Andrey. Oleg is
10 Andrey's son.
11 Q. After you met with Oleg and Andrey, did you
12 invest in their proposed company?
13 A. No. Initially, we prepared the business
14 plan. And when we prepared this business plan,
15 Andrey, of course, said then that he has a friend,
16 Solovyev, who will ship or provide boats, and we will
17 repair and sell them.
18 Q. When you said, "We were preparing a business
19 plan," that meant you and who else?
20 A. I -- myself -- Andrey and Oleg.
21 Q. After the business plan was created, did you
22 invest in the proposed company?
23 A. Of course.
24 Q. And this company became Middle East; correct?
25 A. Correct.

Page 25

1 Q. How much was your first or initial investment
2 into Middle East?
3 A. I do not remember exact details; but, at that
4 time, Oleg didn't have any money whatsoever. So I
5 agreed to put my part and also for Oleg's part. So I
6 provided for two -- both of us -- approximately half a
7 million dollars.
8 Q. Okay. And the approximately half a million
9 dollars was 100 percent of the initial investment;
10 correct?
11 A. So, yes, that was initial. And to add to it,
12 Oleg wrote, also, promissory note. It was official
13 paper -- promissory note that he will repay me back
14 within six months the amount that I loaned him, or he
15 borrowed from me; and there will be about five
16 percent, I believe, interest on that.
17 Q. Okay. After the initial 500,000 US dollar
18 investment, did you make any further investment into
19 Middle East?
20 A. I do not remember exactly or precisely what
21 sum was invested, but I do remember that it was close
22 to half a million dollars, US dollars.
23 Q. My question is: After the initial
24 investment, did you make any additional investment
25 into the company?

7 (Pages 22 - 25)

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1 A. No additional.
2 Q. Okay. When you and Oleg started Middle East,
3 did you sign any contracts or agreements stating what
4 each partner's responsibilities were?
5 A. The agreement or the promissory note that was
6 written agreement, it's about the money that Oleg has
7 to pay me back -- what I invested for him in the
8 company. Then articles of the company were written in
9 English. So I do not remember exactly what the
10 articles say.
11 Q. Was Middle East incorporated in Dubai?
12 A. Yes. In United Arab Emirates. The city is
13 Sharjah.
14 So we created, at that time, two agreements
15 or two contracts. One is about money that I invest
16 for myself and him, and he has to repay me; and the
17 second one about who is in charge of what -- the
18 responsibilities of each party.
19 Q. Mr. Safonov, who prepared the articles of
20 incorporation?
21 A. In City of Sharjah in United Arab Emirates,
22 there is a so-called city zone where you get the
23 templates for how the articles of incorporation or LLC
24 -- so we used there and it's free of charge. We just
25 filled it in.

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1 Q. Okay. You signed the articles of
2 incorporation; correct?
3 A. Yes.
4 Q. Who else signed the articles of
5 incorporation?
6 A. All documents that we created were signed by
7 each of -- both of us, Oleg and I.
8 Q. Mr. Safonov, do you read English?
9 A. Well, depends on what you mean, "read in
10 English." When I look at the English text, I can
11 see -- I read the title, I can see date, if there is
12 state or some names.
13 Q. Did you have any difficulty reading and
14 understanding the articles of incorporation?
15 A. Of course I had, because I don't know English
16 that well.
17 Q. Did you have someone reading the articles of
18 incorporation to you?
19 A. Andrey and Oleg, they both know English.
20 Q. And did they translate the articles of
21 incorporation to you?
22 A. No, they did not.
23 Q. Was the promissory note written in English?
24 A. It was -- the promissory note was written in
25 English, but when that was to sign -- and it was

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1 actually prepared -- I had interpreter. So
2 interpreter -- I'm familiar with what was written in
3 the promissory note.
4 Q. Okay. From now on, when I talk about Middle
5 East, I mean from 2013 through 2014 when you were
6 involved as co-owner. Do you understand?
7 A. Yes, I understand.
8 MS. TARASSOVA: Eric, is it possible to
9 take a break soon?
10 MR. CHANG: Sure, that's fine. How long
11 do you want?
12 MS. TARASSOVA: Like, five minutes.
13 MR. CHANG: Okay.
14 MS. TARASSOVA: Is this a good time?
15 MR. CHANG: It's fine.
16 (Brief recess.)
17 BY MR. CHANG:
18 Q. Were you personally involved in the
19 purchasing of motorboats for Middle East?
20 A. Of course.
21 Q. Where did Middle East get motorboats for
22 repair and sale?
23 A. From Solovyev.
24 Q. But did anybody else at Middle East have
25 involvement in the purchasing of motorboats?

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1 A. The decision making, which boat and selection
2 and so on, was always mine. Online with Solovyev, I
3 would look over or view the boats. And then I would
4 make decision which one I will make -- the choice --
5 choose the boats, and then make decision of
6 purchasing.
7 Q. You were the only one who had the
8 decision-making authority for the purchase of these
9 boats; correct?
10 A. Yes, I'm the only one who had the authority
11 of decision making because I'm the only one who had
12 the money.
13 Q. Do you know how many boats Middle East
14 purchased from 2013 to 2014?
15 A. I think it was ten.
16 Q. Did you purchase, personally, all ten boats?
17 A. Most of those boats, I made decision. Some
18 decision making -- maybe on two or three purchases,
19 decision was made by Sergey. There was such a
20 associate there -- or person -- Sergey, S-E-R-G-E-Y.
21 Q. Sergey is an associate with Middle East?
22 A. He was a part-time, let's say, associate or
23 employee for a certain period of time. He decided
24 that he wanted to purchase two or three boats, repair
25 them and sell, but do it through our company.

8 (Pages 26 - 29)

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1 Q. Okay. I'm going to use an estimate of ten
2 boats that you personally purchased for my question.
3 Is that understood?
4 A. Yes, ten. That's the one that we had in our
5 warehouse. We repaired them. That's for sure.
6 Q. Of the boats that you personally purchased,
7 do you remember where they were purchased from?
8 A. Those boats were purchased, together with
9 Solovyev, while being online -- auction called Copart.
10 That's American auction company.
11 Q. Did you ever purchase any boats from any
12 other person or place?
13 A. No. All boats were purchased from Solovyev.
14 Q. Were you personally involved in arranging the
15 transportation of these boats from the US to Middle
16 East in Dubai.
17 A. No, because that was doing -- Solovyev.
18 Mr. Solovyev, he was in charge of that.
19 Q. Okay. Who at Middle East was in charge of
20 getting the boats from the US to Dubai?
21 A. During auction, I and Solovyev were there. I
22 chose the boat and we bought it. And Solovyev would
23 be paid commission once I purchased the boat in
24 auction. And then his company, Logistics, was
25 responsible to arrange shipping of purchased boat from

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1 US to Dubai; and in Dubai, also to receive it and
2 deliver.
3 MS. TARASSOVA: Eric, did you get your
4 answer? Because I kind of know what you're
5 asking and I don't know if they answered it
6 collectively.
7 MR. CHANG: Not really, but.
8 MS. TARASSOVA: I think Mr. Safonov is
9 not sure if you're asking him what you're
10 asking him. Let me --
11 MR. CHANG: Could the court reporter read
12 the question?
13 THE REPORTER: "Who at Middle East was in
14 charge of getting the boats from the US to
15 Dubai?"
16 THE WITNESS: Okay. Now, I was the one
17 who would choose at auction which boat to
18 bid, which to buy. I paid -- I bought the
19 boat and also paid commission to Solovyev.
20 And Solovyev was responsible for shipping
21 organizing -- shipping of that boat from US
22 to Dubai. And in Dubai, Andrey was the one
23 who was supposed to receive the shipment and
24 deliver to warehouse.
25 BY MR. CHANG:

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1 Q. Okay. If Solovyev had problems with the
2 transportation, who would he talk to at Middle East?
3 A. To me in Middle East if he has problem.
4 Q. If Middle East wanted to change any
5 transportation arrangements, who at Middle East would
6 talk to Solovyev?
7 A. In that case, I -- I am the one who will make
8 decision.
9 Q. Do you remember when you purchased your first
10 boat from Copart?
11 A. I don't remember exactly. I believe it was
12 March; maybe April. I would rather say March.
13 Q. Okay. You described looking at an auction
14 with Solovyev to pick out the boats; correct?
15 A. Yes.
16 Q. Is that an online auction?
17 A. Skype -- through Skype.
18 Q. Is it correct that you would -- how did you
19 find the boats that you wanted at the auction?
20 A. It's elementary. You just go on the website
21 of that auction and view whatever they have to
22 auction. There is a website, Copart Auction.
23 Q. Mr. Safonov, how did you find the Copart
24 website?
25 A. The website I got, Andre Tretiakov, he

