

BEFORE THE FEDERAL MARITIME COMMISSION

LANDERS BROTHERS AUTO GROUP, INC d/b/a
LANDERS HONDA (JONESBORO), LANDERS
BROTHERS AUTO NO 4, LLC, d/b/a LANDERS
HONDA (PINE BLUFF), individually and on behalf
of 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.,
WALLENUS WILHELMSSEN LOGISTICS AS,
WALLENUS WILHELMSSEN LOGISTICS
AMERICAS LLC, EUKOR CAR CARRIERS INC.,
COMPAÑÍA SUD AMERICANA DE VAPORES
S.A., AND CSAV AGENCY NORTH AMERICA,
LLC,

Respondents.

 ORIGINAL



Docket No *16-11*

FILED

APR 21 2016

Federal Maritime Commission
Office of the Secretary

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COMPLAINT

Complainants Landers Brothers Auto Group, Inc., d/b/a Landers Honda (Jonesboro) and Landers Brothers Auto No 4, LLC, d/b/a Landers Honda (Pine Bluff), (“Complainants”), on behalf of themselves and all others similarly situated (the “Class” as defined below¹), upon personal knowledge as to the facts pertaining to themselves and upon information and belief as to all other matters, and based on the investigation of counsel, bring this class action for injunctive relief, actual injury, interest, additional reparations up to twice actual injury, costs of suit, including attorneys’ fees, and other appropriate relief on the basis of the Respondents’ violations of the Shipping Act of 1984, 46 U S C § 40101 *et seq* , (“the Shipping Act”), and allege as follows

NATURE OF COMPLAINT

1 This complaint is brought as a proposed class action against Respondents 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., (collectively the “MOL Defendants”),Kawasaki Kisen Kaisha, Ltd., “K” Line America, Inc (collectively, the “K-Line Defendants”),² Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics Americas LLC, EUKOR Car Carriers Inc , Compañía Sud Americana De Vapores S.A., and CSAV Agency

¹ Class actions are permissible before the Federal Maritime Commission. See 46 C.F.R. § 502.12, *Mar Mol v Sea-Land Service, Inc* , 1997 WL 4000991 (FMC 1997) The putative Class in this action overlaps with the putative classes asserting claims under various state antitrust and consumer protection laws related to the conduct alleged herein in *In re Vehicle Carrier Services Antitrust Litigation*, No 13-cv-3306 (D.N.J), now pending in the United States District Court for the District of New Jersey Neither the conduct, claims, nor class definition herein are co-terminus with those at issue in *In re Vehicle Carrier Services* To the extent that there is any overlap between the actions, relief is sought in the alternative and nothing herein alleged should be deemed to waive or otherwise compromise those claims asserted in *In re Vehicle Carrier Services Antitrust Litigation*.

² 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 for review See *In re Vehicle Carrier Services Antitrust Litigation*, 13-cv-3306, ECF No 278 (D.N.J September 9, 2105)

North America, LLC (all as defined below and collectively, “Respondents”), and unnamed co-conspirators, providers of Vehicle Carrier Services (defined below) globally and in the United States, for engaging in a conspiracy to fix, raise, maintain and/or stabilize prices, and allocate the market and customers for Vehicle Carrier Services

2 “Vehicle Carriers” transport large numbers of cars, trucks, and other automotive vehicles including agriculture and construction equipment (collectively “motor vehicles”) across large bodies of water using specialized cargo ships known as Roll On/Roll Off vessels (“RoRos”) As used herein, “Vehicle Carrier Services” refer to the paid ocean transportation of motor vehicles by RoRo

3 Complainants seek to represent all Automobile Dealers in the United States who purchased motor 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 1, 2000 through such time as the anticompetitive effects of Respondents’ conduct ceased (the “Class Period”)

4 The Respondents provide, market, and/or sell Vehicle Carrier Services throughout the United States.

5 The Respondents, and their co-conspirators (as yet unknown), agreed, combined, and conspired to fix, raise, maintain and/or stabilize prices and allocate the market and customers for Vehicle Shipping Services to and from the United States.

6 Competition authorities in the United States, the European Union, Canada Japan, China and South Africa have been investigating a global cartel among Vehicle Carriers since at least September 2012. The United States Department of Justice’s Antitrust Division (“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 European Commission Competition Authority (“EC”) have

also conducted coordinated dawn raids at the Tokyo and European offices of several of the Respondents.

7 On February 27, 2014, the DOJ announced that Respondent Compania Sud Americana de Vapores SA agreed to plead guilty and pay \$89 million in criminal fines for price-fixing vehicle shipping services to and from the United States and elsewhere. Complainants, based upon their experience in civil antitrust litigation following from criminal antitrust prosecutions by the DOJ, believe it likely that one of the Respondents is a so-called “amnesty applicant” pursuant to the DOJ’s leniency program. A participant in an antitrust cartel is only eligible for participation in this 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.

8 On September 26, 2014, the DOJ announced that Kawasaki Kisen Kaisha Ltd. 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.

9 On March 11, 2015, Nippon Yusen Kabushiki Kaisha 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.

10 On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders totaling more than \$233 million against Respondents Nippon Yusen Kabushiki Kaisha, Kawasaki Kisen Kaisha Ltd., Nissan Motor Car Carrier Co. Ltd., and Wallenius Wilhelmsen Logistics AS for price-fixing Vehicle Carrier Services.

11 On July 1, 2015, Nippon Yusen Kabushiki Kaisha reached an agreement with the South African Competition Commission requiring the Respondent to pay approximately \$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.

12 On or about July 31, 2015, Wallenius Wilhelmsen Logistics reached a settlement with the South African Competition Commission requiring the Respondent to pay approximately \$7 7 million. The South African Competition Commission concluded that the Respondent had colluded on 11 tenders with its competitors in the transportation of motor vehicles by sea issued by several automotive manufacturers to and from South Africa, including BMW, Toyota Motor Corporation, Nissan, and Honda among others.

13 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.

14 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 allocate the market and customers for Vehicle Carrier Services sold to automobile manufacturers and others in the United States, and elsewhere, for the import and export of motor vehicles to and from the United States. The combination and conspiracy engaged in by the Respondents and their co-conspirators violates sections 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*

15 As a direct result of the unlawful conduct alleged herein stemming from secret agreements and/or agreements, Complainants and the Class have been injured, because the

conspiracy artificially inflated the prices for Vehicle Carrier Services, which artificially inflated the price of motor vehicles purchased during the Class Period.

16 The Complainants and the Class each paid an ascertainable, discrete overcharge identifiable to each individual motor vehicle they received. On information and belief, records held by Respondents and third-parties will show the specific transactions and charges for each shipment affected by the illegal conduct.

PARTIES

I. Complainants

17 Landers Brothers Auto Group, Inc , d/b/a Landers Honda (Jonesboro) was incorporated under the laws of Arkansas on February 13, 2006, with its principal place of business located at 119 Challain Drive, Little Rock, Arkansas 72223

18 Landers Brothers Auto No 4, LLC, d/b/a Landers Honda (Pine Bluff) was incorporated under the laws of Arkansas on March 19, 2007, with its principal place of business at 10825 Colonel Glenn Road, Little Rock, Arkansas 72204

19 During the class period, Complainants purchased vehicles which were carried by Respondents. During the course of transport or on arrival, Complainants took title to the motor 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 motor vehicles are delivered to the Complainants and the Class), and/or the intended beneficiaries of Vehicle Carrier Services. Complainants are owners or beneficial owners of the motor vehicles at issue in this action. The Respondents' conduct and overcharges (which are identifiable on a per vehicle basis), most directly impacted the Complainants

20 The vehicles of Complainants are not bulk commodities or large quantities of fungible low-cost items. Rather, the vehicles of Complainants are individual items, with a relatively high cost, accounted for separately and specifically. During the course of transport or on arrival, as to the motor 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 motor vehicles on arrival was determined by the locations of Complainants.

