

**BEFORE THE
FEDERAL MARITIME COMMISSION**

Docket No. 16-11

**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 OTHER SIMILARLY
SITUATED**

Complainants,

v.

**NIPPON YUSEN KABUSHIKI KAISHA, NYK LINE (NORTH AMERICA) INC.,
MITSUI O.S.K. LINES, LTD., MITSUI O.S.K. BULK SHIPPING (USA) INC.,
WORLD LOGISTICS SERVICE (USA) INC., HÖEGH AUTOLINERS AS,
HÖEGH AUTOLINERS, INC., NISSAN MOTOR CAR CARRIERS CO LTD.,
KAWASAKI KISEN KAISHA, LTD., “K” LINE AMERICA, INC.,
WALLENIUS WILHELMSSEN LOGISTICS AS, WALLENIUS WILHELMSSEN
LOGISTICS AMERICAS LLC, EUKOR CAR CARRIERS INC., COMPAÑIA SUD
AMERICANA DE VAPORES S.A., AND CSAV AGENCY NORTH AMERICA, LLC,**

Respondents.

JOINT MOTION TO STAY PROCEEDINGS

Complainants, Specially Appearing Respondents Nippon Yusen Kabushiki Kaisha and NYK Line (North America Inc. (collectively, “NYK”), EUKOR Car Carriers Inc. (“EUKOR”), Wallenius Wilhelmsen Logistics AS and Wallenius Wilhelmsen Logistics Americas LLC, (collectively, “WWL”), Compañía Sud Americana de Vapores S.A. and CSAV Agency North America, LLC (collectively, “CSAV”), and Höegh Autoliners Holdings AS, Höegh Autoliners AS, Höegh Autoliners, Inc., Autotrans AS and Alliance

Navigation LLC (collectively, “Höegh”),¹ and Respondents Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (USA) Inc., World Logistics Service (U.S.A.) Inc. and Nissan Motor Car Carrier Co., Ltd. (collectively, “MOL”) and Kawasaki Kisen Kaisha, Ltd., and “K”Line America, Inc. (collectively, “K’ Line”),² by and through their respective undersigned counsel, jointly respectfully move for the entry of an order staying proceedings in the above-captioned case. In support thereof, Complainants, Specially Appearing Respondents, and Respondents respectfully represent as follows:

BACKGROUND

1. Specially Appearing Respondents have entered special appearances before the Commission, limited, in part, to the filing of this Joint Motion to Stay Proceedings.
2. A group of automobile dealers (“the MDL Auto Dealer Plaintiffs), seeking to represent a similarly situated class to Complainants here, filed suit against Specially Appearing Respondents and Respondents in Multi-District Litigation before the Honorable Esther Salas, USDJ, in the United States District Court for the District of New Jersey. *In Re Vehicle Carrier Services Antitrust Litigation*, Master Docket No. 13-cv-3306, MDL No. 2471 (“the MDL Proceeding”). Specifically, on October 6, 2014, the MDL Auto Dealer Plaintiffs filed their consolidated second amended complaint in the MDL Proceeding; a true copy of the complaint in the MDL proceeding is attached hereto as Exhibit “A” and is made a part hereof by reference.
3. On August 28, 2015, the U.S. District Court entered an Opinion and Order in the MDL Proceeding dismissing the MDL Auto Dealer Plaintiffs federal action with prejudice; a true copy of the U.S. District Court’s Opinion and Order dated August 28, 2015 is attached

¹ NYK, EUKOR, WWL, CSAV and Höegh are collectively referred to as the Specially Appearing Respondents.

² MOL and “K” Line are collectively referred to as Respondents.

hereto as Exhibit “B” and is made a part hereof by reference. On September 25, 2015, the MDL Auto Dealer Plaintiffs filed a notice of appeal of the August 28, 2015 Opinion and Order with the United States Court of Appeals for the Third Circuit (“Third Circuit”); a true copy of the notice of appeal is attached hereto as Exhibit “C” and is made a part hereof by reference. On April 25, 2016, the U.S. District Court entered Orders denying MDL Auto Dealer Plaintiffs’ post-judgment motions.

