

ORIGINAL

BEFORE THE FEDERAL MARITIME COMMISSION

2015 APR 21 PM 3 43

OFFICE OF THE SECRETARY
FEDERAL MARITIME COMMISSION

Rush Truck Centers of Arizona, Inc , Rush)
Truck Centers of California, Inc , Rush Truck)
Centers of Colorado, Inc , Rush Truck Centers)
of Florida, Inc , Rush Truck Centers of Georgia,)
Inc , Rush Truck Centers of Idaho, Inc., Rush)
Truck Centers of Kansas, Inc , Rush Truck)
Centers of North Carolina, Inc , Rush Truck)
Centers of Ohio, Inc., Rush Truck Centers of)
Oklahoma, Inc , Rush Truck Centers of Texas,)
LP , Rush Truck Centers of Utah, Inc , *on*)
behalf of themselves and all others similarly)
situated,)

Complainants,

v

Nippon Yusen Kabushiki Kaisha, NYK Line)
(North America) Inc , Mitsui O S.K. Lines Ltd.,)
Mitsui O S.K. Bulk Shipping (USA), Inc ,)
World Logistics Service (USA) Inc , Höegh)
Autoliners AS, Höegh Autoliners, Inc , Nissan)
Motor Car Carriers Co Ltd., Kawasaki Kisen)
Kaisha Ltd., "K" Line America, Inc , Wallenius)
Wilhelmsen Logistics AS, Wallenius)
Wilhelmsen Logistics Americas LLC, EUKOR)
Car Carriers Inc , Compañia Sud Americana de)
Vapores S.A., and CSAV Agency North)
America, LLC,)

Respondents



Docket No 16-10

COMPLAINT

PAYMENT RECEIVED
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TABLE OF CONTENTS

	Page
NATURE OF ACTION	.2
PARTIES	6
A. Complainants	6
B Respondents	9
JURISDICTION AND VENUE	15
FACTUAL ALLEGATIONS	16
A. The Vehicle Carrier Industry	16
B The Market Structure and Characteristics of the Market for Vehicle Carrier Services Support the Existence of the Conspiracy	20
1 The Vehicle Carrier Services Market Has High Barriers to Entry	20
2 There is Inelasticity of Demand for Vehicle Carrier Services.	22
3 The Market for Vehicle Carrier Services is Highly Concentrated.	23
4 The Services Provided by Vehicle Carriers are Highly Homogenous.	23
5 Respondents Have Had Ample Opportunities to Conspire	24
6 The Market for Vehicle Carrier Services Has Experienced Excess Capacity	27
C Respondents Conspired to Fix Prices and Allocate Customers and Routes in the Vehicle Carrier Services Market	28
1 Respondents Conspired to Inflate Prices of Vehicle Carrier Services Artificially	28
a. Coordination of Price Increases	.28
b Coordination of Responses to Price Reduction Requests	30
2 Respondents Conspired to Allocate Customers and Routes for Vehicle Carrier Services	31

3	Respondents Conspired to Restrict Capacity for Vehicle Carrier Services	33
4	Guilty Pleas in the Vehicle Carrier Services Industry	34
5	Government Fines in the Vehicle Carrier Services Industry	36
D	Other Evidence of Collusion in the Vehicle Carrier Services Market	38
1	Respondents Raised Prices at a Rate that Far Exceeded Demand	38
2	Respondents Previously Colluded in Different Markets	39
	CLASS ACTION ALLEGATIONS	41
	COMPLAINANTS AND THE TRUCK AND EQUIPMENT DEALER CLASSES SUFFERED INJURY IN VIOLATION OF THE SHIPPING ACT	45
	COMPLAINANTS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS	48
A.	The Statute of Limitations Did Not Begin to Run Because Complainants Did Not And Could Not Discover The Claims	48
B	Fraudulent Concealment Tolled the Statute of Limitations.	49
	VIOLATIONS OF THE SHIPPING ACT AND COMMISSION REGULATIONS	51
	Violation 1 – Violation of 46 U S C § 40302(a)	51
	Violation 2 – 46 U S C § 41102(b)(1)	51
	Violation 3 – 46 U S C § 41102(c)	52
	Violation 4 – 46 U S C § 41103(a)(1), (2)	52
	Violation 5 – 46 U S C § 41104(10)	53
	Violation 6 – 46 U S C § 41105(1), (6)	53
	Violation 7 – 46 C.F.R. § 535 401 <i>et seq</i>	54
	PRAYER FOR RELIEF	54

COMPLAINANTS¹ Rush Truck Centers of Arizona, Inc (“Rush AZ”), Rush Truck Centers of California, Inc (“Rush CA”), Rush Truck Centers of Colorado, Inc (“Rush CO”), Rush Truck Centers of Florida, Inc (“Rush FL”), Rush Truck Centers of Georgia, Inc (“Rush GA”), Rush Truck Centers of Idaho, Inc (“Rush ID”), Rush Truck Centers of Kansas, Inc (“Rush KS”), Rush Truck Centers of North Carolina, Inc (“Rush NC”), Rush Truck Centers of Ohio, Inc (“Rush OH”), Rush Truck Centers of Oklahoma, Inc (“Rush OK”), Rush Truck Centers of Texas, L.P (“Rush TX”), Rush Truck Centers of Utah, Inc (“Rush UT”), (collectively “Complainants”) file this Class Action Complaint² on behalf of themselves and all other similarly situated dealers of medium- and heavy-duty trucks, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles (the “Classes” as defined below)

Complainants bring this class action for injunctive relief, actual injury, interest, additional reparations up to twice the amount of actual injury, cost of suit, including attorneys’ fees and any other relief deemed appropriate by the Federal Maritime Commission based upon the Respondents’ violations of the Shipping Act of 1984, 46 U S C 40101 *et seq* , (the “Shipping Act”) They allege as follows

¹ This Complaint overlaps with a putative class action asserting claims under various antitrust and consumer protection laws with regard to the conduct alleged herein, now pending in the United States District Court for the District of New Jersey, titled *In re Vehicle Carrier Services Antitrust Litigation*, No 13-cv-3306 (D.N.J) The claims in the within Complaint are asserted in addition to or in the alternative to those claims asserted in *In re Vehicle Carrier Services Antitrust Litigation* Nothing herein shall be deemed to waive or otherwise compromise those claims asserted in *In re Vehicle Carrier Services Antitrust Litigation*

² Class actions are permissible before the Federal Maritime Commission pursuant to 46 C.F.R. § 502.12 See also *Mar Mol v Sea-Land Service, Inc* , 1997 WL 4000991 (FMC 1997)

NATURE OF ACTION

1 Complainants bring this lawsuit as a proposed class action against Respondents Nippon Yusen Kabushiki Kaisha (“NYK”), NYK Line (North America) Inc (“NYK America”), Mitsui O.S.K. Lines Ltd. (“MOL”), Mitsui O.S.K. Bulk Shipping (USA), Inc (“MOL USA”), World Logistics Service (USA) Inc (“WLS”), Höegh Autoliners AS (“Höegh”), Höegh Autoliners, Inc (“Höegh Inc”), Nissan Motor Car Carriers Co Ltd. (“NMCC”), Kawasaki Kisen Kaisha Ltd. (“K Line”), “K” Line America, Inc (“K” Line America”), Wallenius Wilhelmsen Logistics AS (“WWL”), Wallenius Wilhelmsen Logistics Americas LLC (“WWL Americas”), EUKOR Car Carriers Inc (“EUKOR”), Compañía Sud Americana de Vapores S.A. (“CSAV”), and CSAV Agency North America, LLC (“CSAV North America”) (all as defined below and hereafter collectively as “Respondents”),³ as unnamed co-conspirators, providers of Vehicle Carrier Services (as defined below) globally and in the United States, for engaging in multi-year long conspiracy to fix, raise, maintain, and/or stabilize prices and allocate the market and customers in the United States for Vehicle Carrier Services.

2 Complainants seek to represent classes of truck and heavy equipment dealers in approximately 30 states (“Truck and Equipment Dealer Classes”) who purchased new Vehicles (defined below) that included in their prices Vehicle Carrier Services from any Respondents, unnamed co-conspirator, or any current or former subsidiary or affiliate thereof, Vehicle Carrier Services incorporated into the price of they purchased during the period from January 1, 2000

³ During the course of the proceedings in *In re Vehicle Carrier Services Antitrust Litigation*, the putative classes reached settlements with MOL and K-Line Defendants. Currently pending before the District Court in *In re Vehicle Carrier Services Antitrust Litigation* is a motion for reconsideration which would allow MOL and K-Line Defendants’ settlements to be submitted and effectuated. See *In re Vehicle Carrier Services Antitrust Litigation*, 13-cv-3306 (September 9, 2105) [ECF No 278] In the event that the District Court effectuates these settlements during the pendency of the herein Complaint, the present action against MOL and K-Line Respondents will be dismissed

through such time as the anticompetitive effects of Respondents' conduct ceased (the "Class Period")

3 Respondents transport large numbers of cars, medium- and heavy-duty trucks, and other new, assembled motor vehicles including buses, commercial vehicles, construction equipment, mining equipment, and agricultural equipment (hereafter collectively "Vehicles") across oceans and other large bodies of water using specialized cargo ships known as Roll On-Roll Off vessels ("RoRos") As used herein, "Vehicle Carrier Services" refers to the paid ocean transportation of Vehicles by RoRo

4 Competition authorities in the United States, the European Union, Canada, and Japan have been investigating a possible global cartel among Vehicle Carriers since at least September 2012 The Antitrust Division of the United States Department of Justice ("DOJ") and Canada's Competition Bureau ("CCB") are investigating unlawful, anticompetitive conduct in the market for ocean shipping of cars, trucks, construction equipment, and other products The Japanese Fair Trade Commission ("JFTC") and the European Commission Competition Authority ("EC") have also conducted coordinated dawn raids at the Tokyo and European offices of several of the Respondents.

5 On February 27, 2014, the DOJ announced that Respondent CSAV agreed to plead guilty and pay a criminal fine of \$8.9 million for fixing the prices of Vehicle Carrier Services to and from the United States and elsewhere Counsel for Complainants believe, based on their experience with and observations of civil antitrust litigation following from other DOJ antitrust prosecutions, that one of the Respondents is an "amnesty applicant" under the DOJ's leniency program An individual or entity is only eligible for participation in that program if it self-reports its cartel behavior to the DOJ and is only entitled to the reduced damages provisions

of the Antitrust Criminal Penalties Enhancement Reform Act if it provides full and timely cooperation to the victims of the cartel

6 On September 26, 2014, the DOJ announced that Respondent K Line had agreed to plead guilty and pay a criminal fine of \$67.7 million for its involvement in a conspiracy to fix prices, allocate customers, and rig bids of international ocean shipping services for roll-on, roll-off cargo, such as cars and trucks, to and from the United States and elsewhere

7 On March 11, 2015, Respondent NYK pleaded guilty and agreed to pay a criminal fine of \$59.4 million for “participating in a combination and conspiracy, with its participation starting from at least as early as February 1997 and continuing until at least September 2012, to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for international ocean shipping services for roll-on, roll-off cargo” in violation of the antitrust laws

8 On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders totaling more than \$233 million against Respondents NYK, K Line, NMCC, and WWL for price-fixing Vehicle Carrier Services. NYK and WWL control about 70 percent of the global Vehicle Carrier Services market.

9 On July 1, 2015, Respondent NYK reached an agreement with the South African Competition Commission requiring that Respondent to pay an approximate \$8.5 million. The South African Competition Commission accused the Respondent of colluding with competitors on 14 offers it made to various automobile manufacturers to ship vehicles to and from South Africa.

10 On or about July 31, 2015, WWL reached a settlement with the South African Competition Commission requiring the Respondent to pay an approximate \$7.7 million. The

South African Competition Commission concluded that the Respondent had colluded on 11 tenders with its competitors in the transportation of Vehicles by sea issued by several automotive manufacturers to and from South Africa, including BMW, Toyota Motor Corporation, Nissan, and Honda, among others

11 The United States Federal Maritime Commission has likewise fined several of the respondents for violations of the Shipping Act arising from the allegations above. To date, the FMC has levied the following fines: K Line - \$1.1 million, NYK Line - \$1.225 million, CSAV - \$625,000, and MOL - \$1.3 million.

12 Respondents and their co-conspirators participated in a combination and conspiracy to suppress and eliminate competition in the Vehicle Carrier Services market by agreeing to fix, raise, stabilize, and/or maintain the prices of, and allocation of the market and customers for Vehicle Carrier services sold to Vehicle manufacturers ("OEMs") in the United States and elsewhere for the import and export of new, assembled Vehicles to and from the United States. The combination and conspiracy engaged in by the Respondents and their co-conspirators violates of the Shipping Act, including 46 U.S.C. §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR § 535.401, *et seq*

13 As a direct result of the anticompetitive and unlawful conduct of Respondents and their co-conspirators alleged in this Complaint, Complainants and the Truck and Equipment Dealer Classes paid artificially inflated prices for Vehicle Carrier Services incorporated into the price of new Vehicles they purchased during the Class Period in the United States, and have thereby suffered injury to their businesses and property.

14 Complainants and the Truck and Equipment Dealers Classes each paid a discrete and easily quantifiable overcharge per each Vehicle they received. On information and belief,

records held by Respondents and third-parties will demonstrate the specific transactions that led to the per-vehicle overcharge for each shipment affected by the Respondents' illegal conduct.

PARTIES

A. Complainants

15 Complainant Rush AZ is a Delaware corporation⁴ with its principal place of business in Arizona. Rush AZ is an authorized Peterbilt and Hino dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

16 Complainant Rush CA is a Delaware corporation with its principal place of business in California. Rush CA is an authorized Peterbilt, Hino, Isuzu, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States

17 Complainant Rush CO is a Delaware corporation with its principal place of business in Colorado. Rush CO is an authorized Peterbilt, Isuzu, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States

18 Complainant Rush FL is a Delaware corporation with its principal place of business in Florida. Rush FL is an authorized Peterbilt, Hino, and Isuzu dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

19 Complainant Rush GA is a Delaware corporation with its principal place of business in Georgia. Rush GA is an authorized International, Hino, Isuzu, and IC Bus dealer that

⁴ All Complainants can be contacted at Rush Enterprises, Inc , Office of the General Counsel, 555 IH-35 South Suite 500, New Braunfels, Texas 78130

buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

20 Complainant Rush ID is a Delaware corporation with its principal place of business in Idaho. Rush ID is an authorized International, Autocar, and IC Bus dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

21 Complainant Rush KS is a Delaware corporation with its principal place of business in Kansas. Rush KS is an authorized Hino and Isuzu dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

22 Complainant Rush NC is a Delaware corporation with its principal place of business in North Carolina. Rush NC is an authorized International, Peterbilt, Hino, and Isuzu dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

23 Complainant Rush OH is a Delaware corporation with its principal place of business in Ohio. Rush OH is an authorized International, IC Bus, Isuzu, Ford, and Mitsubishi dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

24 Complainant Rush OK is a Delaware corporation with its principal place of business in Oklahoma. Rush OK is an authorized Peterbilt, Hino, Isuzu, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

25 Complainant Rush TX is a Texas limited partnership with its principal place of business in Texas. Rush TX is an authorized Peterbilt, Hino, Isuzu, Blue Bird, Micro Bird, Elkhart, and Ford dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

26 Complainant Rush UT is a Delaware corporation with its principal place of business in Utah. Rush UT is an authorized International, IC Bus, Autocar, and Mitsubishi Fuso dealer that buys and then sells Vehicles that were shipped via RoRo by one or more of the Respondents or their co-conspirators from the Vehicles' country of origin to the United States.

27 During the class period, each Complainant purchased Vehicles which were carried by Respondents. During the course of transport or on arrival, Complainants took title to the Vehicles. Complainants indirectly paid Respondents for Vehicle Carrier Services, and at all times were the intended beneficiaries of their Respondents' Vehicle Carrier Services, and due to the nature of the relevant markets, transactions, and practices, Complainants were directly affected by Respondents' violations of the Shipping Act. Complainants were also the recipients of goods transported by Vehicle Carrier Services (*i.e.* the Vehicles are delivered to the Complainants and the Truck and Equipment Dealers Classes), and/or the intended beneficiaries of Vehicle Carrier Services. Complainants are owners or beneficial owners of the Vehicles at issue in this action. The Respondents' conduct and overcharges (which are identifiable on a per Vehicle basis), most directly impacted the Complainants.

28 The Vehicles of Complainants are not bulk commodities or large quantities of fungible low-cost items. Rather, the Vehicles of Complainants are individual items, accounted for separately and specifically. So too, the Vehicle Carrier Services supplied for each Vehicle

are accounted for separately and specifically. During the course of transport or on the arrival of the Vehicles, Complainants' interests are insurable, transferable, restitutionary, and collateralizable interests: an insurable interest; an interest that was transferable to others for payment or otherwise, an interest, as to damage or loss, justifying restitution from Respondents or others, and, an interest that could be pledged as collateral for loans. Complainants' interest, during the course of transport or on arrival, was legal and/or equitable in nature. The further destinations of transport of the Vehicles on arrival was determined by the locations of Complainants.

B. Respondents

29 Respondent NYK is a Japanese company. Its principal place of business is 3-2, Marunouchi 2 Chome, Chiyoda-Ku, Tokyo, 100-0005, Japan. NYK has subsidiaries acting as its agents in the United States and has offices throughout the country, including headquarters in Secaucus, NJ. NYK, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, shipped Vehicles into the United States during the Class Period. NYK, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, also marketed, sold, or provided Vehicle Carrier Services in the United States, during the Class Period. In violation of the Shipping Act, NYK facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

30 Respondent NYK America is a wholly owned subsidiary of Respondent NYK. It is headquartered at 300 Lighting Way, Secaucus, New Jersey 07094 and acts as Respondent NYK's agent in the United States. At all times during the Class Period, the activities of NYK America in the United States were under the control and direction of NYK, which controlled its policies, sales, and finances. NYK America shipped Vehicles into the United States during the Class Period. NYK America also marketed, sold, or provided Vehicle Carrier Services

throughout the United States, during the Class Period. In violation of the Shipping Act, NYK America facilitated and/or implemented the secret agreements and/or agreements between the conspirators

31 Respondent MOL is a Japanese company. Its principal place of business is at 1-1 Toranomom 2-Chome, Minato-ku, Tokyo, 105-8688, Japan. MOL has subsidiaries acting as its agents in the United States and has offices throughout the country, including headquarters in Lombard, Illinois. MOL, directly or through its wholly owned and/or controlled subsidiaries, shipped Vehicles into the United States during the Class Period. MOL, directly or through wholly owned and/or controlled subsidiaries, marketed, sold, or provided Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, MOL facilitated and/or implemented the secret agreements and/or agreements between the conspirators

32 Respondent MOL USA is a wholly owned subsidiary of MOL and is a New Jersey corporation with its principal place of business at Harborside Financial Center, Plaza Five, Suite 1710, Jersey City, New Jersey 07311. MOL USA acts as Respondent MOL's agent in the United States. At all times during the Class Period, the activities of MOL USA were under the control and direction of MOL, which controlled its policies, sales, and finances. MOL USA shipped Vehicles into the United States during the Class Period. MOL USA also marketed, sold, or provided Vehicle Carrier Services throughout the United States during the Class Period. In violation of the Shipping Act, MOL USA facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

33 Respondent WLS is a wholly owned subsidiary of MOL and is a California corporation headquartered in Long Beach, California, with its principal place of business at 111

West Ocean Blvd., Suite 1040, Long Beach, California 90802. WLS acts as Respondent MOL's agent in the United States. At all times during the Class Period, the activities of WLS were under the control and direction of MOL, which controlled its policies, sales, and finances. WLS shipped Vehicles into the United States during the Class Period. WLS also marketed, sold, or provided Vehicle Carrier Services throughout the United States during the Class Period. In violation of the Shipping Act, WLS facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

34 Respondent Höegh is a Norwegian company, with its principal place of business at P O Box 4, Skoyen, 0212, Oslo, Norway. Höegh Inc is a wholly owned subsidiary of Höegh with its principal place of business at 2615 Port Industrial Drive, Suite 405, Jacksonville, Florida 32226. Höegh has subsidiaries acting as its agents in the United States. Höegh and Höegh Inc, directly and/or through their subsidiaries, which they wholly owned and/or controlled—shipped Vehicles to and from the United States during the Class Period. Höegh and Höegh Inc. also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States during the Class Period. In violation of the Shipping Act, Höegh and Höegh Inc facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

35 Respondent NMCC is a Japanese company with its principal place of business at 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan. NMCC is owned, in part, by MOL and Nissan Motor Company. At all times during the Class Period, NMCC shipped Vehicles to and from the United States during the Class Period. NMCC also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States during the Class Period. In violation of the Shipping Act, NMCC facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

36 Respondent "K" Line is a Japanese company with its principal place of business at 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540, Japan. "K" Line has subsidiaries acting as its agents in the United States. "K" Line, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, shipped Vehicles into the United States during the Class Period. "K" Line, directly or through its wholly owned and/or controlled subsidiaries and joint ventures, also marketed, sold, or provided Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, "K" Line facilitated and/or implemented the secret agreements and/or agreements between the conspirators

37 Respondent "K" Line America is a wholly owned subsidiary of Respondent "K" Line. Its principal place of business is 8730 Stony Point Parkway, Suite 400, Richmond, Virginia 23235. "K" Line America acts as Respondent "K" Line's agent in the United States. At all times during the Class Period, the activities of "K" Line America in the United States were under the control and direction of "K" Line, which controlled its policies, sales, and finances. "K" Line America shipped Vehicles into the United States during the Class Period. "K" Line America also marketed, sold, or provided Vehicle Carrier Services in the United States the Class Period. In violation of the Shipping Act, "K" Line America facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