II. Respondents

A. NYK Line Respondents

21 Respondent Nippon Yusen Kabushiki Kaisha ("NYK Line") is a Japanese company. Its principal place of business is 3-2, Marunouchi 2 Chome, Chiyoda-Ku, Tokyo, 100-0005, Japan. NYK Line has subsidiaries acting as its agents in the United States. NYK Line—directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled—shipped motor vehicles to and from the United States during the Class Period. NYK Line—directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled—also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States during the Class Period. In violation of the Shipping Act, NYK Line facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

22 Respondent NYK Line North America ("NYK America") is a wholly owned subsidiary of NYK Line. It is headquartered at 300 Lighting Way, Secaucus, New Jersey 07094 and acts as Respondent NYK Line's agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of NYK Line, which controlled its policies, sales, and finances. NYK America shipped motor vehicles to and from the United

States during the Class Period. NYK America also provided, marketed, and/or sold 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.

B. MOL Respondents

23 Respondent Mitsui O S.K. Lines, Ltd. (“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 and/or through its subsidiaries, which it wholly owned and/or controlled—shipped motor vehicles to and from the United States during the Class Period. MOL—directly and/or through its subsidiaries, which it wholly owned and/or controlled—also, provided, marketed, and/or sold Vehicle Carrier Services throughout the United States. In violation of the Shipping Act, MOL facilitated and/or implemented the secret agreements and/or agreements between the conspirators.

24 Respondent Mitsui O S.K. Bulk Shipping (USA), Inc (“MOL USA”) is a wholly owned subsidiary of MOL and 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, its activities in the United States were under the control and direction of MOL, which controlled its policies, sales, and finances. MOL USA shipped motor vehicles to and from the United States during the Class Period. MOL USA also provided, marketed, and/or sold 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.

25 Respondent World Logistics Service (USA) Inc. (“WLS”) is a wholly owned subsidiary of MOL and acts as Respondent MOL’s agent in the United States. It is headquartered

in Long Beach, California, and its principal place of business is at 111 West Ocean Blvd., Suite 1040, Long Beach, California 90802. At all times during the Class Period, its activities in the United States were under the control and direction of MOL, which controlled its policies, sales, and finances. WLS shipped motor vehicles to and from the United States during the Class Period. WLS provided, marketed and/or sold 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.

C. Höegh Respondents

26 Respondent Höegh Autoliners AS (“Höegh”) is a Norwegian company with its principal place of business at P O Box 4, Skeyen, 0212, Oslo, Norway Höegh Autoliners, Inc (“Höegh Inc”) is a wholly owned subsidiary of Höegh with its principal place of business at 2615 Port Industrial Drive, Jacksonville, Florida 32226 Höegh and Höegh Inc—directly and/or through their subsidiaries, which they wholly owned and/or controlled—shipped motor 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.

D NMCC Respondents

27 Respondent Nissan Motor Car Carriers Co Ltd. (“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 by MOL, Höegh, and Nissan Motor Company At all times during the Class Period, NMCC shipped motor 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

E. “K” Line Respondents

28 Respondent Kawasaki Kisen Kaisha, Ltd. (“K’ Line”) is a Japanese company with its principal place of business at 1-1, Uchisarwaicho 2-chome, Chiyoda-ku, Tokyo 100-8540 “K” Line has subsidiaries acting as its agents in the United States “K” Line—directly and/or through its subsidiaries, which it wholly owned and/or controlled—shipped motor vehicles to and from the United States during the Class Period. “K” Line—directly and/or through its subsidiaries, which it wholly owned and/or controlled—provided, marketed, and/or sold Vehicle Carrier Services throughout 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.

29 Respondent “K” Line America, Inc (“K’ Line America”) is a wholly owned subsidiary of “K” Line. Its principal place of business is 8730 Stony Point Parkway, Richmond, Virginia 23235 It acts as “K” Line’s agent in the United States. At all times during the Class period, its activities in the United States were under the control and direction of “K” Line, which controlled its policies, sales, and finances “K” Line America shipped motor vehicles to and from the United States during the Class Period. “K” Line America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States during 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.

F WWL Respondents

30 Respondent Wallenius Wilhelmsen Logistics AS (“WWL”) is a Norwegian-Swedish company with its principal place of business at Strandveien 12, No-1366 Lysaker, Norway WWL is a joint venture between Wallenius Lines AB and Wilh. Wilhelmsen ASA. WWL has offices throughout the United States, including in New Jersey WWL—directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled—shipped motor vehicles to and from the United States during the Class Period. WWL AS—directly and/or through its

subsidiaries, which it wholly owned and/or controlled—also provided, marketed, and/or sold Vehicle Carrier Services throughout 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.

31 Respondent Wallenius Wilhelmsen Logistics Americas LLC (“WWL Americas”) is a New Jersey limited liability company with its principal place of business at 188 Broadway, Woodcliff Lake, New Jersey 07677. It acts as WWL’s agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of WWL, which controlled its policies, sales, and finances. WWL Americas shipped motor vehicles to and from the United States during the Class Period. WWL Americas—directly and/or through its subsidiaries, which it wholly owned and/or controlled—also provided, marketed, and/or sold Vehicle Carrier Services throughout 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.

G EUKOR Respondents

32. Respondent EUKOR Car Carriers Inc (“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. EUKOR has offices throughout the United States, including at Bridge Plaza North #430, Fort Lee, New Jersey 07024, and has subsidiaries acting as its agents in the United States. EUKOR is a joint venture between Wallenius Lines AB, Wilh. Wilhelmsen ASA, and Hyundai Motor Company and Kia Motors Corporation. EUKOR shipped motor vehicles to and from the United States during the Class Period. EUKOR also provided, marketed, and/or sold Vehicle Carrier Services throughout 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.

H. CSAV Respondents

33 Respondent Compania Sud Americana De Vapores, S.A. (“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 motor vehicles to and from the United States during the Class Period. CSAV—directly and/or through its subsidiaries, which it wholly owned and/or controlled—also provided, marketed, and/or sold Vehicle Carrier Services throughout 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.

34 Respondent CSAV Agency North America, LLC (“CSAV North America”) is a wholly owned subsidiary of CSAV and is a New Jersey limited liability company with its principal place of business located at 99 Wood Avenue South, 9th Floor, Iselin, New Jersey 08830. It acts as CSAV’s agent in the United States. At all times during the Class Period, its activities in the United States were under the control and direction of CSAV, which controlled its policies, sales, and finances. CSAV North America is the exclusive maritime agent for Respondent CSAV in the United States. CSAV North America shipped motor vehicles to and from the United States during the Class Period. CSAV North America also provided, marketed, and/or sold Vehicle Carrier Services throughout 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.

I. Agents and Co-Conspirators

35 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.

36 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

37 Complainants bring this action under 46 U S C §§ 40302(a), 41102(b)(1), 41102(c), 41103(a)(1) 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.