4. This case is one of five proceedings pending before the Commission involving first-filed actions in U.S. District Court: (i) *General Motors LLC v. Nippon Yusen Kabushiki Kaisha, et al.* (FMC Docket No. 15-08) (“the GM Case”); (ii) *Cargo Agents Inc., et al. v. Nippon Yusen Kabushiki Kaisha, et al.* (FMC Docket No. 16-01) (“the Cargo Agents Case”); (iii) *Alban, et al. v. Nippon Yusen Kabushiki Kaisha, et al.* (FMC Docket No. 16-07); (“the End-Payors Case”); (iv) *Rush Truck Centers of Arizona, Inc., et al. v. Nippon Yusen Kabushiki Kaisha, et al.* (FMC Docket No. 16-10) (“the Truck and Equipment Dealers Case”); and (v) *Landers Brothers Auto Group, Inc., et al. v. Nippon Yusen Kabushiki Kaisha, et al.* (FMC Docket No. 16-11) (the Auto Dealers Case”).

5. By Order dated January 6, 2016, the Presiding Officer granted a joint motion to stay the GM Case pending resolution of a first-filed action filed by GM pending in the MDL Proceeding. On January 25, 2016, the Specially Appearing Respondents and Respondents in the Cargo Agents Case filed a contested motion to stay that case pending resolution of first-filed actions filed by the Cargo Agents Complainants in the MDL proceeding; that motion has not yet been decided.

6. The parties in this case jointly move to stay this proceeding pending resolution of the motion to stay in the Cargo Agents Case because the Presiding Officer’s decision may bear

on the decision as to whether a similar stay should be granted here. Specially Appearing Respondents and Respondents also are the respondents in the Cargo Agents Case. The complaints in this case and in the Cargo Agents Case involve similar factual allegations.

MOTION FOR A STAY

A. STANDARD FOR A MOTION FOR A STAY.

7. As the Presiding Officer recently stated in the GM Case, “[t]he Commission may grant a request to stay a proceeding, however, the party seeking a stay has the burden to demonstrate the need for the stay.” *General Motors LLC v. Nippon Yusen Kabushiki Kaisha, et al.*, _ SRR _, 2016 WL 232546, *2 (Fed. Mar. Comm’n Dkt. No. 15008, A.L.J. Order, Jan. 5, 2016). The Presiding Officer explained that “[t]he test for evaluating a motion to stay was articulated by Justice Cardozo, who wrote that ‘the power to stay proceedings is incidental to the power inherent in every court to control the disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.’” *Ibid* (quoting *Landis v. North American Co.*, 299 U.S. 248, 254 (1936)). The Presiding Officer defined the issue thusly: “‘the question of whether to grant a motion for stay . . . is discretionary, and requires only a balancing of various competing interests.’” *Ibid* (quoting *Exclusive Tug Arrangements in Port Canaveral, Florida*, _ SRR _, 2002 WL 31556296, at *2 (Fed. Mar. Comm’n Dkt. No. 02-03, Comm’n Order, Nov. 15, 2002). Procedurally, the Presiding Officer commanded that “‘the movant must first ‘make out a clear case of hardship or inequity in being required to go forward, if there is even a fair possibility that the stay for which he prays will work damage to someone else.’” *Ibid* (quoting *Landis, supra*, 299 U.S. at 254-55).

8. In *General Motors LLC, supra*, the Presiding Officer instructed that “[t]he Supreme Court addressed the factors to consider when staying a federal proceeding pending

the outcome of a related state court matter[.]” *id.* at 2 (citing *Moses H Cone Memorial Hospital v. Mercury Construction Corp.*, 460 U.S. 1, 14-18 (1983)), stating that “[t]hese factors include ‘which court first assumed jurisdiction, the inconvenience of the federal forum, the desirability of avoiding piecemeal litigation, whether state or federal law provides the rule of decision on the merits, the adequacy of the state court to protect the parties’ rights, and whether one of the actions has a vexatious or reactive nature.’” *Ibid* (quoting *Profile Manufacturing, Inc. v. Ronald Kress*, 1994 U.S. App. LEXIS 6048, at *7 (Fed. Cir. 1994)).

