S E R V E D
April 27, 2016
FEDERAL MARITIME COMMISSION

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DOCKET NO. 15-11

IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV

v.

MICHAEL HITRINOV a/k/a MICHAEL KHITRINOV,
EMPIRE UNITED LINES CO., INC., and CARCONT, LTD.

ORDER DENYING RESPONDENTS' MOTION FOR STAY

Respondents United Lines Co., Inc. (Empire) and Michael Hitrinov a/k/a Michael Khitrinov have filed a motion seeking a stay of this proceeding pending the resolution of what they contend is a related case pending in the United States Court for the District of New Jersey. Complainants have filed an opposition to the motion. For the reasons stated below, the motion is denied.

BACKGROUND

On November 12, 2015, complainants Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov commenced this proceeding by filing a Verified Complaint with the Secretary. Respondent Empire United Lines Co., Inc. (Empire) is licensed by the Commission as a non-vessel-operating common carrier (NVOCC). Respondent Michael Hitrinov a/k/a Michael Khitrinov is Empire's sole principal and officer. *Baltic Auto Shipping, Inc. v. Michael Hitrinov a/k/a Michael Khitrinov and Empire United Lines Co., Inc.*, FMC No. 14-16 (ALJ Sept. 15, 2015) (Initial Decision on Respondents' Motion for Partial Summary Decision), exceptions filed, Jan. 15, 2016. The FMC Complaint alleges that Hitrinov owns Carcont, Ltd. (Carcont), a company located in Kotka, Finland, and is "the Chairperson of the Board of Carcont, with signatory authority and direct control over respondent Carcont." (Complaint ¶¶ II.9-11.)

The FMC Complaint alleges that Respondents violated 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, and 41106 of the Shipping Act and Federal Maritime Commission (FMC or Commission) regulations at 46 C.F.R. Part 515. The allegations concern the transportation by water

from the United States to Finland of one vehicle for each Complainant. Each Complainant alleges that he or she purchased a used car from a company owned by with Sergey Kapustin. Kapustin allegedly operates three companies that specialize in selling used cars from the United States to consumers in the former USSR republics: G-Auto Sales, Inc., Effect Auto Sales Inc., and Global Cars, Inc. (the Kapustin Group). Kapustin and his companies are not parties in this proceeding. Respondent Hitrinov allegedly provided financial backing to the Kapustin Group. The Kapustin Group allegedly used Empire as an NVOCC to transport the vehicles from ports or points in the United States to Kotka, Finland.

In the FMC Complaint at paragraphs 37 through 49, Ovchinnikov alleges that he purchased a 2009 GMC Acadia VIN GKLVNED6AJ138200 from G-Auto Sales and received an invoice and copy of the certificate of title. Ovchinnikov paid the full asking price for the Acadia. G-Auto gave the original title to respondent Empire for clearance through customs and paid the ocean freight and related charges to G-Auto. The Acadia was shipped from the United States on December 21, 2012, and arrived in the customs bonded warehouse owned by Carcont in Kotka, Finland, on or about January 14, 2013. Carcont told Ovchinnikov that it would not release the Acadia to Ovchinnikov because "there was an unpaid loan due and owing to [Empire] by the principal of G-Auto/Effect." (FMC Complaint ¶ 44.) Ovchinnikov later learned that the Acadia was registered with a Russian citizen in St. Petersburg, Russia, and alleges that Respondents "simply converted [the Acadia] and have sold it to a third party in order to satisfy a loan allegedly due and owing from the principal of Effect/G-Auto to [Empire] and Hitrinov." (FMC Complaint ¶ 49.)

