

FEDERAL MARITIME COMMISSION

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(F)

D&W CLUTCH AND BRAKE

v.

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

**OCTOBER 4, 2007, PROCEDURAL ORDER, ATTACHMENT A
ADMINISTRATIVE LAW JUDGE TENTATIVE FINDINGS OF FACT**

THE PARTIES

1. Complainant Clutch Auto, Ltd. (Clutch Auto), incorporated in India, is a manufacturer and exporter of clutch assembly and clutch kits for commercial vehicles, automotive applications, agricultural tractors, and off-highway vehicles. (Clutch Auto Complaint at 1 (ALJ App. 1).)¹
2. Complainant D&W Clutch and Brake (D&W), incorporated in the United States, is a distributor of clutch assemblies, clutch components, clutch kits, and brake systems for commercial vehicles, automotive applications, agricultural tractors, and off-highway vehicles. (D&W Complaint at 1 (ALJ App. 8).)
3. Respondent International Touch Consolidator, Inc. (International Touch), FMC Organization No. 014239, FMC License No. 014239N, incorporated in Jamaica, New York, is a non-vessel operating common carrier and ocean freight forwarder. (Clutch Auto Complaint at 2 (ALJ App. 2); Official Notice, FMC OTI List, http://www2.fmc.gov/oti/nvos_listing.aspx, accessed October 4, 2007.)
4. Respondent Rosmarine Shipping Private Limited (Rosmarine), incorporated in India, is an agent in India for International Touch. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17); Reply on Behalf of Rosmarine Shipping Private Limited, New Delhi, India (Rosmarine Reply) received May 1, 2007, Annexure IV (email dated Feb. 25, 2006 from Raymond.Wu@itcny.com to VKM@CLUTCHAUTO.COM and others) (ALJ App. 34); Fax cover sheet dated August

¹ The documents cited have been compiled into the accompanying ALJ's Appendix. Page numbers in the Appendix are cited as ALJ App. #.

10, 2006, from Wesley Leung, International Touch Consolidator, Inc., to Venetia D. Bell, FMC Settlement Officer (ALJ App. 37).)

5. Respondent MacAndrews & Company, Ltd. (MacAndrews), is a vessel operating common carrier, FMC Organization No. 019093. (Clutch Auto Complaint at 2 (ALJ App. 2); Official Notice, FMC Links to Tarriffs, <https://www2.fmc.gov/FMC1Users/scripts/ExtReports.asp?tariffClass=vocc>, accessed October 4, 2007.)
6. Respondent Hitos Liner Agency Private Limited (Hitos) is an agent in India for MacAndrews. (Clutch Auto Complaint, Annexure I (ALJ App. 7); MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)

PROCEDURAL POSTURE – NO. 1880(F)

7. On or about June 14, 2006, Clutch Auto filed the complaint in Informal Docket No. 1880(F). (Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F).)²
8. On July 6, 2006, the Clutch Auto complaint was assigned to a Commission Settlement Officer. (Memorandum dated July 6, 2006, from Ronald D. Murphy to Venetia Bell (ALJ App. 40).)

² The Docket Activity Log for Docket No. 1880(F) can be accessed at http://www.fmc.gov/reading/activity_logs.asp?DOCKET_ID=611 .

9. On or about July 6, 2006, International Touch was served with the complaint in Informal Docket No. 1880(F). (Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F).)
10. On September 28, 2006, International Touch served its answer to the Clutch Auto complaint. (Respondent's Answer to Complaint (ALJ App. 41).)
11. On or about April 3, 2007, Rosmarine was served with the complaint in Informal Docket No. 1880(F). (Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F).)
12. On April 27, 2007, Rosmarine served its reply to the complaint in Informal Docket No. 1880(F). (Reply on Behalf of Rosmarine Shipping Private Limited (ALJ App. 18); Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F) (ALJ App. 1).)
13. On or about July 6, 2006, MacAndrews was served with the complaint in Informal Docket No. 1880(F). (Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F).)
14. On September 18, 2006, MacAndrews served its Opposition to Informal Procedure in Informal Docket No 1880(F). (MacAndrews Opposition to Informal Procedure (ALJ App. 46).)
15. On or about April 3, 2007, Hitos was served with the complaint in Informal Docket No. 1880(F). (Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F).)
16. Hitos has not filed an answer to the complaint.

PROCEDURAL POSTURE – 1885(F)

17. On or about September 6, 2006, D&W filed the complaint in Informal Docket No. 1885(F). (Official Notice, *D&W v. International Touch*, FMC Docket Activity Log 1885(F).)
18. On or about April 3, 2007, International Touch was served with the complaint in Informal Docket No. 1885(F). (Official Notice, *D&W v. International Touch*, FMC Docket Activity Log 1885(F).)
19. On or about April 3, 2007, Rosmarine was served with the complaint in Informal Docket No. 1885(F). (Official Notice, *D&W v. International Touch*, FMC Docket Activity Log 1885(F).)
20. On or about April 3, 2007, MacAndrews was served with the complaint in Informal Docket No. 1885(F). (Official Notice, *D&W v. International Touch*, FMC Docket Activity Log 1885(F).)
21. On April 24, 2007, MacAndrews served its Notice of Objection to Informal Proceedings in Informal Docket No 1885(F). (MacAndrews Notice of Objection to Informal Proceedings (ALJ App. 48).)
22. On May 3, 2007, Informal Docket No. 1885(F) was converted from an informal docket under 46 C.F.R. Subpart S to a Formal Docket under 46 C.F.R. Subpart T.
23. On May 10, 2007, International Touch served its answer to the D&W complaint. (Respondent's Answer to [D&W] Complaint (ALJ App. 50).)
24. On July 20, 2007, International Touch served an amended answer to the D&W complaint. (Respondent ITC's Amended Answer to [D&W] Complaint (ALJ App. 54).)

**CONSOLIDATION OF INFORMAL DOCKET NO. 1880(F) AND
INFORMAL DOCKET NO. 1885(F)**

25. On April 10, 2007, the undersigned administrative law judge entered an order consolidating Informal Docket No. 1880(I) and Informal Docket No. 1885(F). (Official Notice, *Clutch Auto v. International Touch*, FMC Docket Activity Log 1880(F); Official Notice, *D&W v. International Touch*, FMC Docket Activity Log 1885(F).)

THE SALE AND SHIPMENT OF MERCHANDISE

26. On or about June 22, 2005, Clutch Auto sold an assortment of automotive parts to D&W. (D&W Complaint at 2 (ALJ App. 9); Clutch Auto Invoice No. EX/2005-2006/72 (ALJ App. 58).)
27. Clutch Auto charged D&W US\$34,014.84 for the automotive parts. (Clutch Auto Invoice No. EX/2005-2006/72 (ALJ App. 58); Clutch Auto Response Order to Supplement the Record dated July 27, 2007, Ans. 3.a (ALJ App. 60) .)
28. The automotive parts were packaged in 300 cartons. (Clutch Auto Invoice No. EX/2005-2006/72 (ALJ App. 58).)
29. The invoice required the automotive parts to be shipped from Mumbai, India, to Baltimore, MD. (Clutch Auto Invoice No. EX/2005-2006/72 (ALJ App. 58).)
30. On December 13, 2005, India Customs issued Shipping Bill for Export No. 1554103. (Shipping Bill for Export No. 1554103 at 1 (ALJ App. 64).)
31. Shipping Bill for Export No. 1554103 concerns Clutch Auto Invoice No. EX/2005-2006/72. (Shipping Bill for Export No. 1554103 at 1 (ALJ App. 64).)