9. The Presiding Officer has set forth the relevant factors in respect of the issuance of a stay. In *SSA Terminals, LLC, et al. v. The City of Oakland, acting by and through its Board of Port Commissioners*, 32 S.R.R. 107 (ALJ 2010), 2010 WL 8367622 (Fed. Mar. Comm’n Dkt. No. 09-08, ALJ Order, Dec. 21, 2010), the Presiding Officer noted that “[m]otions to stay are generally evaluated under the factors established in *Virginia Petroleum Jobbers Ass’n v. FPC*, 259 F.2d 921, 925 (D.C. Cir.1958).” *Id.* at *3. The Presiding Officer listed the factors as

(1) the likelihood that the party seeking the stay will prevail on the merits of the appeal; (2) the likelihood that the moving party will be irreparably harmed absent a stay; (3) the prospect that others will be harmed if the court grants the stay; and (4) the public interest in granting the stay.

[*Ibid.* (quoting *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 673-74 (D.C. Cir. 1985) (citing *Virginia Petroleum Jobbers Ass’n, supra*, 259 F.2d at 925).]

In *SSA Terminals, supra*, the Presiding Officer granted the requested stay over the opposition of the non-moving party.

10. An application of the *Virginia Petroleum Jobbers* factors, as supplemented by additional factors also judicially recognized -- that is, the stage of the litigation; whether the non-moving party will be unduly prejudiced or tactically disadvantaged by a stay; and whether a stay will simplify issues, see *Board of Trustees of the Ohio Laborers’ Fringe Benefit Programs v.*

O.C.I Construction, Inc., No. 2:10-cv-550, 2011 WL 902246 at *3 (S.D. Ohio Mar. 14, 2011); *Washington Mutual Bank v. Law Office of Robert Jay Gumenick*, 561 F. Supp. 2d 410 (S.D.N.Y. 2008); *Auto-Owners Ins. Co. v. Summit Park Townhouse Ass'n*, No. 14-cv-3417, 2015 WL 1740818 (D. Colo. Apr. 14, 2015); *Woodman's Food Market, Inc. v. Clorox Co.*, No. 14-cv-734, 2015 WL 4858396 (W.D. Wis. Aug. 13, 2015) -- support the grant of a stay. The parties address each of those factors as follows.

C. AN APPLICATION OF THE STANDARDS JUSTIFY THE ENTRY OF A STAY.

11. *The first-filed court/status of the district court litigation.* Because consideration of this factor in the context of the contested motion in the Cargo Agents Case likely will bear on similar issues present in this case, the parties request that the Presiding Officer grant a limited stay pending resolution of the contested motion.

12. *The convenience of the forum.* In that the parties seek a limited stay pending resolution of the contested motion in the Cargo Agents Case, this factor is neutral.

13. *The desirability of avoiding piecemeal litigation.* Duplicative litigation will result if the parties are required to litigate the same issues involving a stay before the Commission in this case while the contested motion in the Cargo Agents Case is pending. Granting the parties' requested stay in this case pending resolution of the contested motion in the Cargo Agents Case will avoid piecemeal treatment of similar issues. This factor also supports a stay. *See In re Groupon Derivative Litigation*, 882 F. Supp. 2d 1043 (N.D. Ill. 2012) (staying action in part to avoid piecemeal litigation and attendant burdens on court and parties).

14. *The law providing the rule of decision.* In their class action complaint in the U.S. District Court, the MDL Auto Dealer Plaintiffs assert that their injunction claims are governed by the federal antitrust laws and that their damages claims are governed by state antitrust laws,

state consumer protection laws and the common law of numerous states. Specially Appearing Respondents and Respondents argued that the Shipping Act preempts such claims. The parties have agreed to defer resolution of this dispute pending a decision on the contested motion in the Cargo Agents Case. As a result, this factor is neutral.

15. *The adequacy of the forum to protect the parties' rights.* The parties submit that this factor is neutral.

16. *Whether one of the actions is vexatious or reactive.* Because the parties seek a limited stay pending resolution of the contested motion in the Cargo Agents Case, this factor is neutral.

17. *Whether the parties or the public interest will be harmed by a stay.* The parties will benefit from a stay by avoiding costly and time-consuming duplicative litigation. Absent a stay, the parties here will be forced to brief many of the same issues already briefed in the contested motion in the Cargo Agents Case. The public interest likewise will benefit from a stay because the time and resources of the Commission will not be consumed by duplicative litigation.

18. *The Commission's interest in resolving controversies efficiently.* Because the issues involved in the contested motion in the Cargo Agents Case are similar to those present here, it is both inefficient and wasteful to consume the time and resources of the Commission in deciding a second contested motion on Respondents' requests for a stay. A stay in this case is in the best interests of the Commission's adjudicative goals.