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1 provided the name or address of the website.
2 Q. Do you need a user name to access the auction
3 website?
4 A. Yes. One needs to register with the website
5 first.
6 Q. Did you register for the website?
7 A. Of course. Otherwise, I would not be able to
8 do anything.
9 Q. Okay. Is this website open to the public?
10 A. Of course. How I got there? The same way.
11 It's just public. You go and register and
12 participate.
13 Q. Okay. If you registered for the website, why
14 did you need Solovyev to help you purchase the boats?
15 A. The problem would be how to deliver, ship it
16 from one place to another without American company
17 here. You can't go through the customs. You can't do
18 all the shipping, paperwork and the shipping itself.
19 For shipping abroad, you have to have a
20 higher company that is licensed. Even if I would come
21 to United States and buy my -- buy some boat -- in
22 order to ship it back to whatever place I live, I will
23 have to hire a licensed company to do that.
24 Q. In 2013, were you living in Florida?
25 A. No. We just came here in the summertime of

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1 2013 to register our company here.
2 Q. How many months did you spend in Florida in
3 2013?
4 A. Two.
5 Q. Do you remember which months?
6 A. July and August. I remember because children
7 start school, and our child starts school
8 September 1st. So we left at the end of August -- 26,
9 27. End of August, we left for home.
10 Q. Where was your full-time residence in 2013?
11 A. Dubai.
12 Q. Okay. Once you purchased the boats from
13 auction, how did you pay for the boats?
14 A. The payment was made from my company, Crocus
15 FZE.
16 Q. Was the payment by credit card, by wire?
17 A. Bank wire.
18 Q. Did you wire the purchase money to the
19 auction directly?
20 A. No. I wired it to Solovyev's company.
21 Q. So how did the auction get their money for
22 the boats?
23 A. From Solovyev.
24 Q. Did you -- and by you, I mean Crocus FZE --
25 wire the money to Solovyev before or after Solovyev

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1 wired the money to the auction house?
2 A. Before -- before the Copart auction --
3 because auction company allows only three days for
4 money wiring for the purchased item.
5 Q. So do you know if Solovyev paid the auction
6 house before you paid Solovyev?
7 A. I don't know, but I believe that nothing like
8 that could have ever happened. He never could
9 purchase anything on the money that he has. Also, as
10 a business point of view, it doesn't make much sense,
11 because, in case I would say, "Oh, I changed my mind,"
12 then he will be stuck with boat. In business, nobody
13 does like that.
14 Q. Okay. Do you know how long it takes for a
15 bank wire to clear from Dubai to the US?
16 A. 24 hours. Actually, one business day.
17 Q. Was the same procedure followed for every
18 boat that you personally purchased from Solovyev?
19 A. Down the road -- not at the beginning, but
20 down the business trail, I sent or wired money ahead
21 to Solovyev, so Solovyev would have some extra money
22 just in case -- for different operations or whatever
23 needs might pop up.
24 One business day, why it takes to clear the
25 money, is because every time money -- I wire money.

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1 Within 24 hours, he will call me and say, "I got the
2 money. The money is clear."
3 Q. After you purchased the boat and after you
4 paid for the boat, would you give instruction on where
5 to ship the boats to Solovyev?
6 A. Yeah. He had to ship each boat to Middle
7 East Asia Alfa. Solovyev, initially, I thought, told
8 me he supposed to ship the boats to my company Crocus
9 FZE; however, he told me that he needs to ship it to
10 Middle East Asia Alfa company for the reason that
11 there is a free zone in Dubai and it will be -- the
12 shipping itself will cost less. Of course, later, I
13 learned that it wasn't true. They could have shipped
14 directly to my company, Crocus.
15 Q. Did you give directions to Mr. Solovyev to
16 ship to Middle East?
17 A. Yeah, I gave directions.
18 Q. Before that, did you suggest to Solovyev to
19 ship the boats to Crocus FZE?
20 A. No. He shipped first boat, and all of them,
21 to Middle East company. Only later, when I found out
22 that it is a scheme, that boats have to be shipped to
23 Middle East Asia company, I told him that I want him
24 to ship to Crocus FZE.
25 Q. I apologize if I'm confusing. Earlier you

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1 said that you wanted the boats shipped to Crocus FZE,
2 but you were convinced instead to ship to Middle East
3 because of a free zone. Is that correct?
4 A. Yes, that's correct.
5 Q. Did you give instructions to anybody to ship
6 the boats initially to Crocus FZE?
7 A. I didn't discuss that issue with Solovyev --
8 Mr. Solovyev. With our business, Mr. Solovyev was --
9 that from the beginning -- he has to ship boats to
10 Middle East company.
11 Q. Are you the owner of Crocus FZE?
12 A. Yes, 100 percent.
13 Q. When did you start Crocus FZE?
14 A. November 2012.
15 Q. Where is Crocus FZE incorporated or
16 registered?
17 A. In United Arab Emirates, city Ras al-Khaimah.
18 Q. Do you hold citizenship in the UAE?
19 A. No, I don't have citizenship.
20 Q. Where is your country of citizenship?
21 A. Russia.
22 Q. Has it always been Russia, or do you have
23 separate or dual citizenships?
24 A. I don't have dual. I always -- I actually
25 have had initial Soviet citizenship when Soviet Union

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1 existed; and after that, I become -- my citizenship is
2 country, Russia.

3 Q. Are you in the US on a visa?
4 A. Of course.

5 Q. Do you know what type of visa?
6 A. I applied for student visa and still waiting
7 for that.

8 Q. When did you apply for the student Visa?
9 A. In June, I believe.

10 Q. June of which year?
11 A. This year, 2015.

12 Q. What's your highest level of education?
13 A. I'm an attorney, or I have degree in
14 jurisprudence.

15 Q. Which institute awarded you the degree of
16 jurisprudence?
17 A. Moscow State Law Academy -- State Academy of
18 jurisprudence. Law school in the United States.

19 Q. Is that a question for me?
20 THE INTERPRETER: No. It's in other
21 words, the translation for you.

22 BY MR. CHANG:
23 Q. When did you get your degree from the Moscow
24 State Law Academy?
25 A. I graduated in 2000 -- year 2000.

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1 Q. Have you ever practiced as an attorney?
2 A. No. I always worked in a business as a
3 businessman.

4 Q. When did you enter the Moscow State Law
5 Academy?
6 A. In 1995.

7 Q. Were you attending any university or college
8 institute prior to 1995?
9 A. No.

10 Q. Were you working full-time before 1995?
11 A. I was in military -- served military.

12 Q. Where did you first work after graduating
13 from the Moscow State Law Academy?
14 A. Once I graduated, I registered right away --
15 a company in Moscow.

16 Q. What was the name of that company?
17 A. AES Invest, if you are interested.

18 Q. What did this company do?
19 A. Real estate.

20 Q. Does that mean finding and purchasing homes
21 for other people?
22 A. Yes, of course; all transactions -- buying,
23 selling real estate.

24 Q. Did that include buying and selling real
25 estate for your personal investment?

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1 A. Sure. Once I made the profit, I bought for
2 myself, apartment.

3 Q. How long did you have this real estate
4 company?
5 A. I do not remember. Maybe three, maybe five
6 years.

7 Q. Okay. Do you remember where you worked after
8 that?
9 A. Then, after that, I also registered another
10 company.

11 Q. What was the name of this company?
12 A. An Energo Construction Project --
13 Energo-Stroy -- E-N-E-R-G-O, dash, S-T-R-O-Y, Project.

14 Q. What type of business did Energo Construction
15 Project do?
16 A. Engineering and communication.

17 Q. You were the owner of this company?
18 A. Yes.

19 Q. Do you remember how many employees this
20 company had?
21 A. It varied from 50 up to 120 employees.

22 Q. How long did you continue to work with Energo
23 Projects?
24 A. Till the end of 2011.

25 Q. Where did you next work after 2011?

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1 A. We moved to Dubai.

2 Q. Where did you next work in Dubai?
3 A. I registered my first company there, Crocus
4 FZE.

5 Q. Okay. With your real estate company, why did
6 you decide to leave real estate?
7 A. Because I bought final apartment for myself,
8 and I didn't want to continue that. I didn't like
9 that type of business.

10 Q. Did you sell the company?
11 A. No. In Russia, at the time, you don't sell
12 company to somebody else. You just close it.

13 Q. With Energo Projects, why did you decide to
14 leave in 2011?
15 A. I got tired.

16 Q. Did you sell Energo Projects to anybody?
17 A. No; I closed it as well. At that time, I
18 needed some medical treatments that I was seeking
19 abroad, so I decided to close company and we left.

20 Q. Have any of your companies ever filed for
21 bankruptcy?
22 A. No.

23 Q. What type of business does Crocus FZE do?
24 A. The company that I opened, I wanted to be
25 investor. I was looking for the companies to

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1 invest -- to be investor. As soon as I moved there,
2 these two Tretiakovs showed up.
3 And, if you actually -- in order to get Dubai
4 visa, you have to declare yourself of being capable
5 investor. Otherwise, no visa.
6 Q. Did Crocus FZE invest in any other companies?
7 A. No; only this one.
8 Q. I'm sorry?
9 A. Only this one.
10 Q. Only Middle East; correct?
11 A. Yes.
12 Q. Did Crocus FZE have any contractual
13 relationship with Middle East?
14 A. Yes; there was agreement between Crocus FZE
15 and company, Middle East Asia Alfa, that I, as Crocus
16 FZE, invest my money into Middle East Asia Alfa. Not
17 only my part of the money, but also invest money in
18 their part that -- what they're supposed to invest --
19 so for two people.
20 Q. Do you know how many boats were repaired by
21 Middle East?
22 A. All of them that came in, all were repaired.
23 Q. Do you know how many boats were sold by
24 Middle East?
25 A. Seven.