38 Respondent WWL is a Norwegian-Swedish company with its principal place of business at Strandveien 20, No-1366 Lysaker, Norway. It is a joint venture between Wallenius Lines AB and Wilh. Wilhelmsen ASA that operates most of those companies' vessels and is the contracting party in customer contracts with Vehicle manufacturers for RoRo services. WWL has offices throughout the United States and has subsidiaries that act as its agents in the United States. WWL, directly or through its wholly owned and/or controlled subsidiaries and joint

ventures, shipped Vehicles into the United States during the Class Period. WWL, directly or through its wholly owned and/or controlled subsidiaries or joint ventures, also marketed, sold, or provided Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, WWL facilitated and/or implemented the secret agreements and/or agreements between the conspirators

39 Respondent WWL Americas is a New Jersey limited liability company headquartered at 188-Broadway, Woodcliff Lake, New Jersey 07677. WWL Americas acts as Respondent WWL's agent in the United States. At all times during the Class Period, the activities of WWL Americas in the United States were under the control and direction of WWL, which controlled its policies, sales, and finances. WWL Americas shipped Vehicles into the United States during the Class Period. WWL Americas also marketed, sold, or provided Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, WWL Americas facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

40 Respondent EUKOR is a South Korean company with its principal place of business at 24th Floor, Gangnam Finance Center, 152 Teheran-ro, Gangnam-gu, Seoul, South Korea, 135-984. It has offices throughout the United States, including at 1 Bridge Plaza North #430, Fort Lee, New Jersey 07024, and has subsidiaries acting as its agents in the United States, including in New Jersey. EUKOR shipped Vehicles into the United States during the Class Period. EUKOR, directly or through its wholly owned and/or controlled subsidiaries, also marketed, sold, or provided Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, EUKOR facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

41 Respondent CSAV is a Chilean company with its principal place of business at Catie Sotomayor 50, Valparaiso, Chile. CSAV has offices throughout the United States, including in Iselin, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. CSAV shipped Vehicles into the United States during the Class Period. CSAV, directly or through its wholly owned and/or controlled subsidiaries, also marketed, sold, or provided Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, CSAV facilitated and/or implemented the secret agreements and/or agreements between the conspirators

42 Respondent CSAV North America is a wholly owned subsidiary of Respondent CSAV and is a limited liability company headquartered at 99 Wood Avenue South, 9th Floor, Iselin, New Jersey 08830. CSAV North America acts as CSAV's agent in the United States and is the exclusive maritime agent for CSAV in the United States. At all times during the Class Period, the activities of CSAV North America in the United States were under the control and direction of CSAV, which controlled its policies, sales, and finances. CSAV North America shipped Vehicles into the United States during the Class Period. CSAV North America also marketed, sold, or provided its Vehicle Carrier Services in the United States during the Class Period. In violation of the Shipping Act, CSAV North America facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

43 Each Respondent acted as the principal of or agent for the other Respondents with respect to the acts, violations, and common course of conduct alleged herein. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as Respondents in this lawsuit, and individuals, the identities of which are presently unknown, have participated as co-conspirators with Respondents in the offenses alleged in this Complaint, and

have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anticompetitive conduct.

44 Whenever in this Complaint reference is made to any act, deed or transaction of any corporation or limited liability entity, the allegation means that the corporation or limited liability entity engaged in the act, deed or transaction by or through its officers, directors, agents, employees or representatives while they were actively engaged in the management, direction, control or transaction of the corporation's or limited liability entity's business or affairs.

JURISDICTION AND VENUE

45 Complainants bring this action under 46 U S C §§ 40302(a), 41102(b)(l), 41102(c), 41103(a)(l) and (2), 41104(10), 41105(1) and (6), and 46 C.F.R. § 535 401, *et seq* Complainants seek reparations, additional relief up to double reparations, costs of suit, attorneys' fees, and all other relief deemed appropriate under the Shipping Act for Respondents' and their co-conspirators' violations of the Shipping Act.

46 The Federal Maritime Commission has jurisdiction over this Complaint under the Shipping Act of 1984, 46 U S C § 40101 *et seq* This 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. These statutory violations include, but are not limited to, 46 U S C §§ 40302(a), 41102(b)(l), 41102(c), 41103(a)(l) and (2), 41104(10), 41105(1) and (6), and 46 C.F.R. § 535 401, *et seq*

47 The conduct of Respondents and their co-conspirators involved United States import trade or import commerce and/or were within the flow of, were intended to, and did have a direct, substantial, and reasonably foreseeable effect on United States domestic and import trade or commerce Respondents' illegal conduct involved United States import trade or import commerce In particular, it involved the manner in which Respondents and their co-conspirators

transported Vehicles for importation to the United States and delivery to Complainants. Respondents' and their co-conspirators' conspiracy also directly and substantially affected the price of Vehicle Carrier Services, resulting in artificially inflated prices for Vehicles purchased or leased during the Class Period.

48 The Commission has jurisdiction over each Respondent named in this complaint. Each is a "common carrier" and "ocean common carrier" as defined in the Shipping Act. 46 U S C § 40102 (6) and (17) Their concerted and conspiratorial actions, described herein, are within the scope of activity governed by the Shipping Act. 46 U S C § 40301(a) Respondents and their co-conspirators purposefully availed themselves of the laws of the United States, particularly insofar as they provided Vehicle Carrier Services to customers at ports in the United States Respondents' and their co-conspirators' conspiracy affected in Vehicle Carrier Services in United States commerce by, as noted, imposing illegally inflated costs for Vehicle Carrier Services on Complainants during the Class Period.

FACTUAL ALLEGATIONS

A. The Vehicle Carrier Industry

49 The ocean shipping industry is comprised of multiple sectors and multiple types of vessels, including bulk carriers, tankers, and vehicle carriers. The conduct at issue in this action occurred in the vehicle carrier industry Vehicle carriers ship Vehicles as well as other so-called "high and heavy" cargo—cargo that is bigger and heavier than a Vehicle and requiring special shipping arrangements—and small, ancillary, non-movable cargo such as, for example, the plow blade for a plow truck

50 The vehicle carrier industry involves ocean shipping via RoRo ships. A RoRo ship is a special type of ocean vessel that allows wheeled vehicles to be driven and parked on its decks for long voyages. These ships, also known as vehicle carriers ("Vehicle Carriers"), have

special ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to allow storage of a large number and variety of vehicles.

51 There are various types of RoRo ships. A pure car carrier (“PCC”) is like a floating parking garage that transports Vehicles. PCCs generally have multiple levels of parking for Vehicles, which levels are often moveable to accommodate high and heavy cargo. A pure car and truck carrier (“PCTC”) transports cars, trucks, and other wheeled vehicles using a slightly different configuration than the typical PCC.

52 In the market for Vehicle Carrier Services, there is a distinction between “deep sea services” and “short sea services.” Deep sea vessels are large and transport thousands of Vehicles between continents. Short sea vessels are smaller and transport fewer Vehicles than deep sea vessels over shorter distances. Short sea vessels can enter smaller ports and shallower waters than deep sea vessels.

53 A significant portion of the demand for deep sea services using RoRos involves the shipping of Vehicles. Consequently, the main ocean routes for such services connect major vehicle manufacturing countries with major import markets for Vehicles. Such countries typically have several ports of call, and vessels generally sail in rotation, visiting a sequence of ports.

54 Vehicle Carriers are a defined subdivision of the larger bulk shipping market. While oceangoing container ships allow a wide range of goods to be packed in standard sized containers for quick loading and delivery, cars, trucks and other types of Vehicles are not easily shipped in such containers due to their larger sizes and more irregular shapes and must, consequently, be shipped via Vehicle Carrier. There are no reasonable substitutes to Vehicle Carrier Services because other shipping alternatives, such as shipping by air, would be too

costly, and ground shipping would be impossible due to geographic considerations, among other things.

55 Respondents and their co-conspirators provide Vehicle Carrier Services to OEMs for transportation of Vehicles from their country of origin to the country where they will be sold, including the United States, where the Vehicles are then delivered to Complainants and the other members of the Truck and Equipment Dealer Classes. The OEMs or their agents directly purchase Vehicle Carrier Services from Respondents. Complainants and the Truck and Equipment Dealer Classes are then billed in full and pay in full for the Vehicle Carrier Services when they purchase Vehicles from the OEMs with which they do business.

56 The Respondents engage in three different types of pricing negotiations with OEMs

- Bilateral negotiations, whereby an OEM renews a carriage contract with a provider of Vehicle Carrier Services,
- Price reduction requests, whereby an OEMs seeks lower freight rates from a provider of Vehicle Carrier Services, and
- Tenders, whereby an OEM invites multiple providers of Vehicle Carrier Services to bid for a new or renewed contract award. Tenders involve an initial round of bids followed by a second round of bids

57 The contract period between a non-Japanese OEM and a provider of Vehicle Carrier Services, including the Respondents, is typically two or three years in duration. The contract period between a Japanese OEM and a provider of Vehicle Carrier Services, including the Respondents, is typically one year in duration.

58 In Japan, OEMs typically negotiate with the incumbent Vehicle Carrier when a contract is due to expire, rather than engage in a tender process. Vehicle Carrier Services contracts usually expire in April of each year, and contract renewal negotiations often begin in December of the prior year.

59 American OEMs often employ a tender process to award Vehicle Carrier Services contracts.

60 Whether negotiated bilaterally or awarded by tender, contracts for Vehicle Carrier Services generally cover global requirements for the applicable contract period, though rates for each route are often negotiated separately

61 Contract freight rates for Vehicle Carrier Services are set on a per-unit basis. For instance, rates for new, assembled Vehicles are typically set by a “per car” price. However, rates for high and heavy cargo are set based on weight or cubic meter

62 Respondents also impose surcharges in addition to standard rates for Vehicle Carrier Services. Primary surcharges imposed by Respondents are

- The Bunker Adjustment Factor (“BAF”), which relates to fuel, and
- The Currency Adjustment Factor (“CAF”), which relates to the fluctuation of currency exchange rates

63 Respondents and their co-conspirators provided Vehicle Carrier Services to OEMs for transportation of Vehicles to and from the United States and elsewhere. Respondents and their co-conspirators provided Vehicle Carrier Services in the United States for the transportation of Vehicles manufactured elsewhere for export to and sale in the United States, as well as in other countries for the transportation of Vehicles manufactured elsewhere for export to and sale in the United States

64 Complainants and members of the proposed Truck and Equipment Dealer Classes purchased Vehicles subject to Vehicle Carrier Services charged by one or more of the Respondents during the Class Period.

65 The market for the transportation of new, imported Vehicles manufactured elsewhere for export to and sale in the United States is between \$600 and \$800 million each year

B. The Market Structure and Characteristics of the Market for Vehicle Carrier Services Support the Existence of the Conspiracy

66 The structure and other characteristics of the Vehicle Carrier Services market are conducive to a price-fixing agreement and have made collusion particularly attractive. Specifically, the Vehicle Carrier Services market (1) has high barriers to entry, (2) has inelasticity of demand, (3) is highly concentrated, (4) is highly homogenized, (5) is rife with opportunities to meet and conspire, and (6) has excess capacity.

1 The Vehicle Carrier Services Market Has High Barriers to Entry

67 A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new sources of supply seeking to benefit from the supra-competitive pricing. When, however, there are significant barriers to entry, new entrants are much less likely to enter the market. Thus, barriers to entry help facilitate the formation and maintenance of a cartel.

68 There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Transporting Vehicles without damaging them across oceans requires highly specialized and sophisticated equipment, resources, and industry knowledge. The ships that make such transport possible are highly specialized. Those ships are built using an unusual design that includes especially high sides, multiple interior decks, and no container cargo space. These unique design characteristics restrict the use of such ships to the Vehicle Carrier Services market. A new entrant into the Vehicle Carrier Services market would face high start-up costs, including multi-million dollar costs associated with manufacturing or acquiring a fleet of Vehicle Carriers RoRos and other equipment, energy, transportation,

distribution infrastructure, and skilled labor, as well as a lengthy startup period. It is estimated that the cost of a single RoRo is at least \$95 million.⁵

69 Additionally, the nature of the Vehicle Carrier Services industry requires the establishment of a network of routes to serve a particular set of customers with whom a new supplier would seek to establish relationships, but with whom Respondents already have long-term relationships and contracts of significant duration presently in place. The existence of such routes and contracts increase switching costs for shippers and present an additional barrier to entry

70 The Vehicle Carrier Services market also involves economies of scale and scope, which present additional barriers to entry

(a) Economies of scale exist where firms can lower the average cost per unit through increased production, since fixed costs are shared over a larger number of units. Vehicle Carriers are less sensitive to fuel prices than other modes of transportation, providing opportunities to exploit economies of scale. As fuel prices increased in the last five to ten years, market participants were incentivized to increase the average size of vessels. This reflects the presence of economies of scale, because fuel costs did not increase proportionally as vessel size grew.

(b) Economies of scope exist where firms achieve a cost advantage from providing a wide variety of products or services. The major Vehicle Carriers, including Respondents, own related shipping or transportation businesses they can utilize to provide additional services to clients, such as the operation of dedicated shipping terminals and inland transportation of Vehicles.

⁵ Asaf Ashar, *Marine Highways' New Direction*, J OF COMMERCE, 38 (Nov 21, 2011)

2. There is Inelasticity of Demand for Vehicle Carrier Services

71 “Elasticity” is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be “inelastic” if an increase in the price of a product results in only a small decline or no decline in the quantity sold of that product. In such circumstances, customers have nowhere to turn for alternative, cheaper products of similar quality, and so those customers continue to purchase despite the price increase.

72 For a cartel to profit from raising prices above competitive levels, demand must be relatively inelastic at competitive prices. Otherwise, increased prices would result in declining sales, revenues, and profits as customers turn to substitute products or decline to buy altogether. Inelastic demand is a market characteristic that facilitates collusion because it allows producers to raise their prices without triggering customer substitution and lost sales revenue.

73 Demand for Vehicle Carrier Services is highly inelastic. This is because there are no close substitutes for those services. A Vehicle Carrier is the only type of ocean vessel that has the carrying capacity for a large number of Vehicles. A Vehicle Carrier is also more versatile than other substitutes because it is built to adjust to various shapes and sizes of Vehicle cargo. Because a container ship requires uniformity in the size of the cargo—everything must fit within the standardized containers—it is not conducive to transporting larger and more irregularly-shaped goods, such as cars, trucks, and heavy equipment. OEMs that fabricate Vehicles overseas must employ Vehicle Carrier Services to facilitate the sale of their Vehicles in North America, regardless of whether prices for Vehicle Carrier Services are at *supra*-competitive levels. Such OEMs simply have no viable alternative to high volume transoceanic transportation of Vehicles to the United States.

3 The Market for Vehicle Carrier Services is Highly Concentrated

74 A concentrated market is more susceptible to collusion and other anticompetitive conduct.

75 Respondents dominate the global Vehicle Carrier Services market, controlling among themselves over 70 percent of the Vehicle Carrier Services market during the Class Period.⁶

4 The Services Provided by Vehicle Carriers are Highly Homogenous

76 Vehicle Carrier Services are a commodity-like service and are interchangeable among the providers of those services.

77 When products or services offered by different suppliers are viewed by purchasers as interchangeable, it is easier for the suppliers to agree with each other on the price to be charged for the product or service in question, and it is easier for those suppliers to police effectively the collusively set prices which, in turn, makes it easier to form and sustain an unlawful cartel

78 Vehicle Carrier Services are qualitatively the same across different carriers. Each Respondent has the capability to provide the same or similar Vehicle Carrier Services. Purchasers of Vehicle Carrier Services make purchase decisions based primarily on price. The commoditization and interchangeability of Vehicle Carrier Services facilitated the Respondents' conspiracy by making coordination on price much simpler than if Respondents had many distinct products or services with varying and differentiating features.

⁶ Hesnes Shipping AS, The Car Carrier Market 2010

5. Respondents Have Had Ample Opportunities to Conspire

79 The shipping industry has been characterized as a small world where many of the key figures know each other. Among the key figures are NYK's president, Yasumi Kudo, MOL's president, Koichi Muto, and "K" Line's former president, Kenichi Kuroya.

80 Respondents attended industry events where they had the opportunity to meet, have improper discussions under the guise of legitimate business contacts, and perform acts necessary for the operation and furtherance of the conspiracy. For example, there are frequent trade shows for shipping companies around the globe, such as the Breakbulk conferences,⁷ and the biennial RoRo trade show in Europe.

81 Many employees of the Respondents have spent their entire professional careers in the shipping industry. In several instances, key employees have moved from a position with one of the Respondents to a position at another of the Respondents. This, coupled with the other circumstances present in the shipping industry, fostered familiarity and connections between professed competitors and facilitated the high-level coordination of the conspiracy among the Respondents. For example, for the first eight years of his career, Carl-Johan Hagman worked for WWL. He then served as Chairman and CEO for EUKOR from at least 2003 through 2007 and in 2008, became the CEO of Höegh.

82 Respondents are members of several shipping industry trade associations that have provided opportunities for the Respondents to meet under the auspices of legitimate business purposes. For example, several of the Respondents are members of the ASF Shipping

⁷ Breakbulk Magazine provides its readers with project cargo, heavy lift and RoRo logistics intelligence including news, trending, data and metrics. Breakbulk Magazine's global events include Breakbulk Transportation Conferences & Exhibitions, which "are the largest international events focused on traditional breakbulk logistics, heavy-lift transportation and project cargo trade issues." The conferences provide opportunities to "meet with specialized cargo carriers, ports, terminals, freight forwarders, heavy equipment transportation companies and packers." Source: <http://www.breakbulk.com/breakbulk-global-events/>

Economics Review Committee Among the meetings of that Committee was a meeting on March 2, 2010 in Tokyo, Japan that was attended by senior executives from NKY, MOL, and “K” Line

83 Respondents CSAV (through CSAV Group North America), NYK America, “K” Line America, MOL (through MOL (America), Inc), and WWL America are members of the United States Maritime Alliance, Ltd.

84 Respondents “K” Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc

85 Respondents “K” Line, MOL (through MOL (America), Inc), NYK, and WWL are members of the Pacific Maritime Association.

86 Respondents CSAV, “K” Line, MOL, NYK Line, and WWL are members of the World Shipping Council, and Respondents CSAV, “K” Line, MOL, and NYK were members of the European Liner Affairs Association, which was ultimately absorbed by the World Shipping Council

87 Respondents NYK, “K” Line, and MOL are members of the Japan Shipowners’ Association, a shipping industry trade association based in Japan.

88 These industry trade associations and the meetings, trade shows, and other industry events that they organized and attended provided Respondents with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy

89 In addition to participating in several trade associations with one another, Respondents also did business directly with one another For example, Respondents routinely entered into vessel-sharing agreements whereby they reserved space on each other’s ships. Such sharing or chartering agreements are common in the international marine shipping industry

90 Chartering agreements entered into between the Respondents were primarily of two types: space charters and time charters. A “space charter” is a chartering agreement by which one shipping carrier charters space on another shipping carrier’s vessel. The opportunity for a space chartering agreement arises when one shipping carrier has less than full capacity on one of its vessels and another shipping carrier needs additional capacity. A “time charter” is a chartering agreement by which one shipping carrier fully charters another shipping carrier’s vessel for a certain period of time or particular voyage. The opportunity for a time charter arises when a shipping carrier would otherwise send a vessel home empty and another shipping carrier needs shipping space.

91 While ostensibly entered into in order to optimize utilization capacity and increase efficiency, such sharing and chartering agreements also provided opportunities for the Respondents to enact, coordinate, and police their conspiracy by, among other things, discussing Vehicle Carrier Services market shares, routes, and rates, as well as price fixing, bid rigging, and market and customer allocation.

92 The very nature of the negotiations between Vehicle Carriers and OEMs also facilitated collusion among the Respondents. As explained by an executive from WWL in a publication called *Automotive Supply Chain* in 2012, using Japan as an example

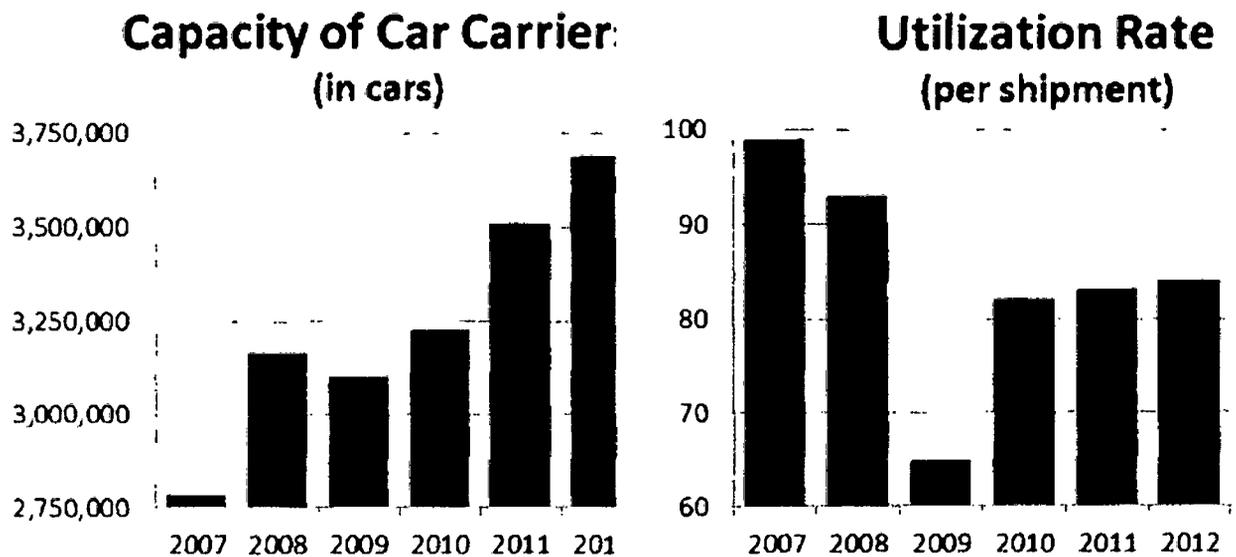
[T]he manufacturers there, in order to get the right frequency, the right market coverage and the right ports, have often called in two, three, sometimes four shipping lines around the table and said that they would spread their volumes between them, depending on how competitive they were. The shipping lines have to work together to find ways of not having ships in the same position and ways of having one line deliver at the beginning of the month and another mid-month.⁸

⁸ *Profitability the key issue for RoRo carriers*, AUTO SUPPLY CHAIN (Oct. 4, 2012), available at <http://www.automotivesupplychain.org/features/133/77/Profitability-the-key-issue-for-RoRo-carriers/>

6. The Market for Vehicle Carrier Services Has Experienced Excess Capacity

93 Excess capacity occurs when a market is capable of supplying more of a product or service than is needed. This often means that demand is less than the output the market has the capability to produce. Academic literature suggests, and courts have found, that the presence of excess capacity can facilitate collusion.⁹

94 The market for Vehicle Carrier Services has operated in a state of excess capacity since 2008. The tables below¹⁰ demonstrate that while the capacity of Vehicle Carriers to transport Vehicles has increased since 2007, the utilization rate of Vehicle Carriers has fallen, and remained stable at a rate of approximately 83 percent since 2010.



95 In the face of such excess capacity, Respondents agreed to reduce capacity and increase prices through fleet reduction, also known as “scrapping” or “lay-ups.” Scrapping

⁹ See Benoit, J and Krishna, V, Dynamic Duopoly: Prices and Quantities, REV OF ECON STUDIES, 54, 23-36 (1987), Davidson, Carl & Deneckere, Raymond, Excess Capacity and Collusion, INT L ECON REV 31(3), 521-41 (1990), *In re High Fructose Corn Syrup Antitrust Litig*, 295 F 3d 651, 657 (7th Cir 2002)

¹⁰ Sources: The Car Carrier Market, 2004-2012, Hesnes Shipping AS and the Platou Report 2004-2012, respectively

involves taking a ship out of commission and rendering the vessel unusable. A “hot lay-up” involves taking a ship out of service while still retaining its crew to perform maintenance. A “cold lay-up” involves taking a vessel out of service and dismissing its crew. A ship that is laid-up may be re-commissioned, but doing so involves certain restart-up costs. A cold lay-up requires higher restart-up costs to re-commission a vessel than does a hot lay-up.

96 Respondents’ concerted, collusive efforts to reduce their fleets via scrapping and lay-ups decreased the availability of Vehicle Carrier Services and caused prices for such services to rise artificially during the Class Period.

C. Respondents Conspired to Fix Prices and Allocate Customers and Routes in the Vehicle Carrier Services Market

1. Respondents Conspired to Inflate Prices of Vehicle Carrier Services Artificially

a. Coordination of Price Increases

97 Respondents discussed Vehicle Carrier Services pricing with each other from as early as 1997. In February of 1997, Respondents “K” Line, MOL, and NYK met several times in Tokyo to discuss Honda’s upcoming renewal for the Japan to United States Vehicle shipping route. Representatives included Messrs. Itage and Tanaka of “K” Line and Messrs. Hagino and Kawano of NYK, who were present at one or more of these meetings.

98 Generally, one carrier will be the “lead” service provider for an OEM such as Honda, even as multiple carriers may provide services to that OEM during that same period.

99 In 1997, MOL had an existing business relationship with Honda. In connection with their meeting in February of 1997, “K” Line, MOL, and NYK agreed separately to request a price increase from Honda on the Japan to United States route. They also collectively agreed specifically to request a price increase for shipping Honda Accord automobiles, which were manufactured in the United States at that time, on the United States to Japan route.

100 In 2002, Respondents "K" Line and MOL shared approximately 50 percent of Volkswagen's business on shipping routes to the United States. Around that time, "K" Line and MOL agreed to seek a price increase of between 3 and 5 percent from Volkswagen.

101 In late 2007, Volkswagen issued a tender for the Europe to United States route "K" Line and MOL discussed the tender and agreed to seek a price increase from Volkswagen.

102 In late 2007 or early 2008, executives from Respondents "K" Line, MOL, and NYK met on several occasions to discuss a 10 percent increase in pricing for 2008 on the Japan to United States shipping route

103 In November of 2007, representatives of MOL and NYK agreed to increase prices for Vehicle Carrier Services in 2008 and persuaded "K" Line to do the same

104 In December of 2007, representatives of MOL and NYK met for dinner in Tokyo to discuss increased costs and the need for a corresponding increase in Vehicle Carrier Services pricing in 2008

105 On January 11, 2008, representatives of MOL, NYK, and "K" Line attended a lunch meeting at which MOL, NYK and "K" Line agreed that their joint objective would be to secure a price increase on Vehicle Carrier Services of between 5 percent and 7.5 percent. Those three companies then had a follow-up meeting at which they discussed how to implement the coordinated price increases. They agreed that each of them would take the lead to increase prices with those OEMs with whom they had the strongest business relationship

106 On January 28, 2008, representatives from MOL, NYK, and "K" Line met to discuss the 2008 price increase further and agreed on a target increase of 10 percent. Those entities then met the following month in furtherance of their agreement.

107 In November of 2011, Höegh and MOL executives had a dinner meeting in which they discussed pricing for the United States to West Africa Vehicle shipping routes, which both Respondents serviced

b. Coordination of Responses to Price Reduction Requests

108 In the fall of 2008, representatives from MOL, NYK and “K” Line communicated with one another about price increases and price negotiations with Mitsubishi. They agreed at that time on the amount of a price increase that each would seek from Mitsubishi for their Vehicle Carrier Services.

109 In 2009, Mitsubishi requested a price reduction from “K” Line, MOL, and NYK equal to the price increase enacted in 2008, as well as retroactive application of that reduction. MOL, NYK, and “K” Line discussed Mitsubishi’s request with one another and collusively agreed to limit the amount of the price reduction and to respond to Mitsubishi’s request with offers of identical reductions of 50 percent of the 2008 price increases.

110 In 2009, Suzuki sought a price reduction from MOL, NYK, and “K” Line. Representatives from MOL, NYK, and “K” Line met to discuss Suzuki’s request and all collusively agreed to reduce prices by the same amount. Similar collusive price reduction discussions occurred in 2010.

111 In September of 2011, Toyota informed MOL that MOL’s BAF and CAF surcharges were higher than those of its competitors and requested a price reduction. Mr. Watanabe, who became Manager of Americas Team for MOL’s Car Carrier Division in 2011, discussed its pricing for Toyota with Mr. Kawamura of NYK and Mr. Fugimoto of “K” Line. MOL subsequently agreed to Toyota’s request.

112 In 2012, Subaru sought a price reduction from MOL and NYK. Historically, NYK was the lead Vehicle Carrier Services provider for Subaru. MOL and NYK then collusively agreed to bid their existing prices to Subaru.

2. Respondents Conspired to Allocate Customers and Routes for Vehicle Carrier Services

113 In approximately 2001, MOL and Höegh discussed Honda Vehicle Carrier Services business from the United States to the Middle East with one another. MOL told Höegh that, while MOL was not the incumbent carrier for that particular route, MOL wanted the business and requested that Höegh refrain from bidding on that route and, in return, MOL promised to use certain of Höegh's vessels on the route if MOL was awarded the business. Höegh agreed and MOL subsequently won the bid. As it had promised, MOL chartered Höegh vessels for the route.

114 In response to a tender issued by General Motors ("GM") in 2001 or 2002, MOL asked WWL not to submit a competitive bid out of "respect" for MOL's incumbent business with GM. "Respect" is a term of art in Japanese business culture, which in various contexts could mean not bidding, or simply bidding a higher price. WWL agreed to do as MOL requested. MOL also asked NYK to submit a higher bid than MOL and told NYK what rate to bid. NYK agreed and submitted MOL's requested bid.

115 In 2002 or 2003, MOL spoke with WWL about a Ford tender. WWL was the incumbent Vehicle Carrier Services provider for Ford from Europe to the United States, and MOL wanted to secure Ford's business from Thailand to the United States. WWL and MOL agreed not to compete with each other for the Ford business, and WWL told MOL what rate to bid on the Europe to United States route. MOL submitted that bid. At the same time, MOL secured an agreement from Höegh not to compete with MOL for Ford's business on the Thailand

to United States route, and MOL agreed to “respect” Höegh’s Vehicle Carrier Services business relationship with Ford on routes from Africa to the Middle East.

116 In 2004, WWL agreed to “respect” MOL’s Vehicle Carrier Services business relationships with Daimler and BMW for the route from South Africa to the United States. In return, MOL agreed to “respect” WWL’s Vehicle Carrier Services business relationships with Daimler and BMW for the route from Europe to the United States.

117 In the fall of 2008, representatives from MOL, NYK, and “K” Line had discussions about an upcoming Mitsubishi tender and agreed on the routes each would seek. They agreed that NYK and “K” Line would seek the Vehicle Carrier Services business for Mitsubishi to the West Coast of the United States and the three companies agreed to share Mitsubishi’s East Coast business.

118 In 2008 or 2009, MOL asked “K” Line to “respect” its incumbent status with Chrysler for the Vehicle Carrier Services business from the United States to South Africa. “K” Line agreed and, in return, MOL agreed to “respect” “K” Line’s Vehicle Carrier Services business on “K” Line’s routes from Brazil to the United States and Argentina.

119 In 2008 or 2009, MOL and WWL agreed to “respect,” rather than compete for, each other’s Daimler and BMW business. Specifically, WWL agreed not to compete for MOL’s Daimler business from Europe to the United States. In return, MOL agreed not to compete for WWL’s BMW business from Europe to the United States.

120 In 2010, CSAV asked MOL to “respect” its GM business on routes from the United States to Colombia. MOL agreed and submitted a bid for that business at a non-competitive price that had been provided by CSAV. That tender covered the period 2010 to 2012.

121 In August 2011, MOL met with Mr Suzuki of NYK regarding a two year tender on Mitsubishi Fuso trucks and buses from Japan to the United States. NYK was the lead Vehicle Carrier for the business, and coordinated arrangements with MOL and "K" Line by providing them with rates to bid. NYK, MOL, and "K" Line agreed that if someone failed to receive a portion of the business, NYK would tender cargo to that carrier NYK, MOL, and "K" Line all received a portion of the business.