19. *The stage of the litigation.* This case is at an early stage in the proceedings. Specially Appearing Respondents and Respondents have yet to respond. A decision to advance or stay the Cargo Agents Case may impact the progress of this case. Accordingly, this factor too

favors a stay. *See Generac Power Systems, Inc. v. Kohler Co.*, 807 F. Supp. 2d 791 (E.D. Wis. 2011) (granting stay based in part on early stage of litigation being stayed).

20. *Whether the non-moving party will be unduly prejudiced or tactically disadvantaged by a stay.* Complainants, Specially Appearing Respondents and Respondents have jointly moved for a stay, and no party will be unduly prejudiced or tactically disadvantaged by a stay.

21. *Whether a stay will simplify issues.* A stay will simplify issues: the Presiding Officer's decision to advance or stay the Cargo Agents Case likely will simplify the issues in this case and its procedural posture. *See Saipan Shipping Co., Inc. v. Asiatic Intermodal Seabridge, S.A.*, 19 S.R.R. 900 (ALJ, I 979) (granting stay where decision in parallel proceeding was likely to either "eliminate the need for a determination of the issues in this proceeding" or have a "strong and direct bearing on the issues in this case"). This factor too supports the issuance of a stay.

CONCLUSION

22. For the foregoing authority, arguments and reasons, Complainants, Specially Appearing Respondents and Respondents respectfully request that (a) their joint motion for a stay of proceedings be granted; (b) an appropriate order be entered staying this action, and all associated proceedings and deadlines, pending a further order from the Presiding Officer on the contested motion in the Cargo Agents Case; (c) Specially Appearing Respondents and Respondents be allowed twenty-one days after this application is determined and, if granted, twenty-one days after the stay is lifted, to answer, move or otherwise respond to the Complaint; and (d) granting such other and further relief as the Presiding Officer may deem just and proper.

DATED: May 31, 2016

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 31st day of May, 2016, a true and correct copy of the foregoing joint motion to stay proceedings was served via electronic mail with follow up via first-class mail, postage prepaid, on the foregoing counsel, all of whom join in this application.


Paul Heylman

EXHIBIT “A”

**UNITED STATES DISTRICT COURT
THE DISTRICT OF NEW JERSEY
NEWARK VICINAGE**

**IN RE: VEHICLE CARRIER
SERVICES**

ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

All Automobile Dealer Actions

Master Docket No. 13-cv-3306 (ES)
(JAD)
(MDL No. 2471)

**CONSOLIDATED SECOND
AMENDED CLASS ACTION
COMPLAINT**

JURY TRIAL DEMANDED

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Plaintiff Martens Cars of Washington, Inc. (“Plaintiff Martens”); Hudson Charleston Acquisition, LLC d/b/a Hudson Nissan (“Plaintiff Hudson Nissan”); John O’Neil Johnson Toyota, LLC (“Plaintiff Johnson”); Hudson Gastonia Acquisition, LLC (“Gastonia Nissan”); HC Acquisition, LLC d/b/a Toyota of Bristol (“Bristol Toyota”); Desert European Motorcars, Ltd (“Plaintiff Desert”); Hodges Imported Cars, Inc. d/b/a Hodges Subaru (“Plaintiff Hodges”); Scotland Car Yard Enterprises d/b/a San Rafael Mitsubishi (“Plaintiff San Rafael”); Hartley Buick/GMC Truck, Inc. d/b/a Hartley Honda (“Plaintiff Hartley”); Panama City Automotive Group, Inc. d/b/a John Lee Nissan (“Plaintiff John Lee”); and Empire Nissan of Santa Rosa, LLC (“Plaintiff Empire Nissan”) (collectively “Plaintiffs”), on behalf of themselves and all others similarly situated (the “Auto Dealer Classes” as defined below), 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, brings this class action for damages, injunctive relief, and other relief pursuant to federal antitrust laws; state antitrust, unfair competition, and consumer protection laws; and the common law of unjust enrichment, demand a trial by jury, and allege as follows:

I. NATURE OF ACTION

1. This lawsuit is brought as a proposed class action against Defendants Nippon Yusen Kabushiki Kaisha (“NYK”); NYK Line (North America) Inc.