38 The Federal Maritime Commission ("FMC") has jurisdiction over this Complaint under the Shipping Act of 1984, 46 U S C § 40101 *et seq* ("the Shipping Act") 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)(1), 41102(c), 41103(a)(1) and (2), 41104(10), 41105(1) and (6), and 46 C.F.R. § 535 401, *et seq*

39 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 motor 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 motor vehicles purchased or leased during the Class Period.

40 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

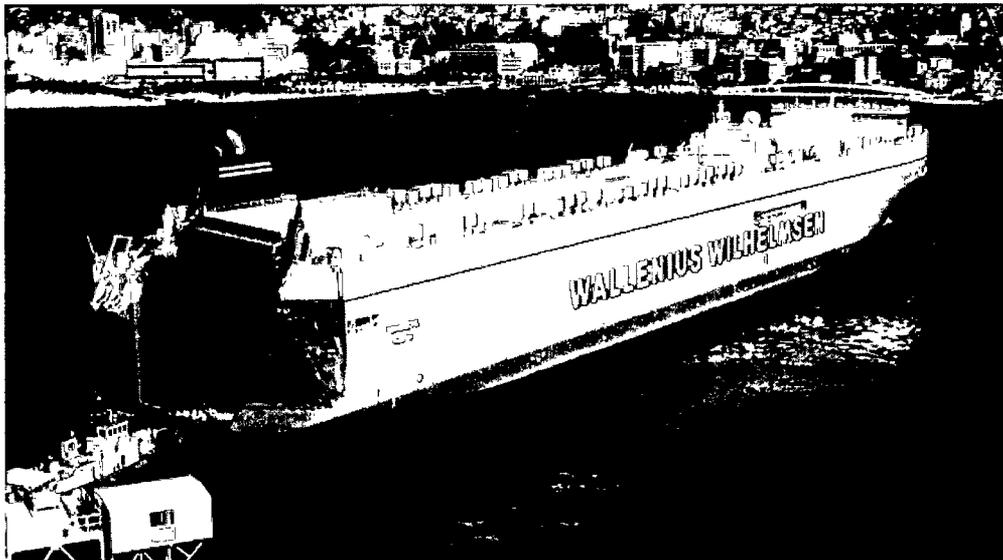
A. The Vehicle Carrier Industry

41 The vehicle carrier industry is comprised of multiple sectors and multiple types of vessels, including bulk carriers, tankers, and vehicle carriers. Complainants allege conduct in the Vehicle Carrier Services industry. In addition to shipping motor vehicles, Vehicle Carriers ship "high and heavy cargo"—cargo bigger and heavier than a vehicle and requiring special arrangements—and small, ancillary, non-moveable cargo, such as a plow blade for a plow truck.

42. The Vehicle Carrier Services industry consists of RoRos. (See Figure 1) RoRos are a special type of ocean vessel that allow motor vehicles to be driven and parked on their decks for long voyages. These ships, also known as 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 motor vehicles.

43 There are different types of RoRos. A Pure Vehicle Carrier (“PCC”) can be thought of as a floating parking garage and transports only motor vehicles. (See Figure 2) The layout is designed to solely carry motor vehicles and is fixed. Generally, there are multiple levels of parking for motor vehicles, and often the levels are moveable for high and heavy cargo. A Pure Car and Truck Carrier (“PCTC”) transports cars, trucks, and other four wheeled motor vehicles.

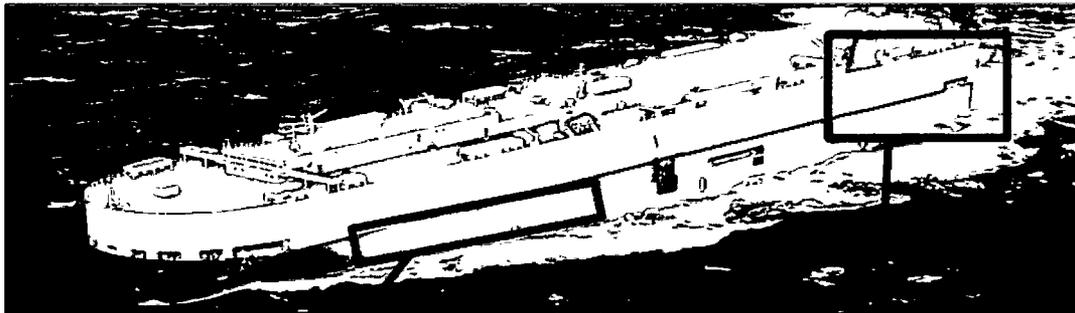
Figure 1



WW ASA’s MV Tønsberg RoRo vessel

Figure 2

Side View of Pure Car Carrier (PCC)



Inside of PCC



Roll-on and Roll-off way

Source <http://www.jftc.go.jp/en/pressreleases/yearly-2014/March/140318.files/Appendix.pdf>

44 In the Vehicle Carrier Services market, there is a distinction between deep sea services and short sea services. Deep sea vessels are large and transport thousands of motor vehicles or rolling equipment between continents. Short sea vessels are smaller and transport fewer motor vehicles or rolling equipment over shorter distances. Short sea vessels can enter smaller ports and shallower waters.

45 The vast majority of demand for deep sea service relates to motor vehicles. Consequently, the main ocean routes connect major vehicle manufacturing countries with major import markets for motor vehicles. Different countries have several ports of call, and vessels generally sail in rotation visiting a sequence of ports.

46 Vehicle Carriers are a defined submarket of the larger bulk shipping market. World trade exploded after the proliferation of container ships. These ships allow a large

range of goods, such as food and consumer electronics, to be packed in standard-sized containers for quick loading and delivery. However, cars, trucks, and heavy machinery, due to their larger and more irregular shapes, are not easily shipped in containers. Furthermore, there are no reasonable substitutes for the shipment of motor vehicles by sea because any alternatives, such as air transportation, would be too costly.

47 Respondents and their co-conspirators provide Vehicle Carrier Services. Their direct transactional contacts are original equipment manufacturers (“OEMs”) – mostly large automotive, construction and agricultural manufacturers.

48 Respondents engage in three different types of pricing negotiations with OEMs: (1) Bilateral negotiations whereby OEMs renew carriage contracts with Respondents, (2) Price reduction requests whereby OEMs request lower freight rates from Respondents, and (3) Tenders whereby multiple Respondents are invited to bid for a new or renewed contract award. Tenders involve an initial bid followed by a second round bid.

49 The contract period between a non-Japanese OEM and a Respondent Vehicle Carrier is typically two or three years. The contract period between a Japanese OEM and a Respondent Vehicle Carrier is typically one year.

50 In Japan, OEMs typically negotiate with an incumbent Vehicle Carrier when a contract expires, rather than engage in an open bidding, or tender process. Contracts are renewed in April of each year. Contract renewal negotiations often begin in December of the previous year.

51 American OEMs often rely on tenders to award business to a Respondent Vehicle Carrier.

52. Contracts, whether negotiated bilaterally or awarded by tender, generally cover global requirements, but rates are often negotiated for each individual route separately.

53 Contract freight rates for Vehicle Carrier Services are set on a per unit price. For instance, rates for motor vehicles are typically set by a “per car” price. However, rates for “high and heavy cargo,” are based on weight or cubic meter.