122 In early 2012, representatives of MOL and WWL met to discuss their companies' American Honda contracts. MOL and WWL agreed not to compete with one another on certain routes from the United States to China and from the United States to Korea for American Honda. WWL supplied MOL with a suggested price for MOL to use in MOL's bid on Honda's United States-China route in order to enable WWL to retain that business, which WWL did. In exchange, MOL supplied WWL with a suggested price for WWL to use in WWL's bid on Honda's United States-Korea route in order to enable MOL to retain that business.

3 Respondents Conspired to Restrict Capacity for Vehicle Carrier Services

123 Respondents MOL, NYK, "K" Line, Höegh, WWL, and/or EUKOR also agreed to manipulate capacity and restrict the supply of Vehicle Carrier Services via fleet reductions

124 From at least the late 1990s through 2002, Respondents MOL, "K" Line, NYK, Höegh, and WWL executives met twice a year in Europe and Japan and discussed coordinated fleet reductions via ship scrapping and lay-ups

125 In or around 2008 or 2009, demand for Vehicle Carrier Services fell as a result of the worldwide financial crisis. Thereafter, representatives of MOL, NYK, and "K" Line met to discuss fleet reductions. MOL, NYK, and "K" Line agreed to scrap vessels, and generally discussed and agreed on the need to resist price reduction requests from OEMs. During this same

time period, representatives from WWL and Höegh also spoke about the need for fleet reductions. As a result of those discussions, MOL scrapped approximately 40 vessels, NYK scrapped approximately 40 vessels, "K" Line scrapped approximately 25 vessels, WWL engaged in cold lay-ups, and Höegh engaged in cold lay-ups.

4 Guilty Pleas in the Vehicle Carrier Services Industry

126 On February 27, 2014, the DOJ filed a one count criminal Information in federal district court in Maryland reflecting a guilty plea by Respondent CSAV in connection with the manipulation of prices and allocation of customers and routes for Vehicle Carrier Services during the period 2000-2012 in connection with shipment of vehicles, including trucks and construction and agricultural equipment, on RoRo ships. According to the DOJ filing, during that period, CSAV and other co-conspirators held meetings and engaged in other communications in which they agreed to set prices and allocate customers, vowed to refrain from bidding against one another, and exchanged pricing information. Under that guilty plea, CSAV agreed to pay a criminal fine of \$8.9 million.

127 The criminal Information filed against CSAV is the first charge in an ongoing federal antitrust investigation into price-fixing, bid-rigging, and other anticompetitive conduct in the international ocean shipping industry conducted by the DOJ Antitrust Division's National Criminal Enforcement Section and the FBI's Baltimore Field Office, along with assistance from the United States Customs and Border Protection, Office of Internal Affairs, and Washington Field Office/Special Investigations Unit.

128 On or about November 17, 2014, "K" Line pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for conspiring to suppress and eliminate competition for Vehicle Carrier Services to and from the United States and elsewhere from as early as February 1997 through at least September 2012. In pleading guilty, "K" Line specifically admitted that the

conspiracy affected certain United States-based manufacturers of cars and trucks. “K” Line agreed to pay a criminal fine of \$67.7 million.

129 On or about March 11, 2015, NYK pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for conspiring to suppress and eliminate competition for Vehicle Carrier Services to and from the United States and elsewhere from at least February 1997 through at least September 2012. In pleading guilty, NYK specifically admitted that the conspiracy affected certain United States-based manufacturers of cars and trucks. NYK agreed to pay a criminal fine of \$59.4 million. Further, in pleading guilty, NYK’s corporate representative expressed NYK’s “deepest regret” that its employees engaged in serious misconduct and violated the antitrust laws, and informed the Court that NYK took “full responsibility” for its employees’ conduct, which violated United States law.

130 Several executives from “K” Line and NYK have been indicted on similar charges. On or about January 30, 2015, “K” Line employee Hiroshige Tanioka pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least April 1998 until at least April 2012. Mr. Tanioka was sentenced to serve an 18-month prison term and to pay a criminal fine of \$20,000. On or about February 6, 2015, “K” Line employee Takashi Yamaguchi also pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least April 1998 until at least April 2012.

131 Mr. Yamaguchi was sentenced to serve a 14-month prison term and to pay a criminal fine of \$20,000. On or about March 26, 2015, “K” Line employee Toru Otsuda pleaded guilty to violating Section 1 of the Sherman Act, 15 U.S.C. § 1, for participating in the conspiracy from at least November 2010 until at least September 2012. Mr. Otsuda was sentenced to serve an 18-month prison term and to pay a \$20,000 criminal fine.

132 On or about March 10, 2015, NYK employee Susumu Tanaka pleaded guilty to violating Section 1 of the Sherman Act, 15 U S C § 1, for participating in the conspiracy from at least April 2004 until at least September 2012 Mr Tanaka was sentenced to serve a 15-month prison term and to pay a \$20,000 criminal fine

5. Government Fines in the Vehicle Carrier Services Industry

133 On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders against four Respondents under Articles 7(2) and 7-2(1) of the Antimonopoly Act (“AMA”) for price-fixing Vehicle Carrier Services from at least as early as around mid-January 2008 until September 6, 2012 The JFTC fined Tokyo-based Respondents NYK \$128.4 million, “K” Line \$55.9 million, and NMCC \$4.1 million. It also fined Norway’s WWL \$34.3 million.

134 According to the JFTC, in accordance with the agreements, Respondents

(a) fixed freight rates and/or colluded freight rate quotations to submit to consignors among the companies who have trade with the same consignors at negotiating with the consignors, and

(b) refrained from bidding against one another for the purpose of securing incumbent trades

135 The JFTC found that NYK, “K” Line, WWL and MOL price-fixed Vehicle Carrier Services on the “North American route” which is comprised of routes between ports in Japan and ports in the United States (including Puerto Rico), Canada, or Mexico The JFTC investigated but did not fine MOL because it had stopped participating in the alleged conduct prior to a 2012 investigation of its offices, and the JFTC granted its application for leniency

136 The EC and CCB are also part of the Vehicle Carrier Services antitrust probe On September 6, 2012, EC officials carried out unannounced inspections at the premises of several

Vehicle Carrier Services providers in a number of European Union member countries in coordination with the United States and Japanese competition authorities. The EC did so because it had reasons to believe that the companies concerned may have violated Article 101 of the Treaty on the Functioning of the European Union, which prohibits cartels and restrictive business practices.

137 On September 7, 2012, Respondent WWL confirmed that it had received requests for information from United States, Japanese, European, and Canadian competition authorities. WWL stated, “the purpose of these requests is to ascertain whether there is any evidence of any infringement of competition law related to possible price cooperation between carriers and allocation of customers.”¹¹

138 On July 1, 2015, Respondent NYK reached an agreement with the South African Competition Commission requiring the Respondent to pay an approximate \$8.5 million. The South African Competition Commission accused the Respondent of colluding with competitors on 14 offers it made to various automobile manufacturers to ship vehicles to and from South Africa.

139 On or about July 31, 2015, WWL reached a settlement with the South African Competition Commission requiring the Respondent to pay an approximate \$7.7 million. The South African Competition Commission concluded that the Respondent had colluded on 11 tenders with its competitors in the transportation of Vehicles by sea issued by several automotive manufacturers to and from South Africa, including BMW, Toyota Motor Corporation, Nissan, and Honda among others.

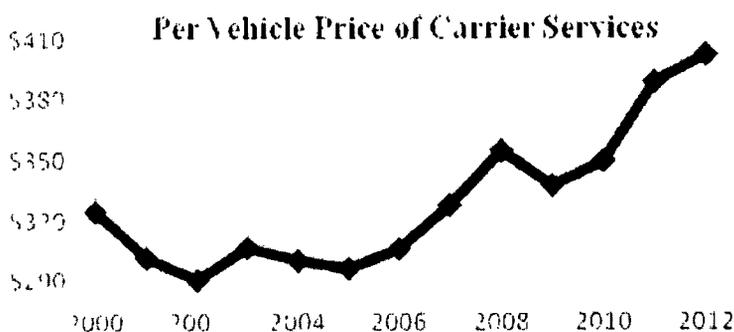
¹¹ <http://www.wilhelmsenasa.com/media/pressreleases/pages/WilhWilhelmsenASAsubsidiariesunderinvestigationbycompetitionauthorities.aspx>.

140 Similarly, the United States Maritime Commission has also fined several of the Respondents for violations of the Shipping Act arising from the allegations above. To date, the FMC has levied the following fines: K Line - \$1.1 million, NYK - \$1.225 million, CSAV - \$625,000, MOL - \$1.3 million.

D Other Evidence of Collusion in the Vehicle Carrier Services Market

1 Respondents Raised Prices at a Rate that Far Exceeded Demand

141 Prices for Vehicle Carrier Services have been generally increasing since 2006, as is demonstrated in the table below:



142 As the graph above demonstrates, pricing for Vehicle Carrier Services (per vehicle) remained relatively flat from 2001 to 2006. In 2001, the per vehicle price was approximately \$301.30, while in 2006 the per vehicle price was \$305.79 - an increase of less than 2 percent.

143 Beginning just prior to the Class Period, the price of Vehicle Carrier Services has increased by 23 percent. This increase in the price of Vehicle Carrier Services far outpaced any increase in demand during the Class Period.

144 In the absence of an unlawful price-fixing conspiracy, according to principles of supply and demand, prices would not increase at a rate greater than the rate of demand, yet that is what happened in the Vehicle Carrier Services market during the Class Period.

2. Respondents Previously Colluded in Different Markets

145 The affiliates and subsidiaries of certain Respondents have recently pled guilty and agreed to pay millions of dollars in fines for violating the antitrust laws in other markets.

146 In 2007, the DOJ and EC launched an investigation into price fixing among international air freight forwarders, including certain affiliates and subsidiaries of Respondents.

147 On October 10 of that year, the EC launched unannounced inspections at the premises of various international air freight forwarding companies with the help and coordination of various other nations' antitrust enforcement groups.

148 On March 19, 2009, the JFTC ordered 12 companies to pay \$94.7 million in fines for violations of the Japanese Antimonopoly Act ("AMA"). Included among the 12 companies were "K" Line Logistics, Ltd., a subsidiary of Respondent "K" Line, Yusen Air & Sea Services Co., Ltd., a subsidiary of Respondent NYK, and MOL Logistics (Japan) Co., Ltd., a subsidiary of Respondent MOL.

149 The JFTC concluded that the companies had, over a five-year period, met and agreed to, among other things, the amount of fuel surcharges, security charges, and explosive inspection charges that they would charge their international air freight forwarding customers. The agreements were, according to the JFTC, negotiated at meetings of the Japan Air Cargo Forwarders Association.

150 Yusen Logistics Co., Ltd.¹² filed a complaint in April 2009 requesting a hearing to review the JFTC's orders, and the Tokyo High Court upheld the orders on November 9, 2012.