(“NYK America”); Mitsui O.S.K. Lines, Ltd. (“MOL”); Mitsui O.S.K. Bulk Shipping (USA), Inc. (“MOL USA”); World Logistics Service (USA) Inc. (“WLS”); Höegh Autoliners AS (“Höegh”); Hoegh Autoliners, Inc. (“Hoegh Inc.”); Kawasaki Kisen Kaisha, Ltd. (“K’ Line”); “K” Line America, Inc. (““K” Line America”); Wallenius Wilhelmsen Logistics AS (“WWL”); Wallenius Wilhelmsen Logistics Americas LLC (“WWL Americas”); EUKOR Car Carriers Inc. (“EUKOR”); Compañía Sud Americana De Vapores S.A. (“CSAV”); and CSAV Agency North America, LLC (“CSAV North America”) (all as defined below, and collectively the “Defendants”), and unnamed co-conspirators, providers of Vehicle Carrier Services (defined below) globally and in the United States, for engaging in at least a conspiracy to fix, raise, maintain, and/or stabilize prices and allocate the market and customers in the United States for Vehicle Carrier Services.

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

3. Plaintiffs seek to represent all automobile dealers in approximately 30 states who indirectly purchased from any Defendant, or any current or former

subsidiary or affiliate thereof or any co-conspirator, Vehicle Carrier Services incorporated into the price of new Vehicles purchased during the period from and including January 1, 2000 through such time as the anticompetitive effects of Defendants' conduct ceased (the "Class Period").

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

5. Defendants, 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 Carrier Services in unreasonable restraint of the foreign commerce of the United States.

6. Competition authorities in the United States, the European Union, Canada, and Japan have been investigating a possible global cartel among Vehicle Carriers since at least September 2012. Both 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 Defendants.

7. On February 27, 2014, the DOJ announced that Defendant CSAV agreed to plead guilty and pay an \$8.9 million criminal fine for price-fixing Vehicle Carrier Services to and from the United States and elsewhere. On September 26, 2014, the DOJ announced that Defendant “K” Line agreed to plead guilty and pay a \$67.7 million criminal for its involvement in a conspiracy to fix prices, allocate customers, and rig bids for Vehicle Carrier Services to and from the United States. Plaintiffs, based upon their experience in civil antitrust litigation following from antitrust prosecutions by the DOJ, believe it likely that the one of the defendants 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 March 19, 2014, the JFTC announced it issued cease and desist orders and surcharge payment orders totaling more than \$233 million against Defendants NYK, “K” Line, Nissan Motor Car Carrier Co., and WWL for price-fixing Vehicle Carrier Services. NYK and Wilhelmsen Logistics AS control about 70 percent of the global market for carrying cars.

9. Defendants 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 in the United States and elsewhere for the import and export of new, assembled motor Vehicles to and from the United States. The combination and conspiracy engaged in by Defendants and their co-conspirators was in unreasonable restraint of interstate and foreign trade and commerce in violation of the Sherman Antitrust Act, 15 U.S.C. § 1; state antitrust, unfair competition, and consumer protection laws; and the common law of unjust enrichment.

10. As a direct result of the anticompetitive and unlawful conduct alleged herein, Plaintiffs and the Auto Dealer Classes paid artificially inflated prices for Vehicle Carrier Services incorporated into the price of new Vehicles purchased during the Class Period in the United States and have thereby suffered antitrust injury to their business or property. Plaintiffs did not purchase any Vehicles through a foreign-based subsidiary or agent.

II. JURISDICTION AND VENUE

11. Plaintiffs bring this action under Section 16 of the Clayton Act (15 U.S.C. § 26) to secure equitable and injunctive relief against Defendants for violating Section 1 of the Sherman Act (15 U.S.C. § 1). Plaintiffs also assert claims for actual and exemplary damages pursuant to state antitrust, unfair

competition, and consumer protection laws, and the common law of unjust enrichment, and seek to obtain restitution, recover damages, and secure other relief against the Defendants for violations of those state laws and common law.

Plaintiffs and the Auto Dealer Classes also seek attorneys' fees, costs, and other expenses under federal and state law.

12. This Court has jurisdiction over the subject matter of this action pursuant to Section 16 of the Clayton Act (15 U.S.C. § 26), Section 1 of the Sherman Act (15 U.S.C. § 1), and 28, U.S.C. §§ 1331 and 1337.