In the FMC Complaint at paragraphs 50 through 64, Rzaeva alleges that she purchased a 2011 Jeep Compass VIN 1J4NF5FB7BD282296 from G-Auto Sales and received an invoice and a copy of the certificate of title. Rzaeva paid the full asking price for the Jeep. G-Auto Sales gave the original title to respondent Empire for clearance through customs and paid ocean freight and related charges to Empire. The Jeep was shipped from the United States on November 15, 2012, and arrived in the customs bonded warehouse owned by Carcont in Kotka, Finland, on or about December 11, 2012. On or about December 15, 2012, Rzaeva paid the amount required to Russian Customs authorities for customs clearance/duty for the Jeep. Carcont told Rzaeva that it would not release the Jeep to Rzaeva because "there was an unpaid loan due and owing to [Empire] by the principal of G-Auto/Effect." (FMC Complaint ¶ 58.) In March 2013, respondent Hitrinov contacted Rzaeva and "admitted to her that he converted her automobile because there was an unpaid loan due and owing by the principal of Effect/G-Auto." (FMC Complaint ¶ 63.) Rzaeva alleges that Respondents "simply converted [the Jeep] and have sold it to a third party in order to satisfy a loan allegedly due and owing from the principal of Effect/G-Auto to [Empire] and Hitrinov." (FMC Complaint ¶ 64.)

In the FMC Complaint at paragraphs 65 through 74, Nekipelov alleges that he purchased a 2009 Mercedes-Benz C300 VIN WDDGF81X49R073295 from G-Auto Sales and received an invoice and a copy of the certificate of title. Nekipelov paid the full asking price for the Jeep. G-Auto Sales gave the original title to respondent Empire for clearance of customs and paid ocean freight and related charges to Empire. The Mercedes-Benz was shipped from the United States on November 15, 2012, and arrived in the customs bonded warehouse owned by Carcont in Kotka,

Finland, on or about December 11, 2012. On or about December 16, 2012, Carcont told Nekipelov that it would not release the Mercedes-Benz to Nekipelov because "there was an unpaid loan due and owing to [Empire] by the principal of G-Auto/Effect." (FMC Complaint ¶ 73.) Nekipelov alleges that Respondents "simply converted [the Mercedes-Benz] and have sold it to a third party in order to satisfy a loan allegedly due and owing from the principal of Effect/G-Auto to [Empire] and Hitrinov." (FMC Complaint ¶ 74.)

The Commission proceeding is not the only case that relates to the Kapustin Group's businesses. In their motion, Empire and Hitrinov describe two cases in United States district courts. The first case is an action that the Kapustin Group commenced against Hitrinov, Empire, Mediterranean Shipping Company (USA), Inc., and five John Does. *Global Auto, Inc. v. Hitrinov*, CV 13-2479 (E.D.N.Y. Apr. 24, 2013) (complaint filed) (Doc. 1). The *Global Auto v. Hitrinov* complaint alleges that Hitrinov and Empire operated as an NVOCC on the Kapustin Group's shipments of automobiles to Kotka, Finland. It further alleges that when the Kapustin Group told Empire that they had reached an agreement to ship their vehicles with other NVOCCs and vessel-operating common carriers (VOCCs) at more favorable rates, Empire and Hitrinov unlawfully seized the Kapustin Group's automobiles and refused to release them to their intended recipients. The New York Complaint asserts claims for relief pursuant to the Shipping Act of 1984, state claims, and federal claims, including violation of the Racketeer Influenced and Corrupt Practices Act (RICO). The Kapustin Group filed an Amended Complaint adding Carcont, the third respondent in this Commission proceeding, as a defendant. Empire filed an answer to the Amended Complaint and included counterclaims against the Kapustin Group. The court denied a motion to intervene filed by several customers of the Kapustin Group.