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1 Q. What was Middle East's income for the year
2 2013?
3 A. In 2013, the company, Middle East, didn't
4 have any. Actually, they lost -- the company lost
5 money.
6 Q. I'm sorry to hear that. In 2014, did Middle
7 East have any income?
8 A. The income was from seven boats that we sold.
9 Whatever those seven boats were sold, that was income;
10 but it did not cover the expenses of the company
11 repairs and the rest.
12 Q. Do you remember approximately how much that
13 income was in 2014 we're talking about?
14 A. I don't know the numbers, because, in that
15 company, everything was so bad -- looking bad -- that
16 I do not remember and do not want to. Nobody was
17 actually counting money in that company.
18 Q. Just to clarify, earlier, when you said there
19 was no income for Middle East in 2013, were you
20 referring to revenue or to profit?
21 A. Talking about profit. There was none in 2013
22 and 2014. No profit for sure. They were stealing
23 everything.
24 Q. When you say "they," who are you referring
25 to?

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1 A. Tretiakov, with his son, Oleg.
2 Q. I'm going to ask you questions about the
3 three boats at issue in this case. Do you know which
4 boats I'm referring to?
5 A. Yes, I'm aware of what boats you're talking.
6 Q. Other than these three boats, did you have
7 any problems with the purchase and shipping of boats
8 through Mr. Solovyev?
9 A. No. Everything was fine.
10 Q. Starting with the Chaparral and the Monterey,
11 do you remember when these two boats were purchased?
12 A. I don't remember exactly, but, approximately,
13 it was May 2013. All boats were purchased between
14 March and August. But which boat was purchased
15 exactly what month, I do not remember. But we do have
16 receipts or invoices.
17 Q. I'm just going to represent to you that the
18 Chaparral and Monterey were purchased in May 2013. Is
19 that understood?
20 A. Uh-huh.
21 Q. Does that sound correct?
22 A. I already told you that I do not remember,
23 but if you want to let me look up in computer?
24 Q. That's fine.
25 MS. TARASSOVA: Eric, I'm showing him the

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1 bill of sale for the Chaparral.
2 MR. CHANG: Do you have a Bates number
3 for the document?
4 MS. TARASSOVA: Yes, it's P-7.
5 MR. CHANG: Do you want us to mark it as
6 an exhibit, Louiza?
7 MS. TARASSOVA: I'm trying to refresh his
8 memory so he can confirm the information.
9 MR. CHANG: That's fine.
10 MS. TARASSOVA: Then I'm showing him the
11 certificate title for the Chaparral.
12 MR. CHANG: Can we get a Bates number for
13 that too?
14 MS. TARASSOVA: P-8.
15 MR. CHANG: Okay.
16 THE WITNESS: Okay. Chaparral, 2008, the
17 receipt is July 5th, 2013. Hold on. And
18 Monterey, the bill is dated April 18th.
19 BY MR. CHANG:
20 Q. For these two boats, how did you purchase
21 these boats?
22 A. Okay. We went on a website, Copart auction.
23 On their website, they post, usually, a date -- exact
24 date of the auction that this particular -- that sale
25 will take place. And, also, they show on a website

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1 that this particular boat -- what exact day it will be
2 auctioned -- when one can participate in the auction.
3 Q. Okay. Were you in communication with anybody
4 when you purchased these boats?
5 A. The auction is run online on the screen.
6 Solovyev participated, and I. We both simultaneously
7 participated in that auction. You see online how much
8 the bid is -- each bid and so on. It's same like we
9 are sitting with you right now and talking. I sat
10 online with Solovyev and witnessed auction and were
11 doing bidding.
12 Q. So you were on a video conference of some
13 type with Solovyev when purchasing these boats?
14 A. Of course.
15 Q. Was there anybody else as part of that video
16 conference?
17 A. Andrey also was sitting, witnessing -- just
18 watching all of it.
19 Q. Where were you physically at the time of this
20 video conference?
21 A. I was in Dubai. Each one of us was at own
22 home. I was in Dubai. Solovyev was in New York.
23 Andrey also was at his home.
24 Also, when auction is in New York, then, in
25 Dubai, it's a deep late night, so usually it's like

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1 10:00, 11:00 at night, or even later.
2 Q. After you purchased the two boats, you would
3 wire transfer the purchase money to Mr. Solovyev's
4 company; is that correct?
5 A. As soon as the bidding is over and we got the
6 highest bid, within an hour or two, Solovyev would
7 send right away, electronically, a bill. Next day in
8 Dubai, I wake up in the morning. I already have the
9 bill, and then I go to the bank and wire.
10 MS. TARASSOVA: Eric, can we take a break
11 soon?
12 MR. CHANG: How long a break were you
13 thinking?
14 MS. TARASSOVA: Five minutes. It's been
15 another hour-and-a-half.
16 MR. CHANG: That's fine. I'm probably
17 going to wrap up with Mr. Solovyev maybe in
18 the next 45 minutes; and then real quick with
19 Ms. -- her last name -- I apologize -- I
20 forget --
21 THE INTERPRETER: Ms. Timoshkina.
22 MR. CHANG: I'll try to remember.
23 (Brief recess.)
24 BY MR. CHANG:
25 Q. Still on the Chaparral and Monterey, other

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1 than by video conference, how did you communicate with
2 Mr. Solovyev?
3 A. Different ways: Skype, mail, and telephone.
4 Q. Is that mail or e-mail?
5 A. E-mail.
6 Q. In Dubai, did you go into the Middle East
7 warehouse on a daily basis?
8 A. Practically every day.
9 Q. And you spoke or met with Andrey at Middle
10 East practically every day; correct?
11 A. Of course.
12 Q. With the Chaparral and Monterey, after you
13 purchased the boats from Copart, did you specifically
14 instruct Mr. Solovyev to ship the two boats?
15 A. Yes, I did.
16 Q. Did you instruct him by Skype, telephone or
17 e-mail, or a combination?
18 A. Instructions via Skype; and the bill, e-mail.
19 Q. The bill from Mr. Solovyev to your company?
20 A. Yes.
21 Q. Okay. Do you know who the ocean carrier was
22 for the Chaparral and Monterey?
23 A. I understood Mr. Solovyev's company, MTL.
24 Q. Okay. Do you know what kind of company
25 Marine Transport Logistics is -- MTL?

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1 A. Logistics, shipping. It's a shipping
2 company, logistics.
3 Q. Did you ever personally communicate with
4 anybody at MTL?
5 A. With Mr. Solovyev only.
6 Q. Okay. Do you recall paying for ocean
7 transportation of the Chaparral and Monterey?
8 A. You mean for these two boats; yes?
9 Q. Correct. Just the Chaparral and Monterey.
10 A. I do not remember exactly what amount went
11 for these two or each separately. I remember that
12 payments that I made, usually it was like 3,000 US
13 dollars, or payment in 15,000 -- the wire -- \$15,000.
14 Or even 50,000 US dollars. Depends on what was the
15 price and how many boats were purchased.
16 Q. Do those dollar amounts that you just
17 described include the purchase price of the boats?
18 A. Yes. The bill that I would receive from
19 Solovyev to wire money always included the price of
20 the boat, delivery, and services for the -- for the
21 services provided by Solovyev's company and all -- the
22 shipping itself.
23 Q. Do you know if there is a bank charge for
24 wire charges from Dubai to the US?
25 A. Yes, there is a fee.

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1 Q. How much is the fee for the bank wire
2 transfer?
3 A. The fee in Dubai is in United Arab Emirate
4 money, so they're higher. Once we use the foreign
5 currency calculation, it would cost between 50 and 60
6 US dollars for each wire.
7 Q. That fee is paid by you; correct?
8 A. Bank automatically takes from my account that
9 money. So, of course, I paid.
10 Q. What I mean is, the amount of the transfer
11 fee is not deducted or taken out of the money you
12 send, but it's in addition to the money you send;
13 correct?
14 A. Yes, of course, it was in addition; not from
15 the amount that I wired.
16 Q. Do you know when the Chaparral and Monterey
17 were shipped from New Jersey?
18 A. I do not remember precise date. Well,
19 there's a lot of paper in here -- documents -- so I
20 won't be able to find it quickly.
21 Q. That's fine. Were you in Dubai at Middle
22 East when the Chaparral and Monterey arrived in Dubai?
23 A. Yes.
24 Q. So you knew that they had been shipped and
25 arrived in Dubai; correct?

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1 A. Yes, I knew.
2 Q. Were you at Middle East when the Chaparral
3 and Monterey were being repaid by Middle East?
4 A. Of course I was there, because any repair and
5 all repairs were done from my money. If I wouldn't be
6 there, nothing would be done.
7 Q. Okay. Do you know when the repairs were
8 completed on the Chaparral and Monterey?
9 A. All boats were repaired and ready for sale by
10 March 1st, 2014, because that was -- at that time,
11 there was planned or scheduled some exhibition of
12 boats -- the boat show -- March 4th was supposed to
13 start. So we were getting ready all those boats for
14 the show.
15 Q. That is including the Chaparral and Monterey;
16 correct?
17 A. Yes.
18 Q. Did Middle East successfully present the
19 Chaparral and Monterey at the exhibition?
20 A. No, they were not -- we were not able to sell
21 them. These two were not sold.
22 Q. Was the exhibition an exhibition for sale of
23 the motorboats?
24 A. Yes; it was exhibition for sale -- show and
25 sale.

