

S E R V E D  
May 24, 2016  
FEDERAL MARITIME COMMISSION

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 15-11**

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**IGOR OVCHINNIKOV, IRINA RZAEVA, and DENIS NEKIPELOV**

v.

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

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**INFORMAL DOCKET NO. 1953(I)**

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**KAIRAT NURGAZINOV**

v.

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

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**ORDER OF CONSOLIDATION**

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On November 12, 2015, complainants Igor Ovchinnikov, Irina Rzaeva, and Denis Nekipelov commenced FMC Docket No. 15-11 by filing a formal Verified Complaint with the Secretary. Respondent Empire United Lines Co., Inc. (Empire) is licensed by the Federal Maritime Commission as a non-vessel-operating common carrier (NVOCC). Respondent Michael Hitrinov a/k/a Michael Khitrinov (Hitrinov) 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 (Sept. 15, 2015) (Initial Decision on Respondents’ Motion for Partial Summary Decision), exceptions filed, Jan. 15, 2016. The 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 Complaint alleges that Respondents violated 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, and 41106 of the Shipping Act and Commission regulations at 46 C.F.R. Part 515, and that Ovchinnikov has suffered direct damages in excess of \$28,960.00, that Rzaeva has suffered direct damages in the excess of \$32,101.00, and that Nekipelov has suffered direct damages in excess of \$19,920.00. Complainants further allege that the full extent of their damages can only be determined after discovery has been conducted and interest due to them and the cost of their legal fees calculated. (Complaint at 15-16.)

On January 11, 2016, Claimant Kairat Nurgazinov commenced Informal Docket No. 1953(I) by filing a Claim with the Secretary. The Claim alleges that Hitrinov, Empire, and CarCont violated 46 U.S.C. §§ 40301, 40302, 40501, 40701, 41102, 41104, and 41106 of the Shipping Act and the Commission's regulations at 46 C.F.R. Part 515. Nurgazinov seeks a reparations award from Respondents in the amount of \$12,900 plus interest and attorney's fees. Nurgazinov requested adjudication of the Claim under the Commission's informal procedures provided at Subpart S of the Commission's Rules of Practice and Procedure, 46 C.F.R. §§ 502.301-502.305.

Respondents Empire and Hitrinov filed motions to consolidate these two proceedings. They state that the complaints are virtually identical except for the names of the complainants and the identification of the cars, the issues are the same, and counsel for Complainants and Respondents are the same. They contend that litigating the two proceedings separately would squander the resources of both the parties and the Commission.

Complainants in No. 15-11 and Claimant in No. 1953(I) have filed responses opposing consolidation. Their main contention is that consolidation would adversely impact their discovery rights.

Complainants do note that consolidation of these matters would result in prejudice to Complainants in both matters on the issue of the number of interrogatories that the Complainants are allowed to serve upon Respondents, as well as the number of deposition that Complainants are allowed to take of the Respondents. Under Rule 203 of the Commission's Rules of Practice and Procedure, Complainants must have leave of the Commission in order to take the deposition of a Respondent if said Respondent has already been deposed (if the parties cannot stipulate to that deposition). If the matters were to remain unconsolidated, the Complainants in these matters would each be allowed to take a single deposition of each Respondent (i.e. each Respondent deposed twice without leave of the Commission). Consolidating Docket No. 1953(I) with [FMC No. 15-11] effectively deprives Complainant in the Informal matter to take his own depositions of the individual respondents. The same prejudice would be suffered by Complainants with respect to the number of interrogatories which Complaints in each matter otherwise would have been allowed to serve under Rule 205 . . . .

(Complainants' Brief in Opposition to the Respondents' Motion for Consolidation [No. 15-11] at 2.)

Rule 148 of the Commission Rule of Practice and Procedure provides that “[t]he Commission or the Chief Judge (or designee) may order two or more proceedings which involve substantially the same issues consolidated and heard together.” 46 C.F.R. § 502.148. The Commission Rules provide that Rule 148 does not apply in proceedings under Subpart S, 46 C.F.R. § 502.305, or Subpart T, 46 C.F.R. § 502.321. It is well-recognized, however, that “a trial court has inherent power to control the sequence in which it hears matters on its calendar and to decide whether to consolidate the proceedings on motions.” *United States v. Western Elec. Co., Inc.*, 46 F.3d 1198, 1208 n.7 (D.C. Cir. 1995) (citing *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). *Cf. South Carolina Maritime Services v. South Carolina State Ports Auth.*, 28 S.R.R. 1489, 1490 (ALJ 2000) (“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.”) (quoting *Landis*, 299 U.S. at 254). “The consent of the parties is not required by [Fed. R. Civ. P. 42]. Rather it is for the court to weigh the saving of time and effort that consolidation would produce against any inconvenience, delay, or expense that it would cause.” Wright & Miller, *Federal Practice and Procedure: Civil 2d* § 2383 (1995).

Nurgazinov filed his Claim seeking adjudication pursuant to the small claims procedures set forth in 46 C.F.R. subpart S. Respondents were required filed an objection to adjudication under subpart S with their Answer if they did object. *Kairat Nurgazinov v. Michael Hitrinov a/k/a Michael Khitrinov, Empire United Lines Co., Inc., and Carcont, Ltd.*, FMC No. 1953(I) (ALJ Jan. 21, 2016) (Notice of Assignment to Small Claims Officer). I do not find an objection to adjudication under subpart S in the Answer filed by Empire and Hitrinov. Ovchinnikov, Rzaeva, and Nekipelov filed a formal Complaint. Arguably, the two proceedings are on separate tracks. I find that in the circumstances, this does not bar consolidation of the proceedings.

I further find that it would be contrary to administrative economy and convenience to adjudicate these two complaints involving Complainants making substantially identical claims against the same Respondents as separate proceedings. Counsel are the same in both proceedings. Litigating these proceedings separately has already resulted in several identical filings by the parties in the two dockets and resulting substantially identical orders issued by the Presiding Officer, which is a burden on the Commission. Consolidation will save time and effort for the parties with little or no inconvenience, delay, or expense, and is in the interest of Commission efficiency. Because the Commission’s discovery rules are not applicable in informal proceedings under subpart S, 46 C.F.R. § 502.305 (or under subpart T, 46 C.F.R. § 502.321), consolidating these proceeding will not deprive Complainants of any discovery rights as they argue in their opposition. Therefore, I will consolidate the two proceedings.

Although as noted above the Commission’s discovery rules are not applicable to subpart S or subpart T proceedings, the parties may use discovery procedures set forth in 46 C.F.R. subpart L to seek information that is relevant to Nurgazinov’s claims and Respondents’ defenses to those claims. 46 C.F.R. § 502.201(e).

**ORDER**

Upon consideration of the motion to consolidate filed by respondents Empire United Lines Co. Inc., and Michael Hitrinov a/k/a Michael Khitrinov, the opposition thereto, and the records herein, and for the reasons stated above, it is hereby

**ORDERED** that the motion to consolidate be **GRANTED**. *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, is designated the lead case.

  
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Clay G. Guthridge  
Administrative Law Judge