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June 22, 2016

The Hon. Karen V. Gregory
Secretary of Federal Maritime Commission
800 North Capitol St.
Room 1046
Washington, D.C. 20573

Re: Docket No. 15-11 – Ovchinnikov v. Hitrinov

Dear Ms. Gregory:

Enclosed for filing in the above-captioned matter are an original true copy and five (5) additional copies of:

1. Respondents' Motion to Strike Complainants' "Shipping Documents"

Please contact me if you have any questions.

Sincerely,

Eric C. Jeffrey

Enclosures

**FEDERAL MARITIME COMMISSION**

**WASHINGTON, D.C.**

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**DOCKET NO. 15-11**

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**IGOR OVCHINNIKOV, ET Al**

**v.**

**MICHAEL HITRINOV ET AL**

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Consolidated With

**DOCKET NO. 1953(I)**

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**KAIRAT NURGAZINOV, ET Al**

**v.**

**MICHAEL HITRINOV ET AL**

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**RESPONDENTS' MOTION TO STRIKE COMPLAINANTS' "SHIPPING DOCUMENTS"**

Respondents Empire United Line ("EUL") and Michael Hitrinov hereby move to strike the "shipping documents" submitted by Complainants in response to the Presiding Officer's Order of April 27, 2016. This motion will not apply to the extent, and at the time, that Complainants provide native electronic originals of the documents, and the emails by which they were transmitted to Complainants, validating the paper submissions. As described in more detail below, Respondents' motion is based on clear evidence that at least some of the "shipping documents" are nothing more than fraudulent fabrications.

As previously shown in Respondents Motion for Judgment on the Pleadings, and the Hitrinov Declaration attached thereto, even a cursory examination of the shipping documents

submitted by Complainants demonstrates that that at least some of those documents are fraudulent. That is, they are not the original document, but instead a composite of multiple documents doctored (we believe by scanner) to appear as an original. The use of a composite is most immediately, and egregiously, evident in the so-called "invoices" produced by Complainants that purport to have been sent by EUL to the Enterprise. As previously explained in Respondents' Motion for Judgment on the Pleadings and Appendix D thereto: (1) the invoices as sent by Empire are simple, unadorned, emails incorporating excerpts from a table or spreadsheet; and (2) the versions submitted by Complainants are highly-manipulated composite documents adding (i) Empire letterhead, (ii) a new title, and (iii) a stamped notation of "paid," as well as private banking information regarding Mr. Hitrinov.[1]

It also appears that the "invoices" were not the only manipulated documents. For example, there is at least one anomaly in the purported vehicle sales invoices from Global Auto Enterprise to Complainants. Those submitted by three of the Complainants include a section 8 regarding payment of transportation fees. That section is conspicuously missing from the invoice submitted by Complainant Rzaeva.

Given these obvious or apparent fakes, there is no good reason to accept ***any*** of Complainants' shipping documents without substantial verification. Toward that end, Counsel for Respondents asked Counsel for Complainants if he would provide informally the electronic originals of all shipping documents, including the emails by which they came to Complainants.

Counsel for Complainants refused the request, stating that even if a formal discovery request were made he would not provide the documents, based on purported attorney-client and

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[1] See Hitrinov Declaration paragraph 35, which establishes that the condition in which they were submitted by Complainants is not the condition in which they left EUL.

attorney work product privileges. It is hard to see how either such claim could be valid unless Counsel created the documents and/or provided the documents to Complainants instead of collecting the documents from them.

Accordingly, the purported EUL invoices submitted by Complainants must be struck as fraudulent.[2] Given that, and the evidence of wider fraud, all other documents should be struck as well, unless and until Complainants can verify them by production of electronic originals in native form (including transmitting emails) demonstrating that the paper documents conform thereto.

Finally, we note that we attempted to confer with Complainants, though it was obviously fruitless in light of their repeated refusal to provide electronic documents, and that Complainants failed to respond to the request, instead making idle claims to file a frivolous motion for sanctions. We have attached Complainants' response as Exhibit 1.

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[2] By submitting these fabricated documents, Complainants' Counsel appears to have violated Rule 3.3 of the Model Rules of Professional Conduct, as made applicable to these proceedings by FMC Rule 26 (46 CFR § 502.26), which states that "[a] lawyer shall not knowingly offer evidence that the lawyer knows to be false." As previously explained this is not the first time Counsel for Complainants has submitted these doctored "invoices" to a federal tribunal. See Hitrinov Declaration paragraph 57, explaining that the very same fabricated "EUL invoices" were provided to the EDNY.

## CONCLUSION

For the foregoing reasons, Respondents respectfully request that the Presiding Officer (1) strike the fraudulent EUL invoices submitted by Complainants and (2) strike all other shipping documents provided by Complainants unless and until Complainants submit electronic originals and emails confirming such documents within a time set by the Presiding Officer.

Respectfully submitted,

Eric Jeffrey
**Nixon Peabody LLP**
799 9th Street, N.W., Suite 500
Washington, D.C. 20001
202-585-8000

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing Respondents' Motion to Strike Complainants' "Shipping Documents" by express courier to the following:

Marcus A. Nussbaum, Esq.
P.O. Box 245599
Brooklyn, NY 11224
Marcus.nussbaum@gmail.com

Seth M. Katz, Esq.
P.O. Box 245599
Brooklyn, NY 11224

Dated at Washington, DC, this 22nd day of June, 2016.

Eric C. Jeffrey
Counsel for Respondents

# EXHIBIT 1

## Vohra, Anjali

**From:** Marcus Nussbaum <marcus.nussbaum@gmail.com>
**Sent:** Tuesday, June 21, 2016 10:11 PM
**To:** Vohra, Anjali
**Subject:** Re: Notice of Motion to Strike

Dear Counsel,

I am in receipt of yours of this date of 8:07 p.m. to which this email responds.

Needless to say, your so called "Notice" of your intention to file a motion fourteen (14) hours prior to its interposing does not remotely constitute any good faith attempt whatsoever to meet and confer on this issue prior to resorting to motion practice. Accordingly, you are advised that upon 'official' notice of your filing of such a motion, we will immediately cross move for the imposition of sanctions upon you personally and your firm for improperly interposing a motion in violation of the Commission's Rules of Practice and Procedure.

Be guided accordingly.

***Regards,***

Marcus A. Nussbaum, Esq.
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Brooklyn, NY 11224
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Fax: 347-572-0439
http://www.nussbaumlawfirm.com/

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On Tue, Jun 21, 2016 at 8:07 PM, Vohra, Anjali <avohra@nixonpeabody.com> wrote:

Dear Mr. Nussbaum,

I am writing to inform you that tomorrow morning Respondents intend to file a Motion to strike the shipping documents submitted by Complainants in response to the Presiding Officer's Order of April 27, 2016, unless and until Complainants provide native electronic originals of the documents, and the emails by which they were transmitted to Complainants, validating the paper submissions.

Please advise whether you consent to this motion or if you would be willing to voluntarily provide the electronic originals of the shipping documents (including e-mails), in order to avoid the need for us to file such a motion. Please respond by **10am tomorrow, June 22**, informing us whether you consent, or if you are willing to voluntarily provide the requested documents.

Best regards,

Anjali

**Anjali Vohra**
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