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1 Q. But Middle East had other boats at the
2 exhibition on March 4th; correct?
3 A. Yes.
4 Q. And the other boats -- not the Chaparral and
5 Monterey -- were those boats at the exhibition?
6 A. Yes. All boats were sold except these two.
7 All boats that we had were presented at that
8 exhibition -- all of those were sold except the two,
9 Monterey and Chaparral.
10 Q. Were you personally present at the
11 exhibition?
12 A. Yes.
13 Q. Okay. What was Middle East's plan to sell
14 these two boats after the exhibition?
15 A. To ship them to United States, so we can use
16 them as rentals or charter; to rent them out in Miami.
17 Q. Were you the person who authorized that
18 decision?
19 A. Yes.
20 Q. Did you personally arrange for the
21 transportation of these two boats from Dubai to the
22 US?
23 A. No, I did not do it in person. That's
24 employee or coworkers, were doing that.
25 Q. Did you give the instructions to arrange the

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1 transportation to the employees or coworkers?
2 A. Of course. And I left, also, money for that
3 procedure. I couldn't take part in the shipping
4 process myself because I was already ready to fly to
5 United States, but I left money for them for that
6 process.
7 Q. Do you remember which Middle East employee
8 you gave those instructions to?
9 A. Yes. Middle East employees, Andrey and Oleg.
10 Q. Okay. Do you know if these two boats were
11 shipped by Middle East back to the US?
12 A. Yes, and I have documents to verify.
13 Q. Do you know how long it takes to ship a boat
14 from Dubai to the US?
15 A. On average, 40 days, plus, minus, but average
16 is 40 days.
17 Q. Do you know how long it takes to go the other
18 way, from US to Dubai?
19 A. I wasn't counting days exactly, but I think
20 an average is the same. Well, I know that there is a
21 little bit longer -- takes longer from Dubai from US
22 than from US to Dubai.
23 Q. Okay. Do you know when the Chaparral and
24 Monterey arrived in the US?
25 A. I called -- I remember I talked -- called

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1 Solovyev -- and it was 4th of July. And Solovyev told
2 me, "Tomorrow the boats should be here."
3 Q. Once the boats arrived in the US, what did
4 you do after you called Solovyev?
5 A. He told me to clear US Customs will cost
6 1,500 US dollars. And the bill -- and he said,
7 "Please provide company requisites or information,"
8 that I should issue invoice to -- to what company I
9 should invoice to.
10 Q. Did you provide that information to
11 Mr. Solovyev?
12 A. Of course. I e-mailed him.
13 Q. What was the company that you wanted him to
14 arrange transportation to?
15 A. Crocus Investments, LLC.
16 Q. In Florida; correct?
17 A. Yes.
18 Q. And did you make the payment of \$1,500 for
19 the customs clearance?
20 A. No, I did not because I hadn't had time. As
21 soon as I e-mailed him requisites, shortly after,
22 Solovyev disappeared. After that, he did not even
23 send me invoice or bill. He stopped answering my
24 phone calls, answering e-mail.
25 Q. When did you e-mail Solovyev to offer to make

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1 the payment of the \$1,500?
2 A. I believe it was also 4th of July 2014, but
3 I'm checking in my files. Okay. In my paper, it says
4 July 16, but that's when I prepared the paper. I need
5 to look in my e-mail box. I am sure that it was in
6 July, but exact date, I will provide later.
7 Q. Could you identify what document you're
8 looking at?
9 A. Just e-mail message.
10 MR. CHANG: Is Mr. Safonov looking at a
11 document or --
12 MS. TARASSOVA: He's looking in his
13 computer. He's trying to find the e-mail.
14 THE WITNESS: Do you really need exact
15 date?
16 MR. CHANG: If he can find it easily now.
17 If it's going to take some time, we'll ask
18 for it later on.
19 THE WITNESS: Okay. Then later.
20 BY MR. CHANG:
21 Q. After you sent the letter to Mr. Solovyev,
22 did you try to reach him by telephone?
23 A. Yes, I sent e-mail. I tried to call. I send
24 e-mails, other calls; but there was no response to any
25 of my e-mails or phone calls.

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1 Q. When you say, "e-mails," do you mean that you
2 sent more than one e-mail afterward?
3 A. Yes; a few e-mails.
4 Q. Does that mean more than five e-mails?
5 A. More than five.
6 Q. More than ten e-mails?
7 A. That, I do not remember.
8 Q. So between --
9 A. I can see that -- on this e-mail address, I
10 already see 13 e-mails. But I remember that I have
11 another e-mail address, and there were some too. So
12 you can say more than ten.
13 I just found in my e-mail box that on
14 July 17, 2014, I e-mailed him requisites of my
15 company. And, here, I can see in this mailbox, he
16 sent me invoice for his services. It was 17 --
17 July 17th, he sent me -- 2014 -- and he replied July,
18 also, 17th.
19 Q. Just to make sure everything is clear, are
20 you saying that on July 17, 2014, you e-mailed
21 Mr. Solovyev about these two boats?
22 MS. TARASSOVA: Eric, I think we're a
23 little bit confused about what you're asking.
24 There are many e-mails. Which timeframe are
25 you asking about?

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1 MR. CHANG: He just mentioned -- sounds
2 like an e-mail, a response, and then a reply
3 all taking place on July 17th. I'm trying to
4 clarify if that's what he meant.
5 MS. TARASSOVA: But are you asking about
6 that timeframe? Because he's confused about
7 what timeframe you're talking about.
8 BY MR. CHANG:
9 Q. On July 17th, 2014, did you e-mail
10 Mr. Solovyev?
11 A. I e-mailed him my company requisites, yes.
12 Q. Did you receive a response from Mr. Solovyev
13 on July 17th?
14 A. No. I have not received a response on my
15 e-mail to him.
16 Q. Did you receive an invoice from Mr. Solovyev
17 at any time in July or August 2014?
18 A. Okay. I received in August, more or less in
19 one month after, for parking.
20 Q. After you received the invoice from
21 Mr. Solovyev, what did you do?
22 A. Initially, once I received his invoice, I
23 replied to that written reply that I do not agree with
24 his invoice numbers.
25 Q. Okay. Do you remember which part of the

15 (Pages 54 - 57)

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1 invoice you disagreed with?
2 A. All of them. Neither. There was none that I
3 would agree with.
4 Q. Did you disagree with the customs clearance
5 charge?
6 A. That part wasn't there listed at all.
7 Q. The customs clearance was not listed in the
8 August 2014 invoice; is that correct?
9 A. I do not remember precisely at this moment,
10 but I think it was not included in that invoice.
11 Q. Okay. Do you agree that you are responsible
12 to pay a customs clearance charge?
13 A. Of course I agree, and that's why I e-mailed
14 him in July my requisites, which means banking,
15 address, how to pay and so on. And after I sent him
16 my requisites and had not received anything from him,
17 I wrote him a letter that why -- it's not a business
18 where you're screwing up for him to hide or avoid any
19 contact and give any explanation.
20 After I sent a few of those, I received, from
21 him, invoice -- that one that we are talking about.
22 And that invoice supposed to be parking, storage or
23 whatever, of those boats.
24 Q. Did you agree that you would be responsible
25 for the uploading of the two boats in the US?

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1 A. Yes; of course it's my responsibility; but as
2 I already told you, I send him requisites, which means
3 my banking account, all company -- for the purpose
4 that he will issue an invoice -- invoice me for the
5 services. And he received that from me, he
6 disappeared.
7 Q. Okay. Did you speak with anyone at Middle
8 East about these two boats after they arrived in the
9 US?
10 A. No, because his friend, Andrey Tretiakov,
11 also disappeared. They both disappeared -- or all of
12 them. And that's why I had to then -- I had to fly
13 back to Dubai and start looking for them.
14 Q. When did you fly back to Dubai to look for
15 Andrey?
16 A. Yes. At the beginning of August -- more or
17 less August 5th -- approximately August 5th, I flew to
18 Dubai.
19 Q. Is that in 2014?
20 A. Yes.
21 Q. Were you able to find Andrey or Oleg in
22 Dubai?
23 A. Yes, I found; because they did not expect me
24 to show up there.
25 Q. When did you find Andrey and Oleg?