151 On September 30, 2011, MOL Logistics (Japan) Co., Ltd. pleaded guilty to a Criminal Information in the United States District Court for the District of Columbia charging it

¹² On October 1, 2010, Yusen Air & Sea Services Co., Ltd. and NYK Logistics merged under the name Yusen Logistics Co., Ltd.

with Sherman Act violations related to price fixing. MOL is one of 16 companies that agreed to plead guilty or have pled guilty as a result of the DOJ's freight forwarding investigation, which has resulted in more than \$120 million in criminal fines to date. According to the Criminal Information filed against MOL Logistics (Japan) Co. Ltd., it and its co-conspirators accomplished their conspiracy by:

(a) Participating in meetings, conversations, and communications to discuss certain components of freight forwarding service fees to be charged on air cargo shipments from Japan to the United States,

(b) Agreeing, during those meetings, conversations, and communications, on one or more components of the freight forwarding service fees to be charged on air cargo shipments from Japan to the United States,

(c) Levying freight forwarding service fees, and accepting payments for services provided for, air cargo shipments from Japan to the United States, in accordance with the agreements reached, and

(d) Engaging in meetings, conversations, and communications for the purpose of monitoring and enforcing adherence to the agreed-upon freight forwarding service fees.

152 On March 28, 2012, the EC fined 14 international groups of companies, including Yusen Shenda Air & Sea Service (Shanghai) Ltd., a subsidiary of Respondent NYK, a total of \$219 million for their participation in the air cargo cartels and violating European Union antitrust rules. According to the EC, "[i]n four distinct cartels, the cartelists established and coordinated

four different surcharges and charging mechanisms, which are component elements of the final price billed to customers for these services.”¹³

153 On March 8, 2013, the DOJ announced that “K” Line Logistics, Ltd. and Yusen Logistics Co , Ltd., a subsidiary of Respondent NYK, agreed to pay criminal fines of \$3,507,246 and \$15,428,207, respectively, for their roles in a conspiracy to fix certain freight-forwarding fees for cargo shipped by air from the United States to Japan. As with MOL Logistics (Japan) Co Ltd., “K” Line Logistics, Ltd. and Yusen Logistics Co , Ltd. pleaded guilty to meeting with co-conspirators, agreeing to what freight forwarding service fees should be charged on air cargo shipments, and actually levying those fees on its customers from about September 2002 until at least November 2007

CLASS ACTION ALLEGATIONS

154 Complainants brings this action on behalf of themselves and as a class action under Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure seeking double reparations for Respondents’ and their co-conspirators’ violations of the Shipping Act and FMC Regulations.¹⁴ Complainants seek relief on behalf of the following class

All Truck and Equipment Dealers in the United States who purchased Vehicles incorporating a Vehicle Carrier Service charge charged by any Respondent or any current or former subsidiary or affiliate thereof, or any co-conspirator, from and including January

¹³ European Commission Press Release, *Antitrust Commission imposes € 169 million fine on freight forwarders for operating four price fixing cartels*, Mar 28, 2012, http://europa.eu/rapid/press-release_IP-12-314_en.htm.

¹⁴ Pursuant to FMC Rule 12, Federal Rule of Civil Procedure 23 applies to this proceeding. See 46 U S C § 502 12 (“In proceedings under this part, for situations which are not covered by a specific FMC rule, the Federal Rules of Civil Procedure will be followed to the extent that they are consistent with sound administrative practice”), *see also, Mar Mol v Sea-Land Service, Inc* , 1997 WL 4000991 (FMC 1997) (noting that “had [complainant] chosen to do so, [it] could have brought a class action before the [Federal Maritime] Commission the necessary tools were there[]”)

1, 2000 through such time as the anticompetitive effects of Respondents' conduct ceased.

155 Excluded from the Truck and Equipment Dealer Classes are Respondents, their parent companies, subsidiaries and affiliates, any co-conspirators, federal governmental entities and instrumentalities of the federal government, states and their subdivisions, agencies and instrumentalities, and persons who purchased Vehicle Carrier Services directly

156 While Complainants do not know the exact number of the members of the Class, Complainants believe there are several thousand.

157 Common questions of law and fact exist as to all members of the Truck and Equipment Dealer Classes. This is particularly true given the nature of Respondents' conspiracy, which was generally applicable to all the members of the Truck and Equipment Dealer Classes, thereby making appropriate relief with respect to the Truck and Equipment Dealer Classes as a whole. Such questions of law and fact common to the Truck and Equipment Dealer Classes include, but are not limited to

(a) Whether the Respondents and their co-conspirators engaged in a combination and conspiracy among themselves to fix, raise, maintain or stabilize the prices of Vehicle Carrier Services,

(b) Whether the Respondents and their co-conspirators accomplished and/or furthered that conspiracy through secret agreements or agreements,

(c) Whether the Respondents operated under agreements required to be filed with the FMC pursuant to 46 U.S.C. §§ 40302 or 40305,

(d) Whether such agreements complied with 46 U.S.C. § 40302(a)'s duty to file such agreements with the FMC,

(e) Whether the Respondents and their co-conspirators failed to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing or delivering property;

(f) Whether the Respondents and their co-conspirators disclosed, offered, solicited, or received information concerning the nature, kind, quantity, destination, consignee or routing of any property and whether such information was improperly disclosed to a competitor;

(g) Whether the Respondents and their co-conspirators unreasonably refused to deal or negotiate with another party;

(h) Whether the Respondents and their co-conspirators unlawfully took concerted action that resulted in an unreasonable refusal to deal or allocated shippers among specific carriers,

(i) Whether the Respondents and their co-conspirators violated FMC Regulations and operated under agreements that should have been filed with the FMC,

(j) The identity of the participants of the alleged conspiracy;

(k) The duration of the alleged conspiracy and the acts carried out by Respondents and their co-conspirators in furtherance of the conspiracy;

(l) Whether the alleged conspiracy violated the Shipping Act or FMC Regulations as alleged in the Counts below;

(m) Whether the conduct of the Respondents and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Complainants and the members of the Truck and Equipment Dealer Classes,

(n) The effect of the alleged conspiracy on the prices of Vehicle Carrier Services during the Class Period,

(o) Whether Complainants and members of the Truck and Equipment Dealer Classes had any reason to know of or suspect the existence of conspiracy, or any means to discover the conspiracy;

(p) Whether the Respondents and their co-conspirators fraudulently concealed the conspiracy's existence from the Complainants and the members of the Truck and Equipment Dealer Classes, and,

(q) The appropriate class-wide measure of reparations for the Truck and Equipment Dealer Classes

158 Class relief in this action is consistent with sound administrative practice and the FMC's rules of procedure.

159 Complainants' claims are typical of the claims of the members of the Truck and Equipment Dealer Classes, and Complainants will fairly and adequately protect the interests of the Truck and Equipment Dealer Classes. Complainants and all members of the Truck and Equipment Dealer Classes are similarly affected by Respondents' wrongful conduct in that they are the beneficial owners of the Vehicles, and in that they paid artificially inflated prices for Vehicle Carrier Services charged by the Respondents and/or their co-conspirators.

160 Complainants' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Truck and Equipment Dealer Classes. Complainants' interests are coincident with, and not antagonistic to, those of the other members of the Truck and Equipment Dealer Classes. Complainants are represented by counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

161 The questions of law and fact common to the members of the Truck and Equipment Dealer Classes predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

162 Class action treatment is a superior method for the fair and efficient adjudication of the controversy, in that, among other things, such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently and without the unnecessary duplication of evidence, effort and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress for claims that it might not be practicable to pursue individually, substantially outweigh any difficulties that may arise in management of this class action.

163 The prosecution of separate actions by individual members of the Truck and Equipment Dealer Classes would create unnecessary inefficiencies, risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Respondents.

**COMPLAINANTS AND THE TRUCK AND EQUIPMENT DEALER CLASSES
SUFFERED INJURY IN VIOLATION OF THE SHIPPING ACT**

164 Respondents' price-fixing, bid-rigging, customer allocation, and capacity-reduction conspiracies, which they accomplished through violations of the Shipping Act, had the following effects, among others

(a) Price competition has been restrained or eliminated with respect to Vehicle Carrier Services,

(b) The prices of Vehicle Carrier Services have been fixed, raised, maintained, or stabilized at artificially inflated levels,

(c) Complainants and members of the Truck and Equipment Dealer Classes have been deprived of free and open competition, and

(d) Complainants and members of the Truck and Equipment Dealer Classes paid artificially inflated prices.

165 During the Class Period, Complainants and the members of the Truck and Equipment Dealer Classes paid supra-competitive prices for Vehicle Carrier Services. The inflated charges resulting from the conduct in violation of the Shipping Act were paid by Complainants. Those overcharges have unjustly enriched Respondents.

166 The market for Vehicle Carrier Services and the markets for medium- and heavy-duty trucks, commercial vehicles, construction equipment, mining equipment, agricultural equipment, and other similar vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the Vehicle market. Without the Vehicles, Vehicle Carrier Services have little to no value because they have no independent utility. Indeed, the demand for Vehicles creates the demand for Vehicle Carrier Services.

167 While even a monopolist would increase its prices when the cost of its inputs increases, the economic necessity of passing through cost changes increases with the degree of competition a firm faces. The OEM market for Vehicles are subject to vigorous price competition. The OEMs have thin net margins, and are therefore at the mercy of their input costs, such that increases in the price of Vehicle Carrier Services lead to corresponding increases in prices for Vehicles charged to dealers.

168 The inflated prices of Vehicle Carrier Services resulting from Respondents' conspiracies were passed on to Complainants and the members of the Truck and Equipment

Dealer Classes by OEMs The amount of the overcharges is discrete, identifiable and quantifiable on a per-car basis

169 The purpose of the conspiratorial conduct of the Respondents and their co-conspirators was to raise, fix, rig, or stabilize the price of Vehicle Carrier Services and, as a direct and foreseeable result, the price of new Vehicles shipped by suppliers of Vehicle Carrier Services.

170 Economists have developed techniques to isolate and understand the relationship between one "explanatory" variable and a "dependent" variable in those cases when changes in the dependent variable are explained by changes in a multitude of variables, even when all such variables may be changing simultaneously That analysis - called regression analysis - is commonly used in the real world and in litigation to determine the impact of a regression analysis is one potential method by which to isolate and identify only the impact of an increase in the price of Vehicle Carrier Services on prices for Vehicles even though such products contain a number of other inputs whose prices may be changing over time A regression model can explain how variation in the price of Vehicle Carrier Services affects changes in the price of new purchased or leased Vehicles In such models, the price of Vehicle Carrier Services would be treated as an independent or explanatory variable The model can isolate how changes in the price of Vehicle Carrier Services impact the price of Vehicles shipped by Vehicle Carrier while controlling for the impact of other price-determining factors, to the extent that the cost is not explicitly differentiated as part of the relevant transactions.

171 The precise amount of the overcharge impacting the prices of Vehicles shipped by Vehicle Carrier can be measured and quantified for each individual shipment. Commonly used and well-accepted economic models can be used to measure both the extent and the amount of

the supra-competitive charge passed-through the chain of distribution. Thus, the economic harm to Complainants and the members of the Truck and Equipment Dealer Classes can be quantified.