54 Respondents also charge surcharges in addition to rates for Vehicle Carrier Services. The primary surcharges are (1) Bunker Adjustment Factor (“BAF”), which relates to fuel, and (2) Currency Adjustment Factor (“CAF”), which relates to the fluctuation of currency exchange rates.

55 Respondents and their co-conspirators provided Vehicle Carrier Services to OEMs for transportation of motor vehicles to and from United States and elsewhere. Respondents and their co-conspirators provided Vehicle Carrier Services (a) in the United States for the transportation of motor vehicles manufactured elsewhere for export to and sale in the United States, and (b) in other countries for the transportation of motor vehicles manufactured elsewhere for export to and sale in the United States.

56 Complainants and members of the proposed Class purchased motor vehicles subject to Vehicle Carrier Services charged by one or more of the Respondents during the Class Period.

57 The annual market for Vehicle Carrier Services in the United States is nearly a billion dollars. Specifically, for the transportation of new, imported motor vehicles manufactured elsewhere for export to and sale in the United States, the market is between \$600 and \$800 million each year.

B. The Market Structure and Characteristics Support the Existence of a Conspiracy

58 The structure and other characteristics of the market for Vehicle Carrier Services 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 Market for Vehicle Carrier Services Has High Barriers to Entry

59 A collusive arrangement that raises product prices above competitive levels would, under basic economic principles, attract new entrants 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.

60 There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Transporting motor vehicles without damage across oceans requires highly specialized and sophisticated equipment, resources, and industry knowledge. The ships that make such transport possible are highly specialized. Such ships are purposely built to an unusual design that includes high sides, multiple interior decks, and no container cargo space. These characteristics restrict the use of the ships to the Vehicle Carrier Services market. A new entrant into the business would face costly and lengthy start-up costs, including multi-million dollar costs associated with manufacturing or acquiring a fleet of Vehicle Carriers and other equipment, energy, transportation, distribution infrastructure and skilled labor. It is estimated that the capital cost of a RoRo is at least \$95 million.³

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

2. There is Inelastic Demand for Vehicle Carrier Services

62. "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

³ Asaf Ashar, *Marine Highways' New Direction*, J OF COMMERCE at 38 (Nov 21, 2011)

the price of a product results in only a small decline in the quantity sold of that product, if any. In other words, customers have nowhere to turn for alternative, cheaper products of similar quality, and so continue to purchase despite a price increase.

63 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 purchased substitute products or declined to buy altogether. Inelastic demand is a market characteristic that facilitates collusion, allowing producers to raise their prices without triggering customer substitution and lost sales revenue.

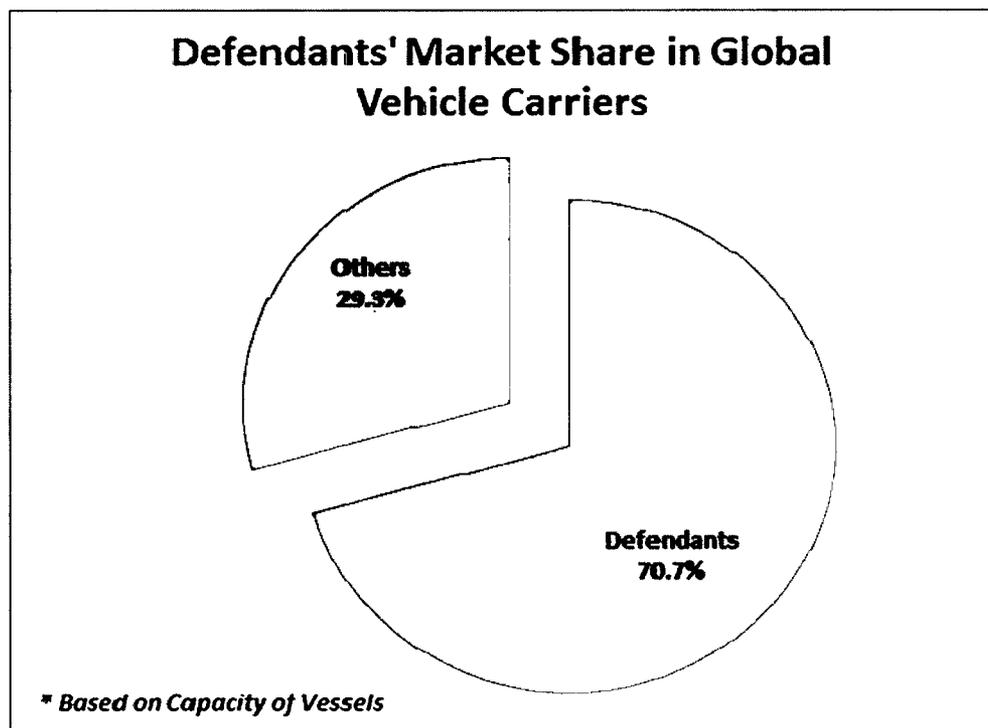
64 Demand for Vehicle Carrier Services is highly inelastic. This is because there are no close substitutes for the service. A Vehicle Carrier is the only ocean vessel that has the carrying capacity for a large number of motor vehicles. A Vehicle Carrier is also more versatile than other substitutes because it is built to adjust to various shapes and sizes. Because a container ship functions based on the uniformity 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 agricultural and construction equipment. Motor vehicles manufactured abroad must be transported by Vehicle Carrier Services to be sold in North America, regardless of whether prices are kept at supra-competitive levels. There is simply no alternative for high volume transoceanic transportation of motor vehicles to the United States.

3 The Market for Vehicle Carriers Is Highly Concentrated

65 A concentrated market is more susceptible to collusion and other anticompetitive practices.

66 The Respondents dominate the global Vehicle Carrier Services market. Respondents controlled over 70 percent of the Vehicle Carrier Services market during the Class Period. (See Figure 3)

Figure 3



Source Hesnes Shipping AS, The Car Carrier Market 2010

4 The Services Provided by Vehicle Carriers Are Highly Homogeneous

67 Vehicle Carrier Services are a commodity-like service, which is interchangeable among Vehicle Carriers. When products or services offered by different suppliers are viewed as interchangeable by purchasers, it is easier for suppliers to unlawfully agree on the price for the product or service in question, and it is easier to effectively police the collusively set prices. This makes it easier to form and sustain an unlawful cartel.

68 Vehicle Carrier Services are qualitatively the same across different carriers. Each Respondent has the capability to provide the same or similar Vehicle Carrier Services and Vehicle Carrier Service customers make purchase decisions based primarily on price. The core considerations for a purchaser will be where, when, and how much. This commoditization and interchangeability of Vehicle Carrier Services facilitated Respondents' conspiracy by making coordination on price much simpler than if Respondents had numerous distinct products or services with varying features.

5. Respondents Had Ample Opportunities to Meet and Conspire

69 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 conferences⁴ and the biennial RoRos trade show in Europe.

70 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 Line's president, Yasumi Kudo, MOL's president, Koichi Muto, and "K" Line's former president, Kenichi Kuroya.

71 Many employees of the Respondents have spent their entire careers in the shipping industry. In several instances, key employees have transferred between the Respondent companies. This is not unusual and is true of many industries. But in the shipping industry it fostered familiarity and connections between professed competitors and facilitated high-level coordination of the conspiracy. For example, Carl-Johan Hagman for the first eight years of his career 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 HAL AS.