13. This Court has subject matter and supplemental jurisdiction of the state law claims pursuant to 28 U.S.C. §§ 1332(d) and 1367, in that (i) this is a class action in which the matter or controversy exceeds the sum of \$5,000,000, exclusive of interests and costs, and in which some members of the proposed Auto Dealer Classes are citizens of a state different from some of the Defendants; and (ii) Plaintiffs' state law claims form part of the same case or controversy as their federal claims under Article III of the United States Constitution.

14. Venue is proper in this district pursuant to Section 12 of the Clayton Act (15 U.S.C. § 22) and 28 U.S.C. §§ 1391 (b), (c), and (d) because a substantial part of the events giving rise to Plaintiffs' claims occurred in this District, a substantial portion of the affected interstate trade and commerce discussed below has been carried out in this District, and one or more of the Defendants reside, are

licensed to do business in, are doing business in, had agents in, or are found or transact business in this District.

15. This Court has *in personam* jurisdiction over the Defendants because each, either directly or through the ownership and/or control of its subsidiaries, *inter alia*: (a) transacted business in the United States, including in this District; (b) directly or indirectly sold or marketed Vehicle Carrier Services throughout the United States, including in this District; (c) had substantial aggregate contacts with the United States as a whole, including in this District; (d) were engaged in an illegal price-fixing conspiracy that was directed at, and had a direct, substantial, reasonably foreseeable, and intended effect of causing injury to, the business or property of persons and entities residing in, located in, or doing business throughout the United States, including in this District; and/or (e) engaged in actions in furtherance of an illegal conspiracy in this District either itself or through its co-conspirators. Defendants also conduct business throughout the United States, including in this District, and they have purposefully availed themselves of the laws of the United States.

16. Defendants engaged in conduct both inside and outside of the United States that caused direct, substantial, and reasonably foreseeable and intended anticompetitive effects upon interstate commerce within the United States.

17. The activities of Defendants and their co-conspirators were within the flow of, were intended to, and did have a substantial effect on interstate commerce of the United States. Defendants' Vehicle Carrier Services are sold in the flow of interstate commerce.

18. Vehicles, the prices of which include Vehicle Carrier Services, transported from abroad by the Defendants and sold for use within the United States are goods brought into the United States for sale and therefore constitute import commerce. To the extent any such Vehicles and the related Vehicle Carrier Services are purchased in the United States, and such Vehicles or Vehicle Carrier Services do not constitute import commerce, Defendants' unlawful activities during the Class Period with respect thereto, as more fully alleged herein, had, and continue to have, a direct, substantial, and reasonably foreseeable effect on United States commerce. The anticompetitive conduct, and its effect on United States commerce described herein, proximately caused antitrust injury to Plaintiffs and members of the Auto Dealer Classes in the United States.

19. By reason of the unlawful activities hereinafter alleged, Defendants substantially affected commerce throughout the United States, causing injury to Plaintiffs and members of the Auto Dealer Classes. Defendants, directly and through their agents, engaged in activities affecting all states, to fix, raise, maintain, and/or stabilize prices, and allocate the market and customers in the

United States for Vehicle Carrier Services, which conspiracy unreasonably restrained trade and adversely affected the market for Vehicle Carrier Services.

20. Defendants' conspiracy and unlawful conduct described herein adversely affected automobile dealers in the United States who purchased new Vehicles for resale, including Plaintiffs and the members of the Auto Dealer Classes.

III. PARTIES

A. Plaintiffs

21. Plaintiff Martens is a Maryland corporation whose principal place of business was in the District of Columbia. Plaintiff Martens was, at all times during the Class Period, an authorized Volvo and Volkswagen dealer that bought and then sold Volvo- and Volkswagen-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

22. During the Class Period, Plaintiff Martens purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Plaintiff Martens purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in the District of Columbia. Plaintiff Martens also displayed, sold, serviced, and advertised its Vehicles in the District of Columbia during the Class Period.