172 By reason of the alleged violations of the Shipping Act and the FMC's regulations, Complainants and the members of the Truck and Equipment Dealer Classes have sustained injury to their business or property, having paid higher prices for Vehicle Carrier Services than they would have paid in the absence of the Respondents' illegal contract, combination, or conspiracy, and, as a result, have suffered damages in an amount presently undetermined (*i.e.* an "actual injury") This is the type of injury that the Shipping Act was meant to punish, prevent, and redress

COMPLAINANTS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because Complainants Did Not And Could Not Discover The Claims

173 Complainants repeat and re-allege the allegations set forth in each of the foregoing paragraphs

174 Complainants and members of the Truck and Equipment Dealer Classes had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until no earlier than May 2013 Complainants and members of the Truck and Equipment Dealer Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until no earlier than May 2013, at or about the time the first civil complaints were filed in federal district court after extensive factual investigation. In fact, it was not until February 27, 2014 that the first of the Defendants, CSAV, pleaded guilty in federal court to charges stemming from the allegations described herein, presenting publicly for the first time facts establishing the violations alleged herein.

175 Complainants and the members of the Truck and Equipment Dealer Classes are truck and equipment dealers who had no direct contact or interaction with any of the Respondents in this case and had no means from which they could have discovered the combination and conspiracy described in this Complaint.

176 For these reasons, the statute of limitations as to Complainants' and the Truck and Equipment Dealer Classes' claims did not begin to run, and has been tolled with respect to the claims that Complainants and the members of the Truck and Equipment Dealer Classes have alleged in this Complaint.

B. Fraudulent Concealment Tolled the Statute of Limitations.

177 In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations as to the claims asserted herein by Complainants and the Truck and Equipment Dealer Classes. Complainants and members of the Truck and Equipment Dealer Classes did not know and could not have known of the existence of the conspiracy and unlawful combination alleged herein until no earlier than May 2013, at or about the time the first civil claims were filed in federal district court after extensive factual investigation. In fact, it was not until February 27, 2014 that the first of the Respondents, CSAV, pleaded guilty in federal court to charges stemming from the allegations described herein, presenting for the first time publicly facts establishing the violations alleged herein.

178 Because Respondents' agreements, understandings, and conspiracies were kept secret, Complainants and members of the Truck and Equipment Dealer Classes were unaware of Respondents' unlawful conduct before that time, and they did not know before then that they were paying supra-competitive prices for Vehicle Carrier Services. No information, actual or constructive, was ever made available to Complainants or to the members of the Truck and

Equipment Dealer Classes that revealed Respondents' unlawful conduct, or the injuries caused thereby, to Complainants or to the members of the Truck and Equipment Dealer Classes.

179 The affirmative acts of the Respondents alleged herein, including acts in furtherance of the conspiracies, were wrongfully concealed and carried out in a manner that precluded detection.

180 By its very nature, Respondents' anticompetitive conspiracies and unlawful combinations were inherently self-concealing. Respondents met and communicated in secret and agreed to keep the facts about their collusive conduct from being discovered others, including by any member of the public or by the OEMs and other direct purchasers with whom they did business

181 The conspiracies were self-concealing and affirmatively concealed by Respondents and their co-conspirators. Complainants and members of the Truck and Equipment Dealer Classes could not have discovered the Respondents' conspiracies at a date prior to May 2013 by the exercise of reasonable diligence because the Respondents and their co-conspirators employed tactics of secrecy and deceptive practices to avoid the detection of, and to fraudulently conceal, their illegal conduct.

182 Because the alleged conspiracy was both self-concealing and affirmatively concealed by Respondents and their co-conspirators, Complainants and members of the Truck and Equipment Dealer Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until May 2013

183 For these reasons, the statute of limitations applicable to Complainants' and the Truck and Equipment Dealer Classes' claims were tolled and did not begin to run until no earlier than May 2013

VIOLATIONS OF THE SHIPPING ACT AND COMMISSION REGULATIONS

Violation 1 – Violation of 46 U.S.C § 40302(a)

184 Complainants repeat the allegations set forth above as if fully set forth herein.

185 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators entered into an agreement and/or agreements “between or among ocean common carriers” to “discuss, fix, or regulate transportation rates” or “control, regulate, or prevent competition in international ocean transportation” that were required to be filed with the FMC pursuant to 42 U S C §§ 40301(a) and 40302(a) This agreement and/or agreements included agreements to (1) rig bids for the sale of Vehicle Carrier Services in the United States and elsewhere in the world, (2) charge prices at certain levels and otherwise to fix, increase, maintain, and/or stabilize prices of Vehicle Carrier Services sold in the United States and elsewhere in the world, (3) refrain from competing by refusing to offer Vehicle Carrier Services sold in the United States and elsewhere in the world at prices below the agreed-upon price; (4) allocate customers for Vehicle Carrier Services in the United States and elsewhere in the world, and (5) restrain capacity for Vehicle Carrier Services sold in the United States and elsewhere in the world.

Violation 2 – 46 U.S.C. § 41102(b)(1)

186 Complainants repeat the allegations set forth above as if fully set forth herein.

187 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-

conspirators operated under an agreement and/or agreements “between or among ocean common carriers” to “discuss, fix, or regulate transportation rates” or “control, regulate, or prevent competition in international ocean transportation” and this agreement and/or agreements were not filed with the FMC and did not become effective pursuant to 46 U S C § 40304. Among the agreed-upon conduct were agreements to (1) rig bids for the sale of Vehicle Carrier Services in the United States and elsewhere in the world, (2) charge prices at certain levels and otherwise to fix, increase, maintain, and/or stabilize prices of Vehicle Carrier Services sold in the United States and elsewhere in the world, (3) refrain from competing by refusing to offer Vehicle Carrier Services sold in the United States and elsewhere in the world at prices below the agreed-upon price, (4) allocate customers for Vehicle Carrier Services in the United States and elsewhere in the world, and (5) restrain capacity for Vehicle Carrier Services sold in the United States and elsewhere in the world. Respondents and their co-conspirators operated under these unfiled agreement and/or agreements that had not become effective, in violation of 46 U S C § 41102(b)(1).

Violation 3 – 46 U.S.C. § 41102(c)

188 Complainants repeat the allegations set forth above as if fully set forth herein.

189 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents failed to establish, observe and enforce just and reasonable regulations and practices relating to receiving, handling, storing or delivering property. Respondents and their co-conspirators violated this section through their intentional conduct designed to unreasonably interfere with international transportation of Vehicles, resulting in the Complainants paying inflated prices.

Violation 4 – 46 U.S.C § 41103(a)(1), (2)

190 Complainants repeat the allegations set forth above as if fully set forth herein.

191 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators knowingly disclosed, offered, solicited, and received information concerning the nature, kind, quantity, destination, consignee, or routing of property tendered to Respondents and their co-conspirators. This information was shared without the shippers' or the consignees' consent and was used to the detriment of the shippers' or consignees' in that they were forced to pay supra-competitive prices for Vehicle Carrier Services, which were ultimately borne by Complainants.

Violation 5 – 46 U.S.C. § 41104(10)

192 Complainants repeat the allegations set forth above as if fully set forth herein.

193 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents, either alone or in conjunction with any other person, directly or indirectly, and their co-conspirators unreasonably refused to deal and negotiate. In allocating customers, every Respondent or co-conspirator agreed to "respect" their competitors' business and not pursue customers, unreasonably refusing to deal or negotiate. This resulted in Complainants paying overcharges, via shippers and consignees.

Violation 6 – 46 U.S.C. § 41105(1), (6)

194 Complainants repeat the allegations set forth above as if fully set forth herein.

195 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents and their co-conspirators engaged in concerted, collaborative action resulting in an unreasonable refusal to deal and negotiate. In allocating customers, every Respondent or co-conspirator that agreed to "respect" their competitors' business and not pursue customers of Vehicle Carrier Services

unreasonably refused to deal or negotiate with shippers and consignees in good faith. This resulted in shippers and consignees paying inflated prices, and those inflated prices were passed on to the Complainants when the Complainants.

Violation 7 – 46 C.F.R. § 535.401 *et seq.*

196 Complainants repeat the allegations set forth above as if fully set forth herein.

197 Beginning at a time presently unknown to Complainants, but at least as early as February 1, 1997 and continuing through at least September 2012, Respondents violated the FMC's regulations supporting the Shipping Act requirements for filing agreements. This resulted in Complainants paying inflated prices when they purchased Vehicles

PRAYER FOR RELIEF

WHEREFORE, Complainants request:

- 1) That Respondents be required to answer the charges herein,
- 2) That after due investigation and hearing Respondents, be found to have violated 46 U S C §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 CFR § 535 401, *et seq* , and such other provisions as to which violations may be proved hereunder;
- 3) The FMC determine that this action may be maintained as a class action under Rule 23(a), (b)(2) and (b)(3) of the Federal Rules of Civil Procedure, and direct that reasonable notice of this action, as provided by Rule 23(c)(2) of the Federal Rules of Civil Procedure, be given to each and every member of Truck and Equipment Dealer Classes,
- 4) That Complainants be awarded reparations in a sum to be proven under 46 U S C § 41305, with interest (46 U S C § 41305(a)) and reasonable attorneys' fees (46 U S C § 41305(b)),
- 5) That Complainants be awarded double its proven actual injury under 46 U S C § 41305(c) because Respondents and their co-conspirators violated 46 U S C §§ 41102(b) and 41105(1),
- 6) That Respondents be found jointly and severally liable for the conduct alleged herein, including that of their co-conspirators, and,
- 7) That such other and further order or orders be made as the FMC determines to be proper

Complainants request a hearing, and that the hearing be held in Washington, District of Columbia.

Dated. April 21, 2016

Respectfully submitted,

/s/ Wayne A. Mack

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*Attorneys for Complainants and the Putative
Truck and Equipment Dealer Classes*

VERIFICATION

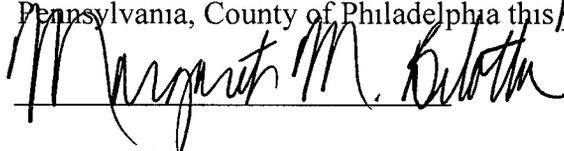
Wayne A. Mack, being first duly sworn on oath deposes and states that he is a senior attorney for the above Complainants and has been authorized by the aforementioned Complainants to file the within Complaint; that he has read the foregoing Complaint and that he believes the facts stated therein to be true and correct on information and belief and upon information received from others.

Dated April 14, 2016



Wayne A. Mack
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Subscribed and sworn to before me, a notary public in and for the Commonwealth of Pennsylvania, County of Philadelphia this 14th day of April, 2016



Notary Public

My Commission expires 10/25/2017

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
MARGARET M. BILOTTA, Notary Public
City of Philadelphia, Phila. County
My Commission Expires October 25, 2017