The second case (the case that Empire and Hitrinov argue justifies a stay of this proceeding) was filed in New Jersey by the Kapustin Group's customers whose motion to intervene had been denied by the New York court. *Akishev v. Kapustin*, No. 13-CV-2479 (SLT) (RER) (D.N.J. Nov. 25, 2013) (complaint filed) (Doc. 1). The customers named the Kapustin Group and Empire, Hitrinov, and Carcont, respondents in this proceeding, as defendants in the New Jersey case. On April 4, 2014, the customers filed an Amended Complaint. The Amended Complaint alleges that the customers are residents of former USSR republics who wanted to purchase "gently used cars from the United States." *Akishev v. Kapustin*, No. 13-CV-2479 (SLT) (RER), Amended Complaint ¶ 1 (D.N.J. Apr. 4, 2014) (Amended Complaint) (Doc. 27). The New Jersey Amended Complaint alleges that Defendants engaged in a massive scheme to defraud customers of the Kapustin Group who attempted to purchase used cars. It alleges specific factual allegations regarding each customer's attempt to purchase used cars, many of which are alleged to have been salvaged vehicles falsely represented as operable, and the damages allegedly suffered by each. Complainants Ovchinnikov, Rzaeva, and Nekipelov in this proceeding are not identified as Plaintiffs in the New Jersey proceeding and the Amended Complaint does not set forth any allegations regarding the transportation of the Acadia, Jeep, or Mercedes-Benz that are the subject of the FMC Complaint. The New Jersey Amended Complaint asserts claims for relief against the Kapustin Group, Empire, Hitrinov, and Carcont under the Racketeer Influenced and Corrupt Organizations Act (RICO), 18 U.S.C. § 1962(c), predicated on alleged violation of 18 U.S.C. § 1343 (wire fraud), 18 U.S.C.

§ 1341 (mail fraud), 18 U.S.C. ¶ 1952 (travel), 18 U.S.C. § 1956 (money laundering), 18 U.S.C. § 1957 (transactions in criminally derived property), and 18 U.S.C. § 1512 (witness tampering); RICO – 18 U.S.C. § 1962(b) predicated on acquisition of an "interest in or control of" an enterprise; RICO – 18 U.S.C. § 1962(c) predicated on employment or association with an enterprise engaged in racketeering; RICO – 18 U.S.C. § 1962(d) predicated on conspiracy to commit RICO violations; N.J.S.A. 56:8-1, *et seq.* (New Jersey Consumer Fraud Act); N.J.A.C. 13:45 A-26A.1 *et seq.* (New Jersey Motor Vehicle Advertising Regulations); 49 U.S.C. § 32701, *et seq.* (Motor Vehicle Information and Cost Savings Act (the "Odometer Act")); breach of contract; common law fraud; civil conspiracy to commit tort; conversion; unjust enrichment and disgorgement of profits; and imposition of a constructive trust. The New Jersey Amended Complaint does not assert a claim of violation of the Shipping Act and does not purport to be an action on behalf of a class of similarly situated Kapustin Group customers. The Kapustin Group filed cross-claims against co-defendants Empire and Hitrinov that are almost identical to the claims the Kapustin Group had brought against Empire and Hitrinov as Plaintiffs in the New York case.

On September 27, 2015, the court dismissed *Global Auto v. Hitrinov*, the New York case, for failure to prosecute because the Kapustin Group's attorneys had withdrawn as counsel and the corporations could not proceed without an attorney. The court denied a motion filed by Empire and Hitrinov to enjoin the Kapustin Group from proceeding with the cross-claims in the New Jersey case. *Global Auto v. Hitrinov*, CV 13-2479 (E.D.N.Y. Sept. 27, 2015) (Memorandum and Order) (Doc. 109). On October 2, 2015, the clerk entered a certificate of default against the Kapustin Group on the counterclaims. *Global Auto v. Hitrinov*, CV 13-2479 (E.D.N.Y. Oct. 2, 2015) (Certificate of Default) (Doc. 110). Empire filed a motion for reconsideration of the denial without prejudice of its motion to enjoin the Kapustin Group from prosecuting the cross-claims in the New Jersey case. The court denied the motion. *Global Auto v. Hitrinov*, CV 13-2479 (E.D.N.Y. Nov. 19, 2015) (Memorandum and Order) (Doc. 114).

In this proceeding, respondents Empire and Hitrinov move to stay this Commission proceeding "pending resolution of the first-filed federal [New Jersey] court claims [*Akishev v. Kapustin*] regarding the same transaction concerning the precise assets at issue here." (Respondents' Motion for Stay at 1 (footnote omitted).) Empire and Hitrinov state:

> Complainants purchased cars from Global Auto, Inc., Effect Auto Sales, G-Auto Sales, Inc., or other related companies owned and/or controlled by a Mr. Kapustin (collectively "Kapustin Global Auto Group" or "Group"), which promised to deliver them in Russia. [Complaint Paragraphs 35, 36, 38, 40, 51, 53, 65, 67.] A member of the Group then contracted with Empire to transport such cars in containers from the United States to a facility in Kotka, Finland operated by Carcont Ltd. There, the containers were opened and the cars and other cargo de-vanned. The vehicles were then picked up by a member of the Kapustin Global Auto Group (Global Cargo Oy), after the Group made and Empire approved a request for release. This arrangement existed for years, and involved many cars beyond the few at issue here.

> Empire never dealt with individual customers of the Kapustin Global Auto Group; and had no knowledge as to their identity. This was true as a general matter, and is true here. Neither Complainants nor the Group ever requested Empire to release the vehicles in question and, as noted, Empire did not know who the individual customers were until well after the cars were sold.

(*Id.* at 2-3 (footnotes omitted).)

Empire and Hitrinov argue:

> There are currently two federal litigations in play regarding the exact same cars – the complaint in the New Jersey District Court and the instant Complaint. Stay of this later-filed proceeding is warranted, indeed mandated, by two separate considerations: (1) respect for judicial economy and avoidance of duplicative litigation; and (2) the potential for double liability to Empire. The first ground is jurisprudential, the latter includes a constitutional dimension.

(*Id.* at 7.)

Inter alia, Empire and Hitrinov rely on a recent decision of a Commission Administrative Law Judge granting a joint motion to stay a Commission proceeding pending resolution of a related case in the federal courts. *General Motors LLC v. Nippon Yusen Kabushiki Kaisa; Wallenius Wilhelmsen Logistics AS; and Eukor Car Carriers Inc.*, FMC No. 15-08 (ALJ Jan. 5, 2016) (*GM v. NYK* – FMC). GM ships automobiles by water between the United States and foreign ports. Respondents in the Commission proceeding operate vehicle carrier services transporting vehicles by water between the United States and foreign ports. The FMC Complaint alleges that "Respondents have entered into a secret, unfiled, and not yet effective and/or unlawful agreement and/or agreements to allocate customers, raise and fix prices, and rig bids in violation of the Shipping Act." *GM v. NYK* – FMC, Complaint ¶ III.

On June 15, 2015, GM had commenced an action against the same vehicle carrier services plus two other companies related to respondents NYK and Wallenius Wilhelmsen in a United States district court. *General Motors LLC v. Nippon Yusen Kabushiki Kaisha; NYK Line (North America) Inc.; Wallenius Wilhelmsen Logistics AS; Wallenius Wilhelmsen Logistics Americas LLC; Eukor Car Carriers Inc.*, No. 1:15-cv-03451-KAM-JO (E.D.N.Y. June 15, 2015) (Complaint filed) (Doc. 1) (*GM v. NYK* – EDNY). The Complaint in *GM v. NYK* – EDNY alleges that the vehicle carrier services violated federal antitrust laws and several state laws by conspiring "to rig bids, allocate markets, restrain capacity, and to otherwise fix, raise, stabilize, and maintain prices for Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world." *GM v. NYK* – EDNY, Complaint ¶ I.1.

Other plaintiffs had previously filed cases in United States district courts against these defendants and other vehicle carrier services. The Judicial Panel on Multidistrict Litigation

consolidated these actions that "share factual questions relating to allegations that dependants conspired to fix, raise, maintain, and stabilize the price of vehicle carrier services charged to original equipment manufacturers in violation of Section 1 of the Sherman Antitrust Act, and corresponding state antitrust and state consumer protection statutes." *In re Vehicle Carrier Services Antitrust Litigation*, 978 F. Supp. 2d 1382, 1383 (J.P.M.L. 2013). The Panel transferred the actions to the District of New Jersey "and, with the consent of that court, assigned [the cases] to the Honorable Esther Salas for coordinated or consolidated pretrial proceedings in that district." *Id. GM v. NYK* – EDNY was transferred to New Jersey pursuant to this order. *GM v. NYK* – EDNY, 1:15-cv-03451-KAM-JO (E.D.N.Y. June 29, 2015) (J.P.M.L. Conditional Transfer Order) (Doc. 10). As of June 29, 2015, twenty-two additional actions had been transferred to New Jersey. *Id.* The New Jersey court docketed the New York Complaint as *GM v. NYK*, 2:15-cv-04739-ES-JAD (D.N.J. June 30, 2015) (transfer order received), and incorporated it into *In re Vehicle Carrier Services Antitrust Litigation.*

As stated by the court in *Vehicle Carrier Services Antitrust Litigation*, Defendants in the antitrust litigation are ocean common carriers engaged in the transportation of large numbers of cars, trucks, and other vehicles, including agricultural and construction equipment, between foreign countries and the United States using Roll On/Roll Off (RO/RO) or specialized car carrier vessels. Plaintiffs seek equitable and injunctive relief under section 16 of the Clayton Act, 15 U.S.C. § 26, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1, and treble damages and costs of suit under various state antitrust, consumer protection, and unjust enrichment laws, alleging that defendants "entered into various collusive, secret agreements to fix and increase the prices for vehicle carrier services to and from the United States." *In re Vehicle Carrier Services Antitrust Litigation*, Master Docket No. 13-3306 (ES) (MDL No. 2471), Opinion at 3 (D.N.J. Aug. 28, 2015), notice of appeal filed, No. 15-3353 (3d Cir. Sept. 25, 2015). Defendants moved to dismiss the complaints of some of the Plaintiffs. The court held that the Shipping Act barred Plaintiff's federal claims.

> [B]ecause "[a] person may not recover damages under section 4 of the Clayton Act . . . or obtain injunctive relief under section 16 of that Act . . . for conduct prohibited by [the Shipping Act]," . . . DPP's claim under section 4 of the Clayton Act and IPP's claims under section 16 of the Clayton Act will be dismissed with prejudice.

Id. at 16-17. The court also held that the state law claims were preempted by the Shipping Act. *Id.* at 29. The court dismissed the complaints. According to the parties to *GM v. NYK* – FMC, "[t]he direct purchaser plaintiffs and the indirect purchaser plaintiffs have filed notices of appeal to the U.S. Court of Appeals for the Third Circuit; those appeals have been consolidated and stayed pending the disposition of a motion for reconsideration filed by the indirect purchaser plaintiffs." (*GM v. NYK* – FMC, FMC No. 15-08 Joint Supplemental Memorandum Regarding Joint Motion to Stay Proceeding at 3 (filed Nov. 12, 2015).) *GM v. NYK* – EDNY was not one of the cases subject to the court's August 28, 2015, dismissal. (*Id.* n.1; *id.* at 4.) To protect against statute of limitations deadlines, GM filed *GM v. NYK* – FMC challenging the same conduct challenged in *GM v. NYK* – EDNY after the *Vehicle Carrier Services Antitrust Litigation* court entered the August 28, 2015,

order. (*Id.* at 3.) Before the Commmission, the parties argued that the FMC proceeding should be stayed pending the federal court determination of whether the substantially identical claims made in GM's district court complaint and GM's FMC Complaint should be heard in the federal court as alleged violations of antitrust and state laws or must be litigated before the Commission as alleged violations of the Shipping Act. (*Id.* at 8.) The Commission Administrative Law Judge stayed *GM v. NYK* – FMC pending federal court answer to this question.

Empire and Hitrinov argue that the factors articulated in *GM v. NYK* – FMC clearly favor a stay in this proceeding.

> The federal court claim [*Akishev v. Kapustin*] was the first to be filed, and is considerably more advanced that this proceeding. And New Jersey is plainly more convenient to the complainants than Washington D.C., as Complainants' counsel is located in the adjacent state of New York (Complainants themselves are necessarily indifferent as they reside in Russia). A stay would not only avoid piecemeal litigation, but also, as discussed next, eliminate the threat of double "jeopardy." Finally, . . . there is evidence from Mr. Kapustin that this action was brought for vexatious purposes. Thus, a prudential stay is warranted here.

Id. at 8.

DISCUSSION

In appropriate circumstances, the Commission may grant a request to stay a proceeding.

> [Title 46 C.F.R. § 502.201(i)], on its face, grants a presiding officer complete discretion in deciding motions pertaining to discovery. Thus, the question of whether to grant a motion for stay of discovery is discretionary, and requires only a balancing of various competing interests. In this regard, the movant must first "make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to some one else."

Exclusive Tug Arrangements in Port Canaveral, Florida, 2002 FMC LEXIS 29, *5 (FMC 2002).

> The Supreme Court stated that "the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants. How this can best be done calls for the exercise of judgment, which must weigh competing interests and maintain an even balance."

Id. at n.4, *quoting Landis v. North American Co.*, 299 U.S. 248, 255 (1936). In response to the moving party's argument in *Exclusive Tug* that the two cases were inextricably linked, the Commission noted that "some, but not all, of the parties in both proceedings are the same, and both

proceedings address the assist tug towing franchise system in Port Canaveral. . . . We believe, to the contrary, that the two cases involve distinct issues and are not as intertwined as CPA would have us believe." *Id.* at *5-6. The Commission denied the motion to stay. *Id.* at *10.

Akishev v. Kapustin, the New Jersey case that Empire and Hitrinov argue justifies staying this proceeding, alleges that Empire and Hitrinov participated in a scheme engineered by the Kapustin Group to defraud persons in former USSR republics who purchased used cars to be shipped from the United States. Complainants Ovchinnikov, Rzaeva, and Nekipelov are not plaintiffs in the New Jersey case and the New Jersey case is not brought as a class action. The New Jersey Complaint does not allege anything about the Acadia, Jeep, or Mercedes-Benz that Ovchinnikov, Rzaeva, and Nekipelov allege they purchased, and the transportation of those vehicles is not at issue. Therefore, Ovchinnikov, Rzaeva, and Nekipelov will not be awarded any relief in the New Jersey case. The New Jersey Complaint does not allege violations of the Shipping Act, and no New Jersey Plaintiff alleges claims related to the Shipping Act in the section of the Complaint stating factual allegations specific to each Plaintiff. Therefore, claims of violation of the Shipping Act will not be addressed in the New Jersey case. For several of the New Jersey Plaintiffs, there is no allegation that the Plaintiff paid to transport the vehicle at issue by water between the United States and a foreign port. *See Akishev v. Kapustin*, No. 13-CV-2479 (SLT) (RER) (D.N.J. Nov. 25, 2013) (complaint filed) (Doc. 1) (Akishev (Complaint ¶¶ 82-90); Zhandos Aliakparov (Complaint ¶¶ 91-111); Igor Glazunov and Irina Glazunova (Complaint ¶¶ 155-181); Arkady Kolbin (Complaint ¶¶ 199-223; ¶¶ 203-304 (shipment from Kotka, Finland to Perm, Russia)); Vladimir Lukyanov (Complaint ¶¶ 259-268); Alexander Pukir (Complaint ¶¶ 296-314).

Even if the New Jersey Complaint alleged violations of the Shipping Act, as recognized by the New Jersey district court in another New Jersey case, the Commission has jurisdiction over violations of the Shipping Act, not the district court. *In re Vehicle Carrier Services Antitrust Litigation*, Master Docket No. 13-3306 (ES) (MDL No. 2471) (D.N.J. Aug. 28, 2015), notice of appeal filed, No. 15-3353 (3d Cir. Sept. 25, 2015). Even if the district court were to make findings on the transportation of the district court Plaintiffs' vehicles between the United States and Finland, each shipment was a separate transaction, and these findings would not be relevant to the question of whether Shipping Act violations occurred on the shipments of the Acadia, Jeep, or Mercedes-Benz at issue in the FMC Complaint. At the conclusion of the New Jersey case, Complainants would be in exactly the same position they are in now without resolution of any issue relevant to whether Empire and Hitrinov violated the Shipping Act when transporting the Acadia, Jeep, and Mercedes-Benz.

Conversely, the Plaintiffs in the New Jersey case are not Complainants in the Commission proceeding, the Commission proceeding is not brought on their behalf, and the transportation of the vehicles that the New Jersey Plaintiffs allege they purchased is not at issue before the Commission. Therefore, the New Jersey Plaintiffs will not be awarded any relief in the Commission proceeding. The Commission does not have jurisdiction to address the federal and state claims raised in the New Jersey case.

Empire and Hitrinov's contention that "there is evidence from Mr. Kapustin that this action was brought for vexatious purposes" is puzzling. If Empire and Hitrinov are referring to this Commission action, Mr. Kapustin did not bring the action. The only action brought by Kapustin is the New York case. He also apparently brought the same claims as cross-claims in the New Jersey case. Even if Kapustin brought the New York case and the New Jersey cross-claims "for vexatious purposes," it does not affect the Commission proceeding brought against Empire and Hitrinov by Ovchinnikov, Rzaeva, and Nekipelov – there is no claim that they brought the Commission proceeding for vexatious purposes.

The circumstances in FMC Docket No. 15-08 in which the Administrative Law Judge entered a stay are not comparable to this proceeding. First, the Complainant and the vehicle carrier Respondents in *GM v. NYK* – FMC are Plaintiff and Defendants *GM v. NYK* – EDNY. The FMC Complainants in this proceeding are not Plaintiffs in *Akishev v. Kapustin*. Second, exactly the same conduct is addressed in the *GM v. NYK* – FMC and *GM v. NYK* – EDNY: The alleged "collusive, secret agreements to fix and increase the prices for vehicle carrier services to and from the United States." *In re Vehicle Carrier Services Antitrust Litigation*, Master Docket No. 13-cv-3306 (ES) (MDL No. 2471), Opinion at 3 (D.N.J. Aug. 28, 2015) (Doc. 275), notice of appeal filed, No. 15-3353 (3d Cir. Sept. 25, 2015). *Compare GM v. NYK* – FMC, FMC No. 15-08, Complaint ¶ IV.A (Sept. 2, 2015) (Respondents "conspired and secretly agreed to rig bids, allocate customers, restrain capacity, and to otherwise fix, raise, stabilize, and maintain prices for Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world.") *with GM v. NYK* – EDNY, No. 1:15-cv-03451-KAM-JO, Complaint at ¶ I.1 (E.D.N.Y. June 15, 2015) (Doc. 1) (Defendants "conspired to rig bids, allocate markets, restrain capacity, and to otherwise fix, raise, stabilize, and maintain prices for Vehicle Carrier Services for shipments to and from the United States and elsewhere in the world."). The FMC Complaint in this proceeding and *Akishev v. Kapustin* on which Empire and Hitrinov rely challenge different conduct. *Compare Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov v. Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., and Carcont, Ltd.*, FMC No. 15-11, Complaint ¶¶ V.A-E (Nov. 12, 2015) (Complaint filed) (*Ovchinnikov v. Empire*) (while operating as an NVOCC transporting Complainants' vehicles, Respondents failed to have a tariff on file, failed to establish, observe, and enforce just and reasonable regulations and practices related to receiving, handling, storing, or delivering property; failed to provide required documents, billed amounts in excess of lawful tariffs, and other violations of the Shipping Act) *with Akishev v. Kapustin*, No. 13-CV-2479 (SLT) (RER), Complaint ¶¶ 3-9 (D.N.J. Nov. 25, 2013) (complaint filed) (Doc. 1) (Kapustin Group and FMC Respondents engaged in bait and switch tactics, misrepresentation of odometer readings, false advertising, withholding of vehicle condition and other information, and other acts of fraud while engaged in the sale of used vehicles).

Ovchinnikov v. Empire and *Akishev v. Kapustin* involve distinct issues. Empire and Hitrinov have not met their burden of demonstrating a clear case of hardship or inequity in being required to go forward. Complainants would be harmed by a stay. Therefore, Empire and Hitrinov's motion for stay is denied.

ORDER

Upon consideration of the Motion for Stay filed by respondents Empire United Lines Co., Inc., and Michael Hitrinov a/k/a Michael Khitrinov and the record herein, and for the reasons stated above, it is hereby

ORDERED that the Motion for Stay be **DENIED**. It is

FURTHER ORDERED, *sua sponte*, that the time for Respondents to file their answer or answers and respond to the order to show cause be extended to May 4, 2016, and for Complainants to respond extended to May 18, 2016.

Clay G. Guthridge
Administrative Law Judge