23. Plaintiff Hudson Nissan is a South Carolina limited liability company with its principal place of business in North Charleston, South Carolina. Plaintiff Hudson Nissan is an authorized Nissan dealer that buys and then sells Nissan-brand cars that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

24. During the Class Period, Plaintiff Hudson Nissan purchased Vehicles shipped by one or more of the Defendants or their co-conspirators. Plaintiff Hudson Nissan purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in South Carolina. Plaintiff Hudson Nissan has also displayed, sold, serviced, and advertised its Vehicles in South Carolina during the Class Period.

25. Plaintiff Gastonia Nissan is a North Carolina limited liability company with its principal place of business in Gastonia, North Carolina. Plaintiff Gastonia Nissan an authorized Nissan dealer who buys and then sells Nissan-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

26. During the Class Period, Plaintiff Gastonia Nissan purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Gastonia Nissan purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in North Carolina. Plaintiff Johnson has also displayed,

sold, serviced, and advertised its Vehicles in North Carolina during the Class Period.

27. Plaintiff Johnson is a Mississippi limited liability company with its principal place of business in Meridian, Mississippi. Plaintiff Johnson is an authorized Toyota dealer who buys and then sells Toyota-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

28. During the Class Period, Plaintiff Johnson purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Johnson purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Mississippi. Plaintiff Johnson has also displayed, sold, serviced, and advertised its Vehicles in Mississippi during the Class Period.

29. Plaintiff Bristol is a Tennessee limited liability company with its principal place of business in Bristol, Tennessee. Plaintiff Bristol is an authorized Toyota dealer, who buys and then sells Toyota-brand cars that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

30. During the Class Period, Plaintiff Bristol purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Bristol purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier

Services in Tennessee. Plaintiff Bristol has also displayed, sold, serviced, and advertised its Vehicles in Tennessee during the Class Period.

31. Plaintiff Desert is a California company with its principal place of business in Rancho Mirage, California. Plaintiff Desert is an authorized Rolls Royce, Bentley, Aston Martin, Maserati, Porsche, Jaguar, Land Rover, Audi, Lotus, and Spyker dealer who buys and then sells Rolls Royce-, Bentley-, Aston Martin-, Maserati-, Porsche-, Jaguar-, Land Rover-, Audi-, Lotus-, and Spyker-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

32. During the Class Period, Plaintiff Desert purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Desert purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Plaintiff Desert has also displayed, sold, serviced, and advertised its Vehicles in California during the Class Period.

33. Plaintiff Hodges Subaru is a Michigan corporation with its principal place of business in Ferndale, Michigan. Plaintiff Hodges is an authorized dealer of Subaru-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

34. During the Class Period, Plaintiff Hodges purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Hodges purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Michigan. Plaintiff Hodges has also displayed, sold, serviced, and advertised its Vehicles in Michigan during the Class Period.

35. Plaintiff San Rafael is a California corporation with its principal place of business in San Rafael, California. Plaintiff San Rafael is an authorized dealer of Mitsubishi-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

36. During the Class Period, Plaintiff San Rafael purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff San Rafael purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Plaintiff San Rafael has also displayed, sold, serviced, and advertised its Vehicles in California during the Class Period.

37. Plaintiff Hartley is a New York corporation with its principal place of business in Jamestown, New York. Plaintiff Hartley has been an authorized Honda, Buick, Pontiac, and GM dealer, who sold Honda-, Buick-, Pontiac-, and GM-brand Vehicles that were shipped via RoRo by one or more of the Defendants

or their co-conspirators from the Vehicles' country of origin to the United States during the Class Period.

38. During the Class Period, Plaintiff Hartley purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Hartley purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in New York. Plaintiff Hartley has also displayed, sold, serviced, and advertised its Vehicles in New York during the Class Period.

39. Plaintiff John Lee is a Florida corporation with its principal place of business in Panama City, Florida. Plaintiff John Lee is an authorized dealer of Nissan-brand Vehicles that were shipped via RoRo by one or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

40. During the Class Period, Plaintiff John Lee purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff John Lee purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in Florida. Plaintiff John Lee has also displayed, sold, serviced, and advertised its Vehicles in Florida during the Class Period.

41. Plaintiff Empire Nissan is a California limited liability company with its principal place of business in Santa Rosa, California. Plaintiff Empire Nissan is an authorized dealer of Nissan-brand Vehicles that were shipped via RoRo by one

or more of the Defendants or their co-conspirators from the Vehicles' country of origin to the United States.