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1 A. Two or three days after I arrived to Dubai.
2 Q. Did you speak to either Andrey or Oleg about
3 the Chaparral or Monterey?
4 A. Yes.
5 Q. What was their response to you?
6 A. They told me, "You have no reason for worry.
7 Go back and everything will be fine."
8 Q. What did you do afterward?
9 A. We came to office; and what I found, that all
10 spare parts or repair parts were stolen, missing. The
11 business car or company car was stolen or missing.
12 And when I saw that, I filed complaint with police.
13 Q. Are you saying someone stole the company car
14 from Middle East?
15 A. Not somebody. Andrey stole the company car.
16 Nobody else in Dubai steals.
17 Q. Then you said you filed a complaint with the
18 police against Andrey; is that correct?
19 A. Yes, correct.
20 Q. Have you been able to recover your car, the
21 company car?
22 A. No.
23 Q. Has anything been done by the police
24 regarding your complaint?
25 A. Well, police accepted my complaint and told

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1 us, "We will look into it." Now just wait until we --
2 at that point, Andrey disappeared completely. And we
3 returned back to United States because our kid has to
4 go to school.
5 Q. I'm going to ask questions now about the
6 Formula boat. Do you remember when you purchased that
7 boat?
8 A. In July 2013.
9 Q. Was this boat also purchased online at
10 auction?
11 A. Yes.
12 Q. Were you also in a video conference with
13 Mr. Solovyev and Andrey for this purchase?
14 A. I do not remember whether we were in video
15 conference with him and how long, but I can say for
16 sure that the boat -- this boat -- was also purchased
17 on auction. That's for sure.
18 Q. Do you remember telling Mr. Solovyev to send
19 the Formula to Middle East?
20 A. Yes.
21 MS. TARASSOVA: Hey, Eric?
22 MR. CHANG: Yes.
23 MS. TARASSOVA: It's getting close to
24 5:00, and they do need to head back soon
25 because they have a child that's on her own.

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1 It's a two-and-a-half-hour drive.
2 So what do you want to do? How do you
3 want to plan it out? Because I don't know
4 how much longer you have with Mr. Safonov,
5 but you still wanted to depose Tatiana. They
6 could probably go another hour, but that's it
7 because they have to head back to their
8 daughter.
9 MR. CHANG: I'll try to wrap it up. I
10 don't want to bring them back.
11 MS. TARASSOVA: And they don't want to
12 have to come back either. That's why they
13 would prefer to get as much done today as
14 they can, but, at the same time, head back
15 within --
16 MR. CHANG: If it looks like we're not
17 even close, we'll work something else out.
18 I'll try to wrap it up.
19 MS. TARASSOVA: Thanks.
20 BY MR. CHANG:
21 Q. Mr. Safonov, do you remember paying for ocean
22 freight for the Formula?
23 A. Yes, from Bank PNC.
24 Q. Do you remember when that payment was made?
25 A. I have the bill or statement at home, but I

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1 don't remember precisely. Summer, in July.
2 Q. You mentioned earlier that it takes
3 approximately 40 days for a boat to move from the US
4 to Dubai; correct?
5 A. No. The big boats, it takes longer than
6 40 days.
7 Q. Okay. Do you consider the Formula a big
8 boat?
9 A. Yes, because it does not fit into the
10 container -- shipping container.
11 Q. So for a big boat like the Formula, do you
12 know how long it takes to ship from the US to Dubai?
13 A. I thought it would take at least two months.
14 Q. So approximately two months afterward -- do
15 you know if the Formula was ever shipped from the US?
16 A. No, it was not shipped from United States.
17 Q. Okay. By November 2013, after more than two
18 months had passed, did you ask anybody why the Formula
19 had not been shipped?
20 A. No, I didn't ask because I knew that -- I was
21 aware of what had happened.
22 Q. Okay. By December, 2013, were you concerned
23 that the Formula had not arrived in Dubai yet?
24 A. No, I was not concerned that it didn't make
25 it, because, initially, we were trying to agree on the

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1 shipping cost of that Formula 24 boat. So Solovyev
2 was trying, supposedly, to find proper shipping
3 container because it was big. And we know that,
4 because Formula boat is bigger -- is more than
5 24 feet. So there is no shipping container as is to
6 put it in.
7 That size of boat has to be mounted or
8 somehow on the deck of the ship -- lower deck.
9 Solovyev -- in order to have it shipped on the deck of
10 the ship, it has to be installed on that trailer.
11 Solovyev was looking or trying to find that size of a
12 trailer that the boat could fit.
13 And, also, I asked him to find a car or
14 truck, actually, that would be capable of towing the
15 trailer with this boat.
16 Q. Do you remember when you asked Mr. Solovyev
17 to find such a trailer?
18 A. Initially, he offered some trailer that he
19 found in November, but I didn't like that trailer.
20 Q. Did you eventually agree on a trailer with
21 Mr. Solovyev?
22 A. Yes. In December, he send me pictures of
23 good or proper trailer that I think is suitable, and I
24 paid for that trailer.
25 Q. Did you contact or communicate with

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1 Mr. Solovyev at that time to instruct him to ship the
2 boat to Middle East?
3 A. No, I did not continue that; because, at that
4 time, I noticed that his friend, Andrey Tretiakov,
5 started to become a crook -- or crooked activities --
6 stealing, hiding. I noticed that. So at that point,
7 I decided I don't want to deal with the crooks, so I
8 instructed him to ship the boat to Miami.
9 Q. You instructed Mr. Solovyev to ship the boat
10 to Miami?
11 A. Yes. I wrote to him -- e-mail.
12 Q. When was the e-mail sent?
13 A. At the beginning of February.
14 Q. Just so I understand, from December 2014 to
15 February 2015, you did not give any instructions to
16 ship the Formula to the Middle East. Is that correct?
17 A. Yes, that's correct, because we agreed and
18 said that we will deal with it after new year.
19 Q. Who did you have this agreement with?
20 A. With Mr. Solovyev.
21 Q. Okay. After you e-mailed Mr. Solovyev in
22 February of 2015 to ship the boat to Florida, did you
23 receive a response from Mr. Solovyev?
24 THE INTERPRETER: Did you say
25 February 2015 or 2014?

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1 BY MR. CHANG:
2 Q. I said '15, but I meant '14.
3 A. No, I have not received any response to my
4 e-mail or letter.
5 Q. Did you e-mail or communicate with
6 Mr. Solovyev again after February of 2014 about the
7 Formula?
8 A. I don't remember that, because I was -- at
9 that time, I was planning already to go to United
10 States in May. I had plans -- or we had plans. So
11 then I thought, once I am there, we'll get together,
12 have meeting and resolve the problems.
13 Q. After February 2014, did you speak with
14 Andrey or anybody else at Middle East about the
15 Formula?
16 A. Yes, with Andrey.
17 Q. Do you remember when you had the
18 communication with Andrey?
19 A. I spoke with him almost every day.
20 Q. Do you remember what the substance or the
21 details of your communications with Andrey were
22 regarding the Formula?
23 A. At first, I asked Andrey why Mr. Solovyev
24 does not respond on my request -- letter request -- to
25 ship Formula to Miami. Andrey told me that Solovyev

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1 is going not to respond, or be quiet and ignore your
2 request until we sell two cars that belong to
3 Solovyev, Porsche and Mercedes.
4 Q. Do you remember when you had this discussion
5 with Andrey?
6 A. I believe it was maybe February, because I
7 believe it happened about two weeks after I e-mailed
8 or sent letter -- e-mail letter to Solovyev in
9 February 2014.
10 Q. Is it correct that you did not try to send
11 any additional e-mails or call or Skype Mr. Solovyev
12 until May 2014?
13 A. Maybe I tried -- attempted to contact him
14 over the phone or Skype. I just don't remember
15 exactly.
16 Q. Okay. But if you had sent any e-mails to
17 Mr. Solovyev, would you still have a record of those
18 e-mails?
19 A. Maybe, maybe. I need to check.
20 Q. Did you return to the US in May 2014 as
21 planned?
22 A. Yes. May 28th, I believe.
23 Q. Where in the US were you on May 28, 2014?
24 A. To the address and the place where we live at
25 present.

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1 Q. That's in Florida; correct?
2 A. Yes; Boca Raton.
3 Q. Did you try to reach Mr. Solovyev after
4 returning to Florida in May 2014?
5 A. Yes. We talk on the phone, and he said that
6 we will meet -- when the boats from Dubai will arrive
7 here, then we'll meet.
8 Q. Do you remember when you had that telephone
9 communication with Mr. Solovyev?
10 A. In June.
11 Q. What was your understanding concerning
12 storage charges for the Formula?
13 A. My understanding -- when I saw the invoice
14 for storage and parking, it was clear to me that they
15 are trying to get -- to make the bill so high for the
16 storage that it will be more than boats' value. So --
17 because \$40,000 for storage -- so it's illegal
18 activity. It's a crooked activity. That's why I
19 wrote to him. So he is trying to defraud me.
20 Q. Other than the Formula, were the other
21 boats -- the other motorboats -- that you purchased
22 also big boats?
23 A. Okay. The other two were smaller. The one
24 was 19 feet; the other one, 21 feet; and Formula was
25 34.

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1 Q. For the other boats, not including the
2 Chaparral, Monterey or Formula, were there any other
3 boats that were considered big boats?
4 A. Yes. We had a big one.
5 Q. Which boat was that?
6 A. Sea Ray 300.
7 Q. Did the Sea Ray also require a trailer to
8 ship?
9 A. Yes.
10 Q. And did you have any problems getting the
11 Sea Ray shipped from the US to Dubai?
12 A. Not any special problems. One thing, though.
13 The trailer, when it came, was broken.
14 Q. Other than the Formula, for all the other
15 boats that you purchased from the US, were they
16 shipped within a month of the purchase?
17 A. It depends. Some were -- that was controlled
18 by Solovyev -- this process. And depends on the boat
19 size. It was his part of the job that he would try to
20 fit two boats in one shipping container, or what the
21 best fit is, and then ship. So it varied, I would
22 say.
23 Q. Do you remember any boats that took more than
24 two months from purchase before shipping?
25 A. No, I don't.