72. Further, the very nature of the negotiations between Vehicle Carriers and OEMs also facilitates collusion among Vehicle Carriers. Soren Tousgaard Jensen, Managing Director of WWL Russia has explained, 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

⁴ 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/>

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.⁵

73 Respondents are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Respondents are members of the ASF Shipping Economics Review Committee. The Committee had meetings, including one in Tokyo on March 2, 2010 that was led by Yasumi Kudo (of NYK Line) and attended by Eizo Murakami (of "K" Line), Junichiro Ikeda (of MOL), and Yasuo Tanaka (of NYK Line).

74 Respondents CSAV (through its subsidiary CSAV Group North America), NYK America, "K" Line America, MOL (through its subsidiary, MOL (America), Inc), and WWL America are members of the United States Maritime Alliance, Ltd.

75 Respondents "K" Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

76 Respondents "K" Line, MOL (through its subsidiary, MOL (America) Inc), NYK Line, and WWL are members of the Pacific Maritime Association.

77 Respondents CSAV, "K" Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

78 Respondents CSAV, "K" Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

79 Respondents NYK Line, "K" Line, and MOL are members of the Japan Shipowners' Association, a trade association based in Japan.

⁵ *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/>

80 These associations—and the meetings, trade shows, and other industry events that stem from them—provided Respondents with ample opportunities to meet and conspire, as well as to perform affirmative acts in furtherance of the conspiracy

81 Respondents routinely enter into vessel-sharing agreements whereby they reserve space on each other's ships. These sharing or chartering agreements are very common in the international maritime shipping industry

82 A "space charter" occurs when a shipping carrier charters space on another shipping carrier's vessel. The opportunity for a space charter arises when a shipping carrier has less than full capacity on its ship and another shipping carrier needs additional capacity

83 A "time charter" occurs when a shipping carrier fully charters another vehicle carrier's vessel. The opportunity for a time charter arises when a vehicle carrier would otherwise send a vessel home empty and another vehicle carrier needs space.

84 While ostensibly entered into to optimize utilization capacity and increase efficiency, such sharing and chartering agreements also provide opportunities for Respondents to discuss Vehicle Carrier Services market shares, routes, and rates and to engage in illegal conspiracies to fix prices, rig bids, and allocate customers and markets.

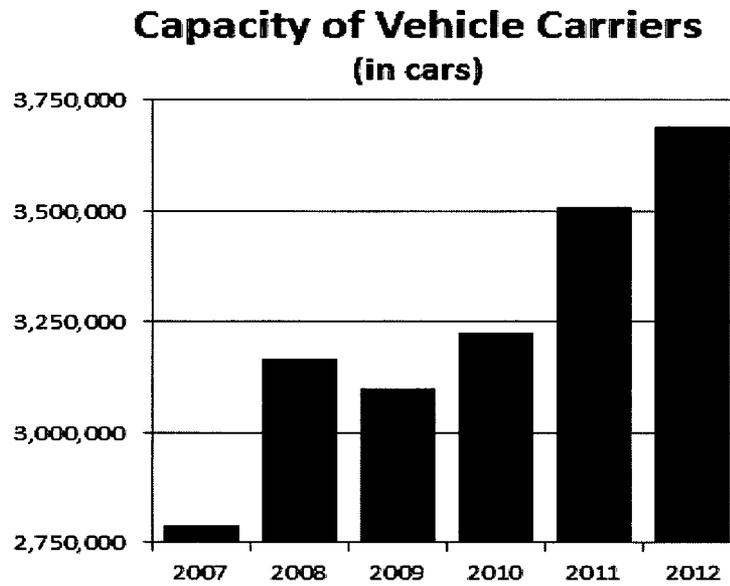
6. The Market for Vehicle Carrier Services Has Excess Capacity

85 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.⁶ Significantly, the market for Vehicle Carrier Services has operated in a state of excess capacity since 2008. The tables below demonstrate that while the capacity of Vehicle Carriers to transport motor vehicles

⁶ See Benoit, J. and V. Krishna, *Dynamic Duopoly Prices and Quantities*, REV OF ECON STUDIES, 54, 23–36 (1987), Davidson, Carl & Raymond Deneckere, *Excess Capacity and Collusion*, INT'L ECON REV 31(3), 521–41 (1990), see also *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 657 (7th Cir. 2002)

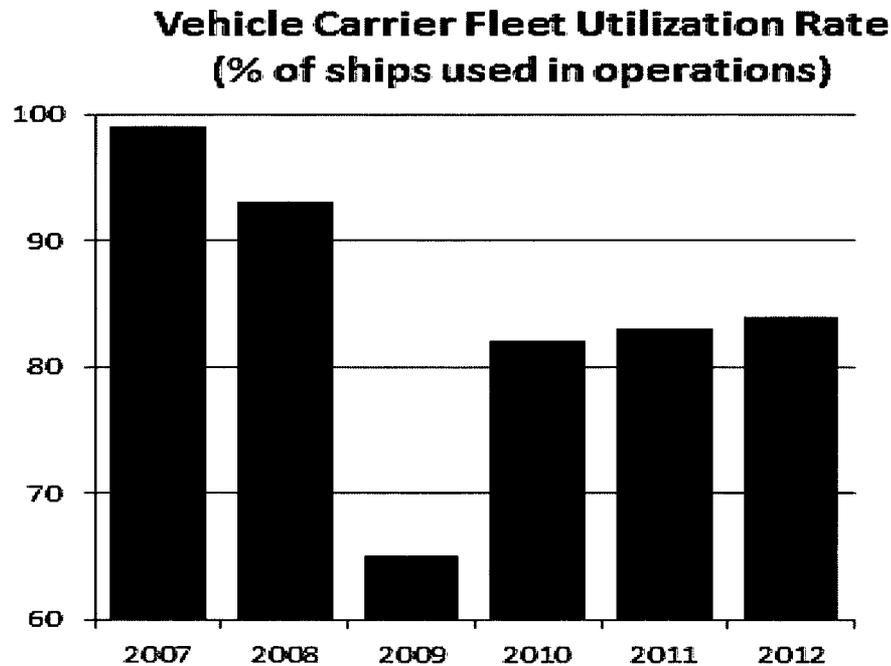
has increased since 2007, the utilization rate of Vehicle Carriers has fallen, and remained stable at a rate of approximately 83 percent since 2010 (See Figures 4 and 5)

Figure 4



Source The Car Carrier Market, 2004-2012; Hesnes Shipping AS

Figure 5



Source: The Platou Report 2004-2012

86 In the face of such excess capacity, Respondents agreed to reduce capacity and increase prices through coordinated fleet reduction, also known as “scrapping” or “lay-ups.” Scrapping involves taking a ship out of commission, and rendering the vessel non-usable. 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, however, certain start-up costs are involved in order to do so. A cold lay-up requires higher start-up costs to re-commission a vessel than a hot lay-up.

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

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

1 Respondents Agreed to Artificially Inflate Prices of Vehicle Carrier Services

Coordination of Price Increases

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

89 Generally, one Vehicle Carrier is the “lead” service provider for an OEM, such as Honda, though multiple Vehicle Carriers may provide services to an OEM. In 1997, MOL had an existing business relationship with Honda. In connection with Respondents’ meeting in February 1997, “K” Line, MOL, and NYK Line agreed to separately request a price increase from Honda on the Japan to the United States route. Respondents also collectively agreed to specifically request a price increase for Honda Accords, which were manufactured in the United States at the time, on the United States to Japan route.