42. During the Class Period, Plaintiff Empire Nissan purchased Vehicles shipped by one or more Defendants or their co-conspirators. Plaintiff Empire Nissan purchased and received the afore-mentioned Vehicles and paid for the Vehicle Carrier Services in California. Plaintiff Empire Nissan has also displayed, sold, serviced, and advertised its Vehicles in California during the Class Period.

43. The majority of Plaintiffs described above sell Vehicles to customers who employ said Vehicles for personal use.

B. Defendants

1. NYK Defendants

44. Defendant NYK is a Japanese company. NYK has subsidiaries acting as its agents in the United States, including in Secaucus, New Jersey. NYK – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, during the Class Period. NYK – 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, including in this District, during the Class Period.

45. Defendant NYK America is a wholly owned subsidiary of NYK. It is headquartered in Secaucus, New Jersey and acts as Defendant NYK'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, which controlled its policies, sales, and finances. NYK America shipped Vehicles into the United States, including to and from this District, during the Class Period. NYK America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

2. MOL Defendants

46. Defendant MOL is a Japanese company. 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 Vehicles into the United States, including in this District, 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, including in this District, during the Class Period.

47. Defendant MOL USA is a wholly owned subsidiary of MOL and a New Jersey corporation. It acts as Defendant 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 Vehicles into the United States, including to and from this District, during the Class Period. MOL USA also provided, marketed and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

48. Defendant WLS is a wholly owned subsidiary of MOL and a California corporation. It is headquartered in Long Beach, California and acts as Defendant 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. WLS shipped Vehicles into the United States, including to and from this District, during the Class Period. WLS also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

3. Höegh Defendants

49. Defendant Höegh is a Norwegian company. Höegh has subsidiaries acting as its agents in the United States. Höegh – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, during the Class Period. Höegh – 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, including in this District, during the Class Period.

50. Defendant Höegh Inc. is a wholly owned subsidiary of Höegh and a New York corporation. It is headquartered in Jericho, New York and acts as Defendant Höegh'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 Höegh, which controlled its policies, sales, and finances. Höegh Inc. shipped Vehicles into the United States, including to and from this District, during the Class Period. Höegh Inc. also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

4. "K" Line Defendants

51. Defendant "K" Line is a Japanese company. "K" Line has subsidiaries acting as its agents in the United States. "K" Line – directly and/or through its subsidiaries and joint ventures, which it wholly owned and/or controlled – shipped Vehicles into the United States, including to and from this District, 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, including in this District, during the Class Period.

52. Defendant “K” Line America is a wholly owned subsidiary of “K” Line and a Virginia corporation. It is headquartered in Richmond Virginia and 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 Vehicles into the United States, including to and from this District, during the Class Period. “K” Line America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

5. WWL Defendants

53. Defendant WWL is a Norwegian-Swedish company. It is a joint venture between Wallenius Lines AB and Wilh. Wilhelmsen ASA that operates most of those companies’ vessels and is the contracting party in customer contracts with OEMs for RoRo services. WWL has offices throughout the United States, including in New Jersey and has subsidiaries acting as its agents in 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 Vehicles into the United States, including to and from this District, during the Class Period. WWL – 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, including in this District, during the Class Period.

54. Defendant WWL Americas is a New Jersey limited liability company. It is headquartered in Woodcliff Lake, New Jersey and 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 Vehicles into the United States, including to and from this District, 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, including in this District, during the Class Period.

55. Defendant EUKOR is a South Korean company. Eukor has offices throughout the United States, including in Fort Lee, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. Eukor shipped Vehicles into the United States, including to and from this District, during the Class Period. EUKOR – 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, including in this District, during the Class Period.

6. CSAV Defendants

56. Defendant CSAV is a Chilean company. Eukor has offices throughout the United States, including in Iselin, New Jersey and has subsidiaries acting as its agents in the United States, including in New Jersey. CSAV shipped Vehicles into the United States, including to and from this District, 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, including in this District, during the Class Period.

57. Defendant CSAV North America is a wholly owned subsidiary of CSAV and is a New Jersey limited liability company. It is headquartered in Iselin, New Jersey and 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. It is the exclusive maritime agent for Defendant CSAV in the United States. CSAV North America shipped Vehicles into the United States, including to and from this District, during the Class Period. CSAV North America also provