

**ORIGINAL**

S E R V E D  
April 10, 2007  
FEDERAL MARITIME COMMISSION

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**WASHINGTON, D. C.**

**INFORMAL DOCKET NO. 1880(F)**

**CLUTCH AUTO LTD.**

**v.**

**INTERNATIONAL TOUCH CONSOLIDATOR, INC.,  
MacANDREWS AND COMPANY, LTD.,  
ROSMARINE SHIPPING PRIVATE LIMITED, and  
HITOS LINER AGENCY PRIVATE LIMITED**

**INFORMAL DOCKET NO. 1885(I)**

**D&W CLUTCH AND BRAKE**

**v.**

**INTERNATIONAL TOUCH CONSOLIDATOR, INC.,  
MacANDREWS AND COMPANY, LTD., and  
ROSMARINE SHIPPING PRIVATE LIMITED**

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**MEMORANDUM AND ORDER CONSOLIDATING PROCEEDINGS**

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On June 14, 2006, complainant Clutch Auto, Ltd. (Clutch Auto) commenced Informal Docket No. 1880(I) by filing an informal complaint under subpart S of the Commission's Rules of Practice and Procedure. 46 U.S.C. § 41301(a); 46 C.F.R. Subpart S. Clutch Auto identified

International Touch Consolidator, Inc. (International Touch), MacAndrews and Company, Ltd. (MacAndrews), Rosmarine Shipping Private Limited (Rosmarine) and Hitos Liner Agency Private Limited (Hitos) as respondents. International Touch, FMC Organization No. 014239, FMC License No. 014239N, is a freight forwarder and non-vessel operating common carrier incorporated in Jamaica, New York. (Clutch Auto Complaint, Exhibit 1/1; FMC OTI List, available at [http://www3.fmc.gov/oti/nvos\\_listing.asp](http://www3.fmc.gov/oti/nvos_listing.asp), visited April 9, 2007; 46 C.F.R. § 502.226 (official notice of records).) Rosmarine, incorporated in India, is a firm engaged in transportation of goods from India to overseas destinations and is an overseas agent in India for International Touch. (Clutch Auto Complaint, Exhibit 1/1; Fax dated August 10, 2006, from International Touch Consolidator, Inc., to Venetia D. Bell, FMC Settlement Officer.) MacAndrews is a vessel operating common carrier, FMC Organization No. 019093. (Clutch Auto Complaint, Exhibit 1/1; FMC Links to Tariffs, available at <http://www3.fmc.gov/fmcfirm1/scripts/ExtReports.asp?tariffClass=vocc>, visited April 9, 2007; 46 C.F.R. § 502.226.) Respondent Hitos, incorporated in India, is the agent in India for MacAndrews. (Clutch Auto Complaint, Exhibit 1/1.)

A Commission Settlement Officer was appointed to handle Clutch Auto's informal complaint. On July 6, 2006, the Settlement Officer served the complaint and Notice of Filing and Assignment on International Touch and MacAndrews. The Settlement Officer inadvertently did not serve the complaint on Rosmarine or Hitos.

On September 18, 2006, MacAndrews filed an Opposition to Informal Procedure. See 46 C.F.R. § 502.304(e) ("Within twenty-five (25) days from the date of service of the claim, the respondent shall serve upon the claimant and file with the Commission its response to the claim, together with an indication, in the form prescribed in Exhibit No. 2 to this subpart, as to whether the informal procedure provided in this subpart is consented to. Failure of the respondent to indicate

refusal or consent in its response will be conclusively deemed to indicate such consent.”); 46 C.F.R. § 502.304(f) (“If the respondent refuses to consent to the claim being informally adjudicated pursuant to this subpart, the claim will be considered a complaint under § 502.311 and will be adjudicated under Subpart T of this part.”) Therefore, the Commission converted Clutch Auto’s complaint to a formal proceeding under Subpart T of the Commission’s Rules of Practice and Procedure, 46 C.F.R. Subpart T. The Commission changed the docket number to 1880(F), 46 C.F.R. § 311, and transferred the proceeding to the Office of Administrative Law Judges.

Briefly summarized, Clutch Auto’s complaint alleges that Clutch Auto attempted to ship a container of automotive parts from India to D&W Clutch and Brake (D&W) in Baltimore, Maryland. Clutch Auto arranged the shipment through Rosmarine. Clutch Auto claims that Rosmarine issued an International Touch “to order” house bill of lading for the shipment indicating that freight charges and inland handling charges had been prepaid. This bill of lading identifies Clutch Auto as the exporter. Clutch Auto alleges that Hiros then issued a MacAndrews ocean bill of lading for the shipment identifying Rosmarine as the shipper. When D&W submitted the International Touch bill of lading to secure release of the container, MacAndrews refused to release the container because Rosmarine would not release the MacAndrews ocean bill of lading. Clutch Auto alleges the Rosmarine refuses to release this bill of lading to coerce payment for shipments unrelated to the one at issue. MacAndrews has refused to release the container to D&W without receipt of the ocean bill of lading held by Rosmarine.

On September 6, 2006, D&W submitted an informal complaint to the Settlement Officer containing allegations substantially identical to those in the Clutch Auto complaint. D&W identified International Touch, MacAndrews, and Rosmarine as respondents. This complaint was not served but was made part of the record in the Clutch Auto proceeding, Informal Docket No. 1880(F). On

April 3, 2007, I removed the D&W complaint from the Clutch Auto record and referred it to the Office of the Secretary, which assigned Informal Docket No. 1885(I) to the complaint and served the complaint on International Touch, MacAndrews, and Rosmarine. The D&W complaint was assigned to me for adjudication pursuant to Subpart S. On April 3, 2007, the Commission also served the Clutch Auto complaint (Informal Docket No. 1880(F)) on Rosmarine and Hitos.

The Clutch Auto complaint, Informal Docket No. 1880(F), and the D&W complaint, Informal Docket No. 1885(I), concern shipment of the same container of automotive parts from India to Baltimore, Maryland. Three of the four respondents in 1880(F) are also respondents in 1885(I). The cases have common, indeed, substantially identical, issues of law and fact.

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).

I find that it would be contrary to administrative economy and convenience to adjudicate these two complaints involving substantially the same parties and concerning the same shipment of automotive parts as separate proceedings. Consolidation would save time and effort for the parties with little or no inconvenience, delay, or expense. Therefore, I am consolidating the two proceedings *sua sponte*.

Consolidation of these two proceedings is complicated, but only slightly, by the fact that the two cases currently are on separate procedural tracks, with the Clutch Auto complaint being adjudicated pursuant to Subpart T and the D&W complaint being adjudicated pursuant to Subpart S, with both cases being assigned to me. “[W]hile a consolidation order may result in a single unit of litigation, such an order does not create a single case for jurisdiction purposes.” *Cella v. Togum Constructeur Ensembleier en Industrie Alimentaire*, 173 F.3d 909, 912 (3d Cir. 1999) (citing *Johnson v. Manhattan R. Co.*, 289 U.S. 479, 496-97 (1933); *Newfound Management Corp. v. Lewis*, 131 F.3d 108, 116 (3d Cir. 1997) (“As this Court has previously recognized, ‘Johnson remains the “authoritative” statement on the law of consolidation.’”); 9 Wright & Miller, *Federal Practice and Procedure: Civil 2*, § 2382 (1995)). The two subparts provide similar mechanisms that will permit me to develop the record as necessary. Compare 46 C.F.R. § 502.304(e) (“The Settlement Officer may request the respondent to furnish such further documents or information as deemed necessary, or he or she may require the claimant to reply to the defenses raised by the respondent.”) with 46 C.F.R. § 502.314 (“The administrative law judge may require the submission of additional affidavits, documents, or memoranda from complainant or respondent.”). Accordingly, absent an objection from one or more of the respondents in the D&W proceeding, Informal Docket No.

1885(I), *see* 46 C.F.R. §§ 502.304(e) and (f), *supra*, the D&W complaint will be adjudicated pursuant to Subpart S and the Clutch Auto complaint will be adjudicated pursuant to Subpart T.

**ORDER**

It is hereby

**ORDERED** that *Clutch Auto Ltd. v. International Touch Consolidator, Inc., MacAndrews and Company, Ltd., Rosmarine Shipping Private Limited, and Hitos Liner Agency Private Limited*, Informal Docket No. 1880(F), and *D&W Clutch and Brake v. International Touch Consolidator, Inc., MacAndrews and Company, Ltd., and Rosmarine Shipping Private Limited*, Informal Docket No. 1885(I), be consolidated.



Clay G. Guthridge  
Acting Chief Administrative Law Judge