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1 Q. With the Formula, was your objection to the
2 storage fee on the amount of the storage or to any
3 storage?
4 A. The answer is that the bill for \$40,000,
5 which if we consider it's for storage, is tenfold or
6 ten times exceeds normal price for that. But that
7 invoice he issued and sent to me after I sent him a
8 letter that he should not get involved in criminal
9 activities or a fraud that Andrey is committing.
10 Q. Do you agree that for a boat that remained in
11 storage for more than a month, you're responsible for
12 the storage of that boat?
13 A. As a matter of principle, at the same time,
14 my company had his two cars that were stored or parked
15 there -- were repaired and stored until he will claim
16 them, and he never received any bill or invoice for
17 storage of his two cars and repairs.
18 So for him, it's a pure insolence or
19 impudence to issue the invoice, especially in such an
20 amount.
21 Q. Do you know how long those two cars were
22 stored at Middle East?
23 A. Okay. We cleared the customs -- or cleared
24 those two cars through Dubai customs in 2013,
25 September.

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1 Q. Were those two cars eventually sold by Middle
2 East?
3 A. As I already said, Andrey sold Mercedes
4 without my knowledge and sent or wired money to
5 Solovyev.
6 Q. Do you remember when that sale took place?
7 A. It arrived in September; October 20 for
8 repairs. So I would say November or December 2013.
9 Q. Okay. Do you know if Middle East sold the
10 Porsche Panamera?
11 A. I don't know, because he and Solovyev stole
12 it; and whatever they did with it, I don't know.
13 Q. You do not remember or you don't know when
14 the Porsche left Middle East?
15 A. I know one thing -- that when I talked to
16 employees of shipping company in Dubai that I used --
17 I know them -- as in part of investigation, they told
18 me that the Porsche was shipped to Russia in August of
19 2014. So when we arrived, they shipped it right away.
20 Q. Who did you speak with that told you the
21 Porsche was shipped in August 2014?
22 A. I don't remember the name. It's something
23 cargo. It's a shipping company. That company -- that
24 shipping company, we used to deliver the boats from
25 Dubai to Sharjah. So the company worked in Dubai --

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1 shipping.
2 Q. For the Porsche and the Mercedes, did you
3 have an agreement with Mr. Solovyev that you would not
4 charge him storage?
5 A. No. Everything was based on trust, and he
6 would send whatever he wants to our company.
7 Q. Other than these two cars, the Mercedes and
8 the Porsche, did Mr. Solovyev send any other
9 machineries to your company?
10 A. No. He asked to sell these two -- those two
11 cars -- and also requested to send money to him.
12 Q. Do you know how much storage is charged by
13 Middle East for a car?
14 A. I don't remember now.
15 Q. Can you estimate, to the best of your
16 recollection, how much the storage charge was at
17 Middle East?
18 A. After I received invoice or bill from
19 Solovyev, I sent him initial invoice, too, for these
20 two cars. My invoice included repair, customs
21 clearance in Dubai, and parking, and all other
22 services that were provided to those two cars, and it
23 was 50,000.
24 Q. Did Middle East store cars or boats for any
25 other customers?

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1 A. No.
2 Q. Middle East is not in the business of
3 providing warehouse space; is that correct?
4 A. No. That was just help or a friendly favor
5 to Solovyev. The reason for that was because damaged
6 cars, he will not be able to sell in United States.
7 That's why he wanted us to help him ship the cars to
8 my company in Dubai, fix them, and then only sell.
9 Q. Did Middle East receive any money from the
10 sale of the cars?
11 A. No.
12 Q. Did Middle East receive any money from the
13 repair of the cars?
14 A. No. I paid for that repair.
15 Q. Have you been able to recover the money that
16 you loaned to Oleg under the promissory note?
17 A. Less than 50 percent. Because when we sold
18 boats, those boats that we sold, part of that money I
19 received, but it's less than he owes me -- less than
20 50 percent what he owes me.
21 Q. I apologize. Were you able to recover the
22 money directly from Oleg that you loaned him?
23 A. I have not received anything directly from
24 Oleg.
25 Q. Are there currently any lawsuits against

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1 Middle East Asia in Dubai?
 2 A. There's no lawsuits against the Middle East
 3 company.
 4 Q. Do you know of any lawsuits against you
 5 personally in Dubai?
 6 A. No.
 7 Q. Do you know of any lawsuits against Andrey in
 8 Dubai?
 9 A. Oh, Sergey and I.
 10 Q. Sergey and you? I'm sorry. What do you mean
 11 by Sergey and you?
 12 A. It means, I know one more person who filed
 13 the lawsuit in Dubai against Andrey.
 14 Q. So there are two lawsuits against Andrey?
 15 A. Yes; I and the other man, but two cases.
 16 Q. Do you know of any lawsuits against Oleg in
 17 Dubai?
 18 A. Yes; against Oleg too.
 19 Q. Is that also a lawsuit filed by you and
 20 Sergey?
 21 A. And there is a third person, yes. I, Sergey
 22 and the third, also. I know another -- third person
 23 that also filed against.
 24 Q. What is the basis for your lawsuit against
 25 Andrey?

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1 A. For fraud, and, also, stealing the company's
 2 assets.
 3 Q. Has Andrey responded to your lawsuit in
 4 Dubai?
 5 A. Yeah. He run away to Russia.
 6 Q. So no response has been entered by Andrey in
 7 the Dubai lawsuit; correct?
 8 A. Of course not, because he doesn't want to be
 9 in jail there, so he prefer to run away.
 10 MR. CHANG: Louiza, I'm going to end
 11 there for Mr. Safonov and try to wrap up
 12 quickly for Ms. Timoshkina. No further
 13 questions.
 14 MS. TARASSOVA: Give me one second.
 15 (The reading and signing of the
 16 transcript were not waived, and these
 17 proceedings concluded at 5:45 p.m.)
 18
 19
 20
 21
 22
 23
 24
 25

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1 CERTIFICATE OF OATH
 2
 3 STATE OF FLORIDA
 4 COUNTY OF ORANGE
 5
 6
 7 I, Lisa Gerlach, the undersigned Notary
 8 Public, in and for the State of Florida, hereby
 9 certify that Alexander Safonov personally appeared
 10 before me and was duly sworn.
 11
 12 WITNESS my hand and official seal this
 13 21st day of December, 2015.
 14
 15 *Lisa Gerlach*
 16 Lisa Gerlach, Court Reporter
 Commission #DD353538
 Expires 9/8/2016
 17
 18
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1 CERTIFICATE OF REPORTER
 2 STATE OF FLORIDA
 3 COUNTY OF ORANGE
 4
 5 I, Lisa Gerlach, Court Reporter, do hereby
 6 certify that I was authorized to and did
 7 stenographically report the foregoing deposition; and
 8 that the transcript is a true and correct
 9 transcription of the testimony given by the witness.
 10 I further certify that I am not a relative,
 11 employee, attorney or counsel of any of the parties,
 12 nor am I a relative or employee of any of the parties'
 13 attorney or counsel connected with the action, nor am
 14 I financially interested in the action.
 15 Dated this 21st day of December, 2015.
 16
 17 *Lisa Gerlach*
 18 Lisa Gerlach, Court Reporter
 19
 20 The foregoing certification of this transcript does
 21 not apply to any reproduction of the same by any means
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1 ERRATA SHEET
2 RE: Crocus v. Marine Transport Logistics, et al.
3 DEPO OF: Alexander Safonov
4 TAKEN: December 3, 2015

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6 Page Line Change Reason

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17 Under penalties of perjury, I declare that I have read
18 the foregoing document and that the facts stated in it
19 are true.

20 _____
21 DATE ALEXANDER SAFONOV

22 Subscribed and sworn before me this ____ day of
23 _____, 20__.

24 State of Florida)
25 County of) _____
NOTARY PUBLIC

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24 State of Florida)
25 County of) _____
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RESPONDENTS' REPLY TO COMPLAINANTS'

PETITION TO REOPEN PROCEEDINGS

EXHIBIT 3

S E R V E D
April 12, 2016
FEDERAL MARITIME COMMISSION

FEDERAL MARITIME COMMISSION

DOCKET NO. 15-04

CROCUS INVESTMENTS, LLC AND CROCUS, FZE

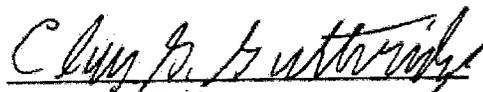
v.