32. Shipping Bill for Export No. 1554103 indicates that Clutch Auto is the exporter. (Shipping Bill for Export No. 1554103 at 1 (ALJ App. 64).)
33. Shipping Bill for Export No. 1554103 indicates that D&W is the consignee. (Shipping Bill for Export No. 1554103 at 1 (ALJ App. 64).)
34. On December 13, 2005, the India Office of Customs authorized export of the automotive parts sold by Clutch Auto to D&W through Clutch Auto Invoice No. EX/2005-2006/72. (Shipping Bill for Export No. 1554103 at 4 (ALJ App. 64).)
35. On December 14, 2005, Rosmarine issued International Touch Bill of Lading No. RSPL/DEL/BAL/05151. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 1).)
36. Rosmarine issued International Touch Bill of Lading No. RSPL/DEL/BAL/05151 as agent for International Touch. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17); Reply on Behalf of Rosmarine Shipping Private Limited, New Delhi, India (Rosmarine Reply) received May 1, 2007, Annexure IV (email dated Feb. 25, 2006 from Raymond.Wu@itcny.com to VKM@CLUTCHAUTO.COM and others) (ALJ App. 34); Fax cover sheet dated August 10, 2006, from International Touch Consolidator, Inc., to Venetia D. Bell, FMC Settlement Officer (ALJ App. 37).)
37. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 describes the shipment as 300 cartons of automotive parts packed on twenty pallets “as per invoice No. EX/2005-2006/72 DTD: June 22, 2005.” (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)

38. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 indicates that the shipment of automotive parts from Clutch Auto to D&W is contained in one twenty foot container, FCL/FCL, container No. IPXU-3304500/20. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)
39. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 identifies Clutch Auto as the exporter. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)
40. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 indicates that the shipment is consigned "To Order." (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)
41. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 identifies D&W as the party to be notified when the shipment arrives. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)
42. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 indicates that the export carrier is C P Kanha, voyage 5151. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)
43. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 states "freight prepaid at Delhi, subject to realization." (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)
44. International Touch Bill of Lading No. RSPL/DEL/BAL/05151 indicates that origin inland hauling charges are prepaid. (International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 (ALJ App. 17).)

45. On December 26, 2005, Hitos issued MacAndrews ocean Bill of Lading MCAWDELORF00157 as agent for MacAndrews. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
46. Ocean Bill of Lading MCAWDELORF00157 pertains to container No. IPXU-3304500/20. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
47. Ocean Bill of Lading MCAWDELORF00157 indicates that Rosmarine is the shipper of container No. IPXU-3304500/20. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
48. Ocean Bill of Lading MCAWDELORF00157 indicates that International Touch is the consignee of container No. IPXU-3304500/20. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
49. Ocean Bill of Lading MCAWDELORF00157 indicates that APL Alexandrite is the vessel carrying container No. IPXU-3304500/20. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
50. Ocean Bill of Lading MCAWDELORF00157 states the number and kind of package description of goods as 300 cartons of automotive parts packed on twenty pallets. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
51. Ocean Bill of Lading MCAWDELORF00157 states that the packages are marked "D&W Baltimore." (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
52. Ocean Bill of Lading MCAWDELORF00157 indicates that Norfolk is the port of discharge for container No. IPXU-3304500/20. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)

53. Ocean Bill of Lading MCAWDELORF00157 indicates that Baltimore (ramp) is the place of delivery of container No. IPXU-3304500/20. (MacAndrews Bill of Lading MCAWDELORF00157 (ALJ App. 38).)
54. On December 22, 2005, International Touch issued an Arrival Notice/Remarks for House B/L No. RSPL/DEL/BAL/05151, MS HB/L No. MCAWDELORF00157A, and Ocean Bill of Lading No. MCAWDELORF00157. (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
55. The Arrival Notice/Remarks identifies the vessel as APL ALEXANDRIT [*sic*]/5152W. (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
56. The Arrival Notice/Remarks indicates that the Port of Loading was India. (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
57. The Arrival Notice/Remarks indicates that the ETD for the shipment was December 27, 2005. (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
58. The Arrival Notice/Remarks indicates that discharge will be at Norfolk on January 16, 2006. (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
59. The Arrival Notice/Remarks indicates the final destination to be Baltimore on January 24, 2006. (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
60. On or about January 24, 2006, International Touch added the following remarks by typeface to International Touch's Arrival Notice: "Remarks: Be advised, please not[e] that this container ha[s] been place[d] on hold by S. Line due to charges at origin. Please contact your shipper at origin A.S.A.P. Last free day at ramp [January 27, 2006]." (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)

61. On or about February 3, 2006, International Touch added the following remarks by hand to International Touch's Arrival Notice: "Shipment still on hold. Please contact your" (International Touch Consolidator Inc. Arrival Notice/Remarks (ALJ App. 68).)
62. When the container No. IPXU-3304500/20 arrived at Baltimore, it was in the custody of MacAndrews. (Respondent International Touch Answer to Clutch Auto Complaint at ¶ 5 (ALJ App. 43).)
63. D&W surrendered International Touch Consolidator, Inc., Bill of Lading No. RSPL/DEL/BAL/05151 to International Touch. (D&W Complaint at 2 (ALJ App. 9).)
64. MacAndrews refuses to release the shipment until Rosmarine submits MacAndrews Bill of Lading MCAWDELORF00157. (Affidavit of Raymond Wu in Support of International Touch Motion for Summary Judgment ¶¶ 7, 9 (ALJ App. 70); Affidavit of Rajesh Bhatia in Support of Motion for Summary Judgment ¶¶ 7, 9 (ALJ App. 73).)

**PAYMENTS FOR THE MERCHANDISE AND FOR
SHIPMENT OF THE MERCHANDISE**

65. On December 15, 2005, Rosmarine issued Debit Note ROS/DEL490 to Clutch Auto for B/L RSPL/DEL/BAL/05151 for 130,158 Indian Rupees. (Rosmarine Shipping Pvt. Ltd. Debit Note ROS/DEL490 (ALJ App. 75).)
66. Debit Note ROS/DEL490 indicates the following charges: ocean freight 102,740 Indian Rupees (US\$2200); B/L charges 750 Indian Rupees; IHC 25500 Indian Rupees; ACD - 20' 1168 Indian Rupees (US\$25). (Rosmarine Shipping Pvt. Ltd. Debit Note ROS/DEL490 (ALJ App. 75).)

67. On January 15, 2006, Clutch Auto issued check No. 954571 drawn on Canara Bank, Account No. DGGA000010007, in the amount of 150,000 Indian Rupees pay to the order of Rosmarine. (Clutch Auto Complaint at 3 (ALJ App. 3); Clutch Auto Limited Cheque Payment Voucher dated December 15, 2005 (ALJ App. 76).)
68. Clutch Auto directed the application of check No. 954571 as follows: 130,158 Indian Rupees for Rosmarine Invoice No. 490; 19,842 Indian Rupees as “add. bal. on A/C payment.” (Clutch Auto Limited Cheque Payment Voucher dated December 15, 2005 (ALJ App. 76); Clutch Auto Response Order to Supplement the Record dated July 27, 2007, Ans. 1.b (ALJ App. 60).)
69. Clutch Auto check No. 954571 bounced when it was presented for payment. (April 27, 2007 Reply on Behalf of Rosmarine Shipping Private Limited at 2 (ALJ App. 19) and Annexure I.B at 5 (ALJ App. 31).)
70. On January 21, 2006, Canara Bank debited Clutch Auto Account No. DGGA000010007 for 150,000 Indian Rupees for check No. 954571 payable to Rosemarine [*sic*] Shipping Pvt. Ltd. (Clutch Auto Response Order to Supplement the Record dated July 27, 2007, Ans. 1.a (ALJ App. 59); Canara Bank “To whom so ever it may concern” dated 28 May 2007 (ALJ App. 77).)
71. Clutch Auto check No. 954571 represented payment of all ocean freight and related charges for the shipment of container No. IPXU-3304500/20. (Rosmarine Shipping Pvt. Ltd. Debit Note ROS/DEL490 (ALJ App. 75); Clutch Auto Limited Cheque Payment Voucher dated December 15, 2005 (ALJ App. 76); Canara Bank statement for Clutch Auto Ltd. Account No. DGGA000010007 (ALJ App. 77).)

72. D&W has not paid to Clutch Auto the US\$34,014.84 that it agreed to pay for the automotive parts. (Clutch Auto Response Order to Supplement the Record dated July 27, 2007, Ans. 3.a. (ALJ App. 60); 3.c (ALJ App. 61).)
73. D&W has not paid to Clutch Auto or any other entity for the cost of shipping the automotive parts. (Clutch Auto Response Order to Supplement the Record dated July 27, 2007, Ans. 3.b. (ALJ App. 61))

ATTEMPTS TO OBTAIN DELIVERY OF THE AUTOMOTIVE PARTS

74. International Touch released its original Bill of Lading No. RSPL/DEL/BAL/05151. (Respondent International Touch Answer to Clutch Auto Complaint at ¶ 5 (ALJ App. 43).)
75. D&W submitted original Bill of Lading No. RSPL/DEL/BAL/05151 to MacAndrews. (Clutch Auto Complaint at 3 (ALJ App. 3); D&W Complaint at 2 (ALJ App. 9).)
76. Rosmarine has refused to present MacAndrews ocean Bill of Lading MCAWDELORF00157. (Clutch Auto Complaint at 3 (ALJ App. 3); Respondent International Touch Answer to Clutch Auto Complaint at ¶ 5 (ALJ App. 43); Affidavit of Rajesh Bhatia in Support of Motion for Summary Judgment ¶ 6 (ALJ App. 73).)
77. Rosmarine refuses to present MacAndrews ocean Bill of Lading MCAWDELORF00157 until Clutch Auto pays all shipping charges, freight, cheque dishonor charges and interest that Rosmarine claims are owed to it by Clutch Auto for the shipment represented by MacAndrews ocean Bill of Lading MCAWDELORF00157 and for other unrelated shipments. (Rosmarine Reply (ALJ App. 18); Rosmarine Reply Annexure IIID (ALJ App. 32); Rosmarine Reply, Annexure IV (email dated Feb. 25, 2006 from

Raymond.Wu@itcn.com to VKM@CLUTCHAUTO.COM and others) (“Please note that this shipment is on a hold because (Clutch Auto @ India) has a previous outstanding balance with our agent (Rosmarine Shipping) in the amount of \$109,096.00 USD. [Container No. IPXU-3304500] will not be released to Clutch Auto until the outstanding balance of \$109,096.00 is recovered by Rosmarine.”) (ALJ App. 34); Affidavit of Rajesh Bhatia in Support of Motion for Summary Judgment ¶ 6-8 (ALJ App. 73).)

78. MacAndrews has refused to release the automotive parts sold by Clutch Auto to D&W through Clutch Auto Invoice No. EX/2005-2006/72 without presentment of MacAndrews original ocean Bill of Lading MCAWDELORF00157. (Respondent International Touch Answer to Complaint at ¶ 5 (ALJ App. 43); Affidavit of Rajesh Bhatia in Support of Motion for Summary Judgment ¶ 9 (ALJ App. 73).)
79. MacAndrews has possession of the automotive parts sold by Clutch Auto to D&W through Clutch Auto Invoice No. EX/2005-2006/72. (Respondent International Touch Answer to Complaint at ¶ 5 (ALJ App. 43).)

RELATIONSHIP BETWEEN CLUTCH AUTO AND ROSMARINE

80. Rosmarine and Clutch Auto are involved in litigation in a high court in India regarding Clutch Auto’s alleged non-payment of shipping charges, freight, cheque dishonor charges, and interest. (Rosmarine Reply Annexure VI (*M/S Rosmarine Shipping (P) Ltd. v. M/S Clutch Auto Ltd.*, Company Pet. No. 216 of 2006 (New Delhi H.C.)) (ALJ App. 36).)