90 In 2002, Respondents “K” Line and MOL shared approximately 50 percent of Volkswagen’s business on routes to the United States. In or around that same time, “K” Line and MOL agreed to seek a price increase of 3 to 5 percent from Volkswagen.

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

92 In late 2007 or early 2008, executives from Respondents “K” Line, MOL, and NYK Line met on several occasions to discuss a 10 percent price increase for 2008 on the Japan to the United States route.

(a) In November 2007, Hiroyuki Fukumoto (General Manager of MOL's Car Carrier Division), and Mr Kusnunose of NYK Line agreed to increase prices in 2008 and to persuade "K" Line to do the same.

(b) In December 2007, Toshitaka Shishido (Managing Executive Officer of MOL's Car Carrier Division) and Mr Kato of NYK Line had a dinner meeting in Tokyo to discuss increased costs and the need for a corresponding collective price increase in 2008

(c) On January 11, 2008, Messrs Shishido and Kato had a lunch meeting, which included Mr Murakami of "K" Line. At this January 11, 2008 lunch meeting, MOL, NYK Line, and "K" Line agreed that their objective would be at least a 5 percent price increase with a potential maximum increase of up to 7.25 percent. "K" Line, MOL, and NYK Line then had a follow-up meeting in which they discussed how to implement the coordinated price increases. They agreed that each Respondent would take the lead to increase prices with those OEMs with whom it had the strongest business relationship

(d) On January 28, 2008, Messrs Uchiyama of "K" Line, Fukumoto of MOL, and Kusnunose of NYK Line met to discuss the 2008 price increase further and agreed on a target increase of 10 percent. Messrs Yamaguchi of "K" Line, Fukumoto, and Kusnunose then met the following month in furtherance of the agreement.

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

Coordination of Responses to Price Reduction Requests

94 In the fall of 2008, Messrs. Watanabe of MOL, Kurosawa of NYK, and Yokoyama of K Line communicated about price increases and price negotiations with Mitsubishi. They agreed on the price increase that each would seek from Mitsubishi.

95 In 2009, Mitsubishi requested a price reduction from "K" Line, MOL, and NYK Line equal to the aforementioned price increase in 2008 and retroactive application of this reduction. Respondents discussed Mitsubishi's request and collusively agreed to limit the amount of the price reduction and respond with identical reductions of 50 percent of the 2008 price increases.

96 In 2009, Suzuki sought a price reduction from MOL, NYK Line, and "K" Line. Mitsuoka Moriya (Manager of the Americas Team for MOL's Car Carrier Division), Mr. Shimizu of NYK, and Mr. Yokoyama of "K" Line met to discuss the request, and each company collusively agreed to limit the amount of the price reduction and reduce prices by the same amount. Similar collusive price reduction discussions occurred in 2010.

97 In September 2011, Toyota informed MOL that MOL's BAF and CAF surcharges were higher than 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 Line and Mr. Fugimoto of "K" Line. MOL subsequently agreed to Toyota's request.

98 In 2012, Subaru sought a price reduction from MOL and NYK Line. Historically, NYK Line was the lead vehicle carrier service provider for Subaru. Mr. Watanabe of MOL and Mr. Kawamura of NYK Line collusively agreed to limit the amount of their price reduction and bid their existing prices.

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

99 In or around 2001, MOL and Höegh discussed American Honda business from the United States to the Middle East. MOL informed Höegh that while MOL was not the incumbent for this particular route, MOL wanted the business. Thus, MOL requested that Höegh refrain from bidding on the 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 won the bid. As promised, MOL chartered Höegh vessels for the route

100 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"⁷ for MOL's incumbent business with GM. WWL agreed. MOL likewise asked NYK Line to submit a bid higher than MOL's and gave NYK a rate to bid. NYK Line agreed and submitted MOL's preferred bid.

101 In 2002 or 2003, MOL spoke with WWL about a Ford tender. WWL was the incumbent for Ford business 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. WWL gave MOL a rate to bid on the Europe to the United States route, which MOL submitted. At the same time, MOL spoke with Höegh and Höegh agreed to not compete with MOL for Ford's business on the Thailand to the United States route, and MOL agreed to "respect" Höegh for Ford's business on routes from Africa to the Middle East.

102. In 2004, WWL agreed to "respect" MOL's Daimler and BMW businesses for the route from South Africa to the United States. In return, MOL agreed to "respect" WWL's portion of the Daimler and BMW business from Europe to the United States.

103 In the fall of 2008, Messrs. Watanabe of MOL, Kurosawa of NYK Line, and Yokoyama of "K" Line reached an agreement regarding price increases each would request from

⁷ "Respect" is a well-recognized term of art in Japanese business culture which, in this context, may either mean not bidding at all, or bidding a higher price

Mitsubishi. The parties also agreed on the routes each would seek. NYK Line and "K" Line sought business to the West Coast of the United States, and the three companies shared Mitsubishi's East Coast business.

104 In 2008 or 2009, Mr Ito of MOL asked Mr Tsuji of "K" Line to "respect" its incumbent status for Chrysler business from the United States to South Africa. Specifically, MOL asked "K" Line to bid a higher rate. "K" Line agreed, and in return MOL agreed to "respect" "K" Line on routes from Brazil to the United States and Argentina.

105 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 the Europe to the United States. In return, MOL agreed not to compete for WWL's BMW business from Europe to the United States.

106 In 2010, CSAV asked MOL to "respect" its GM business on routes from the United States to Colombia. MOL agreed and submitted a bid at a non-competitive price provided by CSAV. This tender covered business for the years 2010 to 2012.

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

108 In February and/or March 2012, Messrs. Noguchi of MOL and Tsuneda of WWL met to discuss their companies' American Honda contracts. MOL and WWL agreed not to compete on certain routes from the United States to China and from the United States to Korea for American Honda. WWL gave MOL a price to bid on the United States-China route and

retained that business with American Honda. In exchange, MOL gave WWL a price to bid on the United States-Korea route

3. Respondents Conspired to Restrict Capacity for Vehicle Carrier Services

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

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

111 In or around 2008 or 2009, demand for Vehicle Carrier Services fell as result of the worldwide financial crisis. Thereafter, Toshitaka Shishido of MOL, Mr Kato of NYK Line, and Mr Murakami of "K" Line met to discuss fleet reductions. MOL, NYK Line, and "K" Line agreed to scrap vessels, and as general matter, they also discussed and agreed on the need to resist price reduction requests from OEMs Messrs. Shishido, Euren of WWL and Hagman of Höegh also spoke about the need for fleet reductions. MOL also had similar discussions with EUKOR. As a result of these agreements

- (a) MOL scrapped approximately 40 vessels,
- (b) NYK Line scrapped approximately 40 vessels,
- (c) "K" Line scrapped approximately 25 vessels,
- (d) WWL engaged in cold lay-ups, and
- (e) Höegh engaged in cold lay-ups.