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

ORDER TO SUPPLEMENT THE RECORD

On January 14, 2016, Complainants filed their appendix, then supplemented their appendix with English translations on March 23, 2016, pursuant to an order issued March 3, 2016. *Crocus Investments, LLC and Crocus, FZE v. Marine Transport Logistics, Inc. and Aleksandr Solovyev a/k/a Royal Finance Group Inc.*, FMC No. 15-04 (Mar. 3, 2016) (Order to File English Translations of Documents in Languages Other than English). Respondents filed their appendix on February 11, 2016. My preliminary review of the appendices finds only one document related to the transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States: APL bill of lading number APLU 020188407 dated May 30, 2014, identifying Middle East Asia Alfa, FZE, as shipper; AEC Cargo Services LLC as forwarding agent; Marine Transport Logistic [*sic*] as consignee; Jebel Ali, Dubai as port of loading; and Maher Terminal, NJ as port of unloading; and identifying the cargo to include the 2008 Chaparral and the 2011 Monterey. (Resp. App. 05.) It is hereby

ORDERED that on or before April 22, 2016, Complainants serve and file all documents related to the transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States, including, but not limited to, bills of lading, waybills, dock receipts, notices of arrival, invoices, and records of payment for the transportation created by Complainants, Respondents, Middle East Asia Alfa, FZE, AEC Cargo Services LLC, APL, or any other entity. On or before April 29, 2016, Respondents must file any additional documents related to the transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States not included in Complainants' filing. If Respondents do not have additional documents, they should file a document so stating.


Clay G. Guthridge
Administrative Law Judge

RESPONDENTS' REPLY TO COMPLAINANTS'

PETITION TO REOPEN PROCEEDINGS

EXHIBIT 4

FEDERAL MARITIME COMMISSION

DOCKET NO.: 15-04

CROCUS INVESTMENTS, LLC AND CROCUS, FZE

v.

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

COMPLAINANTS' RESPONSE TO SUPPLEMENT THE RECORD

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by mailing and emailing a copy to the persons listed below:

Stephen H. Vengrow
Eric Chang
Montgomery, McCracken,
Walker & Rhoads, LLP
437 Madison Ave., 29th Floor
New York, NY 10022

Dated: April 22, 2016

s/Louiza Tarassova

Louiza Tarassova, Esq.
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COMPLAINANTS' RESPONSE TO SUPPLEMENT THE RECORD

COME NOW, Complainants, Crocus Investments, LLC and Crocus, FZE and file this Response to Supplement the Record in response to the Order to Supplement the Record served on Complainants on April 12, 2016.

The Order requests that parties file any additional documentation in relation to the "transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States...on or before April 22, 2016."

The following documents within the Complainants' Appendix also relate to the transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States:

1. CX 058-CX 059 – Emails between Alex Solovyev and Emirates Logistics regarding the shipment of boats from Dubai to the United States.

The following documents are a supplement to Complainants' Appendix relating to the transportation of the 2008 Chaparral and the 2011 Monterey from Dubai to the United States:

2. Certification of Alexander Safonov dated April 21, 2016 (See Attached.)

FEDERAL MARITIME COMMISSION

DOCKET NO.: 15-04

CROCUS INVESTMENTS, LLC AND CROCUS, FZE

v.

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

CERTIFICATION OF ALEXANDER SAFONOV

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by mailing and emailing a copy to the persons listed below:

Stephen H. Vengrow
Eric Chang
Montgomery, McCracken,
Walker & Rhoads, LLP
437 Madison Ave., 29th Floor
New York, NY 10022

Dated: April 22, 2016

s/Louiza Tarassova

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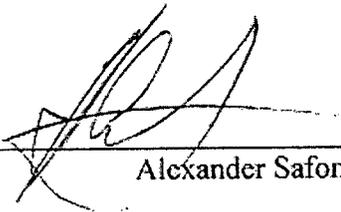
CERTIFICATION OF ALEXANDER SAFONOV

Alexander Safonov, pursuant to 28 U.S.C. § 1746, making the following Certification under penalty of perjury, in lieu of an oath or affidavit says:

1. I am the President and Owner of a corporation known as Crocus Investments (“Crocus”), a party to this action.
2. I am also an owner of a foreign corporation known as Middle East Asia Alfa, FZC, a non-party to this action.
3. On or about April 1, 2014 I told my assistant, Andrey Tretykov, to arrange delivery of two boats 2008 CHAPARRAL 190 SSI and 2011 MONTEREY 204 (collectively hereinafter “the boats”) to the USA.
4. My assistant found two companies that can deliver the boats for approximately \$4,000.00, but then he received a better offer for the same delivery from Aleksandr Solovyev for \$1,500.00.
5. I agreed to the proposal made by Alexander Solovyev with the understanding that Marine Transport Logistics, Inc. (hereinafter “MTL”) will arrange for the shipment of the boats from Dubai, UAE and the boats will be picked up and held by MTL in the USA.
6. Solovyev and I agreed to discuss the details of routing the boats within the US later, upon their arrival.
7. The boats were shipped from Dubai on May 30, 2014.
8. Solovyev stopped communicating with me.
9. On August 13, 2014 Solovyev sent a demand letter via email to pay fees for storage of the boats and customs fees which he alleged MTL paid for the boats.

10. I subsequently found out that the boats were delivered to MTL's address at 63 Hook Road, Bayonne, NJ 07002 and Solovyev and MTL now claim that the boats are in possession or custody of World Express & Connection, Inc., a company owned by Soloveyv's.

Executed on April 21, 2016


Alexander Safonov

RESPONDENTS' REPLY TO COMPLAINANTS'

PETITION TO REOPEN PROCEEDINGS

EXHIBIT 5

KeyCite Yellow Flag - Negative Treatment
Distinguished by Mapfre Tepeyac. SA v. Robbins Motor Transp., Inc.,
S.D.Tex., December 13, 2006

92 F.2d 104
Circuit Court of Appeals, Fifth Circuit.

STATE OF TEXAS
v.
ANDERSON, CLAYTON & CO. et al. *

* Writ of error denied 58 S.Ct. 265, 82 L.Ed.— .

No. 8227.

Sept. 4, 1937.

Rehearing Denied Sept. 29, 1937.

Appeal from the District Court of the United States for the
Southern District of Texas; Thomas M. Kennerly, Judge.

Suit by Anderson, Clayton & Co., on behalf of itself and
all others similarly situated, against the Wichita Valley
Railway Company and others, in which the State of Texas
intervened. From the decree entered, intervener appeals.

Affirmed.

See, also, Anderson, Clayton & Co. v. Wichita Valley R.
Co., 15 F.Supp. 475.

West Headnotes (6)

[1] **Declaratory Judgment**

↔ Appeal and Error

A state, intervening as party defendant by
court's permission in suit for declaratory
judgment, became real, not merely nominal,
party thereto, and hence had right to appeal
from such judgment. 28 U.S.C.A. §§ 2201,
2202.

Cases that cite this headnote

[2] **Federal Courts**

↔ Intervention or addition of new parties
on appeal

A declaratory judgment against railway
companies and state, intervening as defendant
in shippers' action against such companies,
was several, though joint in form, so as
to entitle state to appeal therefrom alone;
severance of defendants being unnecessary. 28
U.S.C.A. §§ 2201, 2202.

2 Cases that cite this headnote

[3] **Commerce**

↔ Transportation or Movement of Goods
or Persons

In determining whether particular freight
movement is interstate, intrastate, or foreign
commerce, intention existing when movement
started governs.

11 Cases that cite this headnote

[4] **Commerce**

↔ Beginning, continuance, and termination
of movement

Interstate character of shipment is lost when
it comes to rest within state of origin and
goods are disposed of locally, but temporary
stoppage thereof within such state, made
necessary in furtherance of interstate carriage,
does not change its character.

15 Cases that cite this headnote

[5] **Commerce**

↔ Beginning, continuance, and termination
of movement

Delays in shipments by water at seaport,
usually incident to arrival and loading of
vessel, do not break continuity of interstate
journey as causing freight to come to rest
within state.

7 Cases that cite this headnote

[6] **Carriers**

↔ Rates of freight

Grading, sampling, and assembly of cotton at seaport, to which it was transported by rail from interior of state, in preparation for further shipment to other states or countries, and appropriation of single shipment to more than one order for export or further shipment in interstate commerce, did not deprive movement thereof within state of its interstate character, so that shippers were entitled to compress shipments at other points in direct line of transit than compress point nearest point of origin, and were not liable for combination of local rates on such shipments. Jud.Code § 24(8), 28 U.S.C.A. § 41(8).

7 Cases that cite this headnote

Attorneys and Law Firms

*105 Wm. McCraw and Wm. Madden Hill, both of Austin, Tex., and A. L. Reed, of Dallas, Tex., for the State of Texas.

John H. Crooker and Carl G. Stearns, both of Houston, Tex., and J. H. Barwise and Fred L. Wallace, both of Fort Worth, Tex., for appellees.

Before FOSTER, SIBLEY, and HUTCHESON, Circuit Judges.

Opinion

FOSTER, Circuit Judge.

Appellee, Anderson, Clayton & Co., an unincorporated joint-stock association, brought this suit, on behalf of itself and all others similarly situated, against the Wichita Valley Railway Company, Fort Worth & Denver City Railway Company, and Burlington-Rock Island Railroad Company, alleging jurisdiction under section 24(8), Judicial Code (28 U.S.C.A. § 41(8)), as a suit arising under the interstate commerce laws, and under the provisions of the Declaratory Judgment Act, Act March 3, 1911, as amended (28 U.S.C.A. § 400).

The case as shown by the pleadings and proof is this. Anderson, Clayton & Co., hereafter referred to as plaintiff, is a dealer in raw cotton, doing a large business, with headquarters at Houston, Tex. Plaintiff buys cotton

intended for export or shipment to states other than Texas, in bales, in small lots, at interior points in Texas, and assembles it in carload lots at various shipping points along the lines of defendants. Carload rates vary and are based on capacities of 25,000, 50,000 and 75,000 pounds, approximately 50, 100, and 150 bales. It is then transported to Houston by these carriers. The railroad agents are notified that the cotton is intended for export or interstate shipment, and it moves on through bills of lading, appropriately marked to so indicate.

In the usual course of business, cotton is purchased by plaintiff through its own representative or over the telephone from the main office. A written confirmation is immediately sent the seller, setting out the conditions of the purchase. Shipping instructions are given the seller, and he delivers the cotton to the railroad and usually receives a bill of lading 'to shipper's order, notify Anderson, Clayton & Co.' The seller indorses the bill of lading over to plaintiff, draws a draft on plaintiff for the price, and negotiates the draft with a local bank. The draft is paid by plaintiff on presentation. Insurance on the cotton in favor of plaintiff attaches as soon as the bill of lading is indorsed.

At Houston the cotton is weighed, sampled, classed, and, according to grade, is appropriated, with other similar cotton, to orders in hand, for shipment to foreign countries or states other than Texas or for replacement of their own stocks of spot cotton at such points of destination. Sales for export are usually round lots of 50 or 100 bales. The cotton is compressed to high density, if that has not already been done, and then moves to its ultimate destination by ocean carrier, sometimes the same day it is received, but the average delay is seven to eight days.

From a typical transaction set out in the bill the following appears: For the purpose of filling contracts previously executed, a lot of thirty bales of cotton was purchased on September 28, 1935, from the Rochester Gin Company of Rochester, Tex., who delivered it to the Wichita Valley Railway Company at Weinert, Tex., for transportation to Houston. The railroad issued a through export bill of lading to the Gin Company. The Wichita Valley Railway transported the cotton to Wichita Falls, Tex., and delivered it to the Houston Compress Company. The cotton was compressed and consolidated with other cotton into a carload lot. It was transported from Wichita Falls by the Fort Worth & Denver City Railway Company to Teague, Tex., where it was delivered to the

Burlington-Rock Island Railroad Company, and was by it transported to Houston, where it arrived on October 12, 1935. At Houston the cotton was discharged in the warehouse of the Houston Compress Company, where it was graded, sampled, and assembled with sufficient other bales of cotton of uniform grade and quality to fill orders for export. The cotton was appropriated to seven different contracts in the proportions of one to eighteen bales. Twenty-nine bales were shipped to Japan on three vessels, and one bale was shipped to England on a different vessel. Deliveries were made to the vessels on October 12, 17, 18, 25, and 29 and November 5, 1935. The local consumption of raw cotton at Texas ports is negligible. The method used by plaintiff in buying, selling, and shipping cotton for export is general in the trade.

Defendants and other railroads have entered into a joint agreement under which *106 through rates are provided and a tariff covering these rates, designated as Texas-Louisiana Lines' Tariff No. 71-C, I.C.C. No. 382, has been filed with and approved by the Interstate Commerce Commission. The tariff applies to both interstate and intrastate commerce with certain exceptions. A rule of the Texas Railroad Commission requires that cotton moving from interior points must be compressed for shipment at the nearest compress to the point of origin in either direction. Tariff No. 71-C, I.C.C. No. 382, recognizes this rule, but item No. 280 contains the following exception: 'Exceptions applicable only on interstate traffic. Exception 2.— The F.W. & D.C.-W.V. will permit shippers to compress and consolidate shipments of cotton at compress points (other than the first) on said lines when in direct line of transit. * * *

' The exception applies to all the defendant railroads as connecting carriers. The through rate was applied to certain shipments to plaintiffs, set out in the bill, and they were permitted to compress the cotton at presses in direct line between the point of shipment and Houston, regardless of whether they were the nearest to point of origin.

A hearing was provoked before the Texas Railroad Commission by interested parties and the question of whether shipments as above outlined were interstate or intrastate was considered. The Commission ruled that such shipments were wholly intrastate, and, on December 6, 1935, the railroads were ordered to apply the rule as to compressing and collect charges under intrastate tariffs.

In conformity with this ruling defendants instituted a number of suits against plaintiffs for undercharges, based upon the sum of the local rates; announced their intention to file other suits of the same nature; and notified plaintiff that in future they must comply with the ruling of the Texas Railroad Commission as to compressing or pay the combination of local rates.

The State of Texas was permitted to intervene in the case by order of court, without objection by any of the parties. The intervention asserted the validity of the orders made by the Railroad Commission; alleged that shipments as above outlined were wholly intrastate; that plaintiffs and defendants had conspired to give them a fictitious interstate character; and asked that the state be made a party defendant. There were no other interventions.

After an extensive hearing, a final decree was entered, holding that the court had jurisdiction and plaintiff was entitled to a declaratory judgment; that shipments as above outlined were interstate and not governed by the laws of Texas and not under the jurisdiction of the Texas Railroad Commission; that all such shipments of cotton moving after September 16, 1935, the effective date of the Texas-Louisiana Lines Tariff No. 71-C, were entitled to the privileges and benefits of exception No. 2 above quoted. The decree denied an injunction as to the pending suits for undercharges, but granted an injunction as to the prosecution of such future suits. Defendants were further enjoined from refusing to accord the shipments of cotton by plaintiffs, such as above described, the rights and privileges of compression and consolidation provided for in the interstate tariffs; and from taking any action to require plaintiffs to compress or consolidate such shipments only at points prescribed in the tariffs for intrastate shipments; and from demanding or collecting from plaintiffs the combination of local rates upon such shipments. The State of Texas was specifically denied any relief.

[1] [2] Only the State of Texas has appealed. Appellee has moved to dismiss the appeal on the grounds that the State is without appealable interest and that there was no summons or severance as to the defendants. There may be some doubt as to the right of the State to intervene and, had that been denied, a different question would be presented. By the intervention the State became a real, not merely a nominal, party to the suit and is materially affected by the declaratory judgment. It is elementary that a real party against whom a judgment

runs has a right of appeal. On the second ground, while the judgment is joint in form, on analysis, it is clear that it is several. The judgment could be separately enforced against the defendant railroads by coercive action. But to enforce it against the State would require ancillary proceedings against the proper state officers. We consider that severance of the defendants was not necessary. *Elliot v. Lombard*, 292 U.S. 139, 54 S.Ct. 637, 78 L.Ed. 1175. The motion to dismiss the appeal is denied.

In this case it is immaterial when the purchase price was actually paid. Nor is the form of the bill of lading material. The rights and duties of buyer and seller were fixed by the usual contracts of purchase *107 before the shipment of the cotton began at the interior points and all shipments were for account of the buyer. There is no doubt whatever that when the cotton was purchased and caused to be shipped from interior points in Texas it was the intention of plaintiff that it would be ultimately shipped to other states and foreign countries and that purpose was accomplished by shipment from Houston.

[3] [4] As the case is governed by well-known rulings of the Supreme Court, it would serve no good purpose to attempt to review the numerous authorities cited by the parties. It is well settled that, in determining whether a particular movement of freight is interstate or intrastate or foreign commerce, the intention existing at the time the movement starts governs and fixes the character of the shipment. 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, but temporary stoppage within the state, made necessary in furtherance of the interstate carriage, does not change its character

[5] [6] What was done at Houston to prepare the shipments for export made no change in the character of the cotton. The identical bales shipped at interior points were ultimately forwarded in interstate or foreign commerce. The stoppage at Houston was temporary and slight. In all shipments by water there are delays at the seaport, usually incident to the arrival and loading of the vessel. It would be idle to say that such delays break the continuity of the interstate journey and cause the freight to come to rest within the state. The stoppage of the cotton at Houston had no more effect than this.

We consider that what is shown to have been done at Houston to prepare the cotton for further shipment and the appropriating of a single shipment from the interior to more than one order for export or for further shipment in interstate commerce did not deprive the movement within the state of its interstate character. The following authorities sustain this conclusion: *Coe v. Errol*, 116 U.S. 517, 6 S.Ct. 475, 29 L.Ed. 715; *Swift & Co. v. U.S.*, 196 U.S. 375, 25 S.Ct. 276, 49 L.Ed. 518; *So. Pac. Terminal Co. v. I.C.C.*, 219 U.S. 498, 31 S.Ct. 279, 55 L.Ed. 310; *Texas & N.O.R.R. Co. v. Sabine Tram Co.*, 227 U.S. 111, 33 S.Ct. 229, 57 L.Ed. 442; *R.R. Comm. of La. v. T. & P. Ry. Co.*, 229 U.S. 336, 33 S.Ct. 837, 57 L.Ed. 1215; *Stafford v. Wallace*, 258 U.S. 495, 42 S.Ct. 397, 66 L.Ed. 735, 23 A.L.R. 229; *Board of Trade of Chicago v. Olsen*, 262 U.S. 1, 43 S.Ct. 470, 67 L.Ed. 839.

The judgment appealed from is affirmed.

All Citations

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