D Guilty Pleas in the Vehicle Carrier Services Industry

112 On February 27, 2014, the DOJ announced that Respondent CSAV agreed to pay a \$8.9 million criminal fine and to plead guilty to a one-count Criminal Information charging it with engaging in a conspiracy to suppress and eliminate competition by allocating customers and routes, rigging bids and fixing prices for the sale of international ocean shipping services of roll-on, roll-

off cargo to and from the United States and elsewhere, including the Port of Baltimore, from at least January 2000 to September 2012 in violation of Section 1 of the Sherman Act, 15 U S C § 1

113 According to the Criminal Information filed, to form and carry out the Vehicle Carrier Services conspiracy, Respondent CSAV and its co-conspirators

(a) attended meetings or otherwise engaged in communications regarding certain bids and tenders for international ocean shipping services for roll-on, roll-off cargo,

(b) agreed during those meetings and other communications to allocate customers by not competing for each other's existing business for certain customers on certain routes,

(c) agreed during those meetings and other communications not to compete against each other on certain tenders by refraining from bidding or by agreeing on the prices they would bid on those tenders,

(d) discussed and exchanged prices for certain customer tenders so as not to undercut each other's prices,

(e) submitted bids in accordance with the agreements reached, and

(f) provided international ocean shipping services for certain roll-on, roll-off cargo to and from the United States and elsewhere at collusive and non-competitive prices.

114 This is the first charge in an ongoing federal antitrust investigation into price-fixing, bid-rigging, and other anticompetitive conduct in the Vehicle Carrier Services 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. Bill Baer, Assistant Attorney General in charge of the DOJ's Antitrust Division, stated. "Because of the growth in the automobile ocean shipping industry over the past 40 years, the conspiracy substantially affected interstate and foreign commerce Prosecuting international price-fixing conspiracies remains a top priority for the division."

115 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.

116 On or about March 11, 2015, NYK 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 at least February 1997 through at least September 2012. In pleading guilty, NYK Line specifically admitted that the conspiracy affected certain United States-based manufacturers of cars and trucks. NYK Line agreed to pay a criminal fine of \$59.4 million. Further, in pleading guilty, NYK Line’s corporate representative expressed NYK Line’s “deepest regret” that its employees engaged in serious misconduct and violated the antitrust laws, and informed the Court that NYK Line took “full responsibility” for its employees’ conduct, which violated United States law.

117 Several executives from “K” Line and NYK Line 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.

118 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 Otoda 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. Otda was sentenced to serve an 18-month prison term and to pay a \$20,000 criminal fine.

119 On or about March 10, 2015, NYK Line 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.

E. Government Fines in the Vehicle Carrier Services Industry

120 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 Line \$128.4 million, “K” Line \$55.9 million, and NMCC \$4.1 million. It also fined Norway’s WWL \$34.3 million. (See Figure 6)

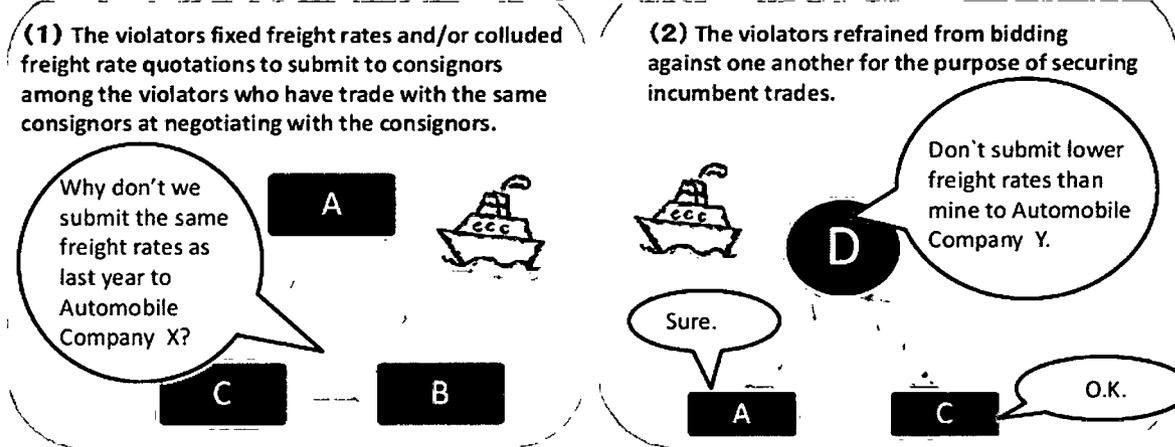
121 According to the JFTC, in accordance with the agreements, Respondents

(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.

122. The JFTC found that NYK Line, “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 MOL had stopped participating in the alleged conduct prior to a 2012 investigation of its offices and the JFTC granted its application for leniency

Figure 6



123 The EC and CCB are also part of the antitrust probe of the Vehicle Carrier Services industry. On September 6, 2012, EC officials carried out unannounced inspections at the premises of several vehicle carriers in several European Union member countries in coordination with the United States and Japanese competition authorities. The EC had reason 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. 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 evidence of any infringement of competition law related to possible price cooperation between carriers and allocation of customers."⁸

124 On July 1, 2015, Nippon Yusen Kabushiki Kaisha 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.

⁸ <http://www.wilhelmsenasa.com/media/pressreleases/pages/WilhWilhelmsenASAsubsidiariesunderinvestigationbycompetitionauthorities.aspx>

125 On or about July 31, 2015, Wallenius Wilhelmsen Logistics reached a settlement with the South African Competition Commission requiring the Respondent to pay approximately \$77 million. The South African Competition Commission concluded that the Respondent had colluded on eleven tenders with its competitors in the transportation of motor vehicles by sea issued by several automotive manufacturers to and from South Africa, including BMW, Toyota Motor Corporation, Nissan, and Honda among others.

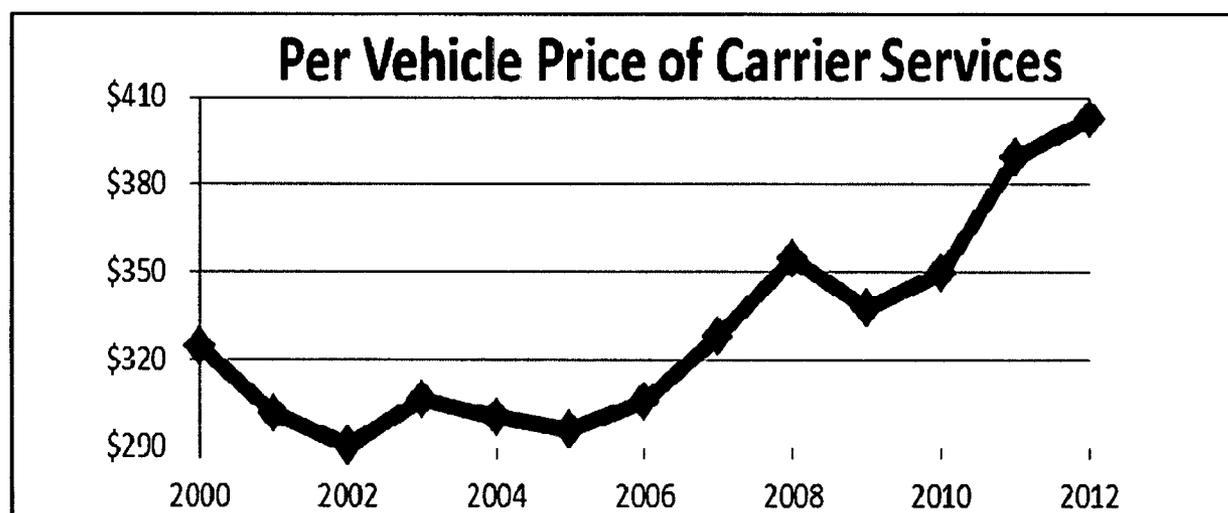
126 The United States Federal Maritime Commission has likewise fined several of the respondents for violations of the Shipping Act arising from the allegations above. To date, the FMC has levied the following fines: "K" Line--\$1.1 million, NYK Line--\$1.225 million, CSAV--\$625,000, MOL--\$1.3 million.

F Other Evidence of Collusion in the Vehicle Carrier Service Market

1 Respondents Raised Prices at a Rate that Far Exceeded Demand

127 Prices for Vehicle Carrier Services have been generally increasing since 2006

Figure 7



128 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.

129 Beginning just prior to the Class Period, the price of Vehicle Carrier Services has increased by 23 percent.

130 The increase in the price of Vehicle Carrier Services far outpaced any increase in demand during the Class Period.

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

2. Respondents Previously Colluded in Different Markets

132. 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.

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

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.

134 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 Line, and MOL Logistics (Japan) Co., Ltd., a subsidiary of Respondent MOL.

135 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.

136 Yusen Logistics Co., Ltd.⁹ 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

137 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 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

138 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 Line, a total of \$219 million for their participation in the air cargo cartels and violating European Union antitrust

⁹ On October 1, 2010, Yusen Air & Sea Services Co., Ltd. and NYK Logistics merged under the name Yusen Logistics Co., Ltd.

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.”¹⁰

139 On March 8, 2013, the DOJ announced that “K” Line Logistics, Ltd. and Yusen Logistics Co , Ltd., a subsidiary of Respondent NYK Line, 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

140 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.¹¹ Complainants seek relief on behalf of the following class (the “Class”)

All Automobile Dealers in the United States who purchased motor 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 1, 2000

¹⁰ 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.

¹¹ 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[]”), *Government of Guam v American President Lines*, 28 F.3d 142, 148 n. 8 (D C Cir 1994) (“[A]lthough the agency rules were silent on class relief, there was nothing to prohibit it.”),

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

141 Excluded from the Class 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

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

143 Common questions of law and fact exist as to all members of the Class. This is particularly true given the nature of Respondents' conspiracy, which was generally applicable to all the members of the Class, thereby making appropriate relief with respect to the Class as a whole. Such questions of law and fact common to the Class 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 negotiated 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 Class,
- 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 Class 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 Class, and,
- q. The appropriate class-wide measure of reparations for the Class.

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

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

146 Complainants' claims arise out of the same common course of conduct giving rise to the claims of the other members of the Class. Complainants' interests are coincident with, and not antagonistic to, those of the other members of the Class. Complainants are represented by

counsel who are competent and experienced in the prosecution of antitrust and class action litigation.

147 The questions of law and fact common to the members of the Class predominate over any questions affecting only individual members, including legal and factual issues relating to liability and damages.

148 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.

149 The prosecution of separate actions by individual members of the Class would create unnecessary inefficiencies and a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Respondents.

**THE RESPONDENTS' VIOLATIONS OF THE SHIPPING ACT INJURED THE
COMPLAINANTS AND THE CLASS**

150 The Respondents' price-fixing conspiracy, 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 Class have been deprived of free and open competition, and
- d) Complainants and members of the Class paid artificially inflated prices.

151 During the Class Period, Complainants and the members of the Class 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.

152. The market for Vehicle Carrier Services and the market for motor vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the market for motor vehicles. Without the motor vehicles, the Vehicle Carrier Services have little to no value because they have no independent utility. Indeed, the demand for motor vehicles creates the demand for Vehicle Carrier Services.

153 While even a monopolist would increase its prices when the cost of its inputs increased, the economic necessity of passing through cost changes increases with the degree of competition a firm faces. The OEM market for motor 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 motor vehicles charged to dealers.

154 Hence, the inflated prices of Vehicle Carrier Services in motor vehicles resulting from Respondents' price-fixing conspiracy have been passed on to Complainants and the other members of the Class by OEMs.

155 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 motor vehicles shipped by Vehicle Carriers.

156 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 price increase on one cost in a product (or service) that is an assemblage of costs.

157 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 motor 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 motor 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 motor 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.

158 The precise amount of the overcharge impacting the prices of motor 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 Class can be quantified.

159 By reason of the alleged violations of the Shipping Act and the FMC's regulations, Complainants and the members of the Class 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.

PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. Because of the Respondents' conduct, the Complainants did not and could not discover that their claims had accrued.

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

161 Complainants and members of the Class 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 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.

162. Complainants and members of the Class are automobile dealers who had little or no direct contact or interaction with the Respondents, and had no means from which they could have discovered the combination and conspiracy described in this Complaint.

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

B. Fraudulent Concealment Tolled the Statute of Limitations

164 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 Class. Complainants and members of the Class 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.

165 Because Respondents' agreements, understandings, and conspiracy were kept secret, Complainants and members of the Class were unaware before that time of Respondents' unlawful conduct, and they did not know before then that they were paying supra-competitive prices for Vehicle Carrier Services throughout the United States during the Class Period. No information, actual or constructive, was ever made available to Complainants and members of the Class that even hinted to Complainants and the members of the Class that they were being injured by Respondents' unlawful conduct.

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

167 By its very nature, the Respondents' anticompetitive conspiracy 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 by any member of the public or by the OEMs and other direct purchasers with whom they did business.

168 Complainants and members of the Class could not have discovered the alleged combination or conspiracy at an earlier date by the exercise of reasonable diligence because of the deceptive practices and techniques of secrecy employed by the Respondents and their co-conspirators to avoid detection of, and fraudulently conceal, their conduct.

169 Because the alleged conspiracy was both self-concealing and affirmatively concealed by Respondents and their co-conspirators, Complainants and members of the Class 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

170 For these reasons, the statute of limitations applicable to Complainants' and the Class' 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)

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

172 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 for 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)

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

174 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 Among the agreed-upon conduct were agreements to (1) rig bids for the sale of for 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)

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

176 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 motor vehicles, resulting in the Complainants paying inflated prices.

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

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

178 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

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

180 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 that agreed to “respect” their competitors’ business and not pursue customers unreasonably refused to deal or negotiate. This resulted in Complainants paying overcharges, via shippers and consignees.

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

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

182 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 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.*

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

184 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 motor vehicles.

PRAYER FOR RELIEF

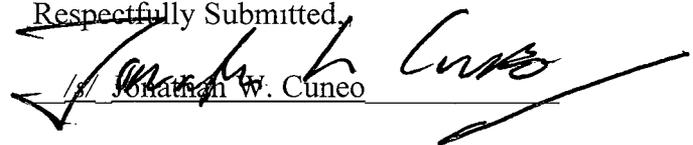
WHEREFORE, Complainants request:

- 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 the Class,
- 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/ Jonathan W. Cuneo

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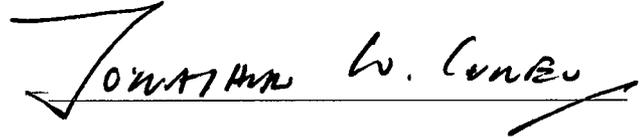
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VERIFICATION

Jonathan W Cuneo, being first duly sworn on oath deposes and states that he is the senior attorney for the above complainants, that he has read the foregoing Complaint and that the facts stated therein he believes to be true on information and belief and upon information received from others.

Dated. April 21, 2016



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Subscribed and sworn to before me, a notary public in and for District of Columbia, on this the 21st day of April, A.D 2016



Notary Public Marie Schenk

My Commission expires July 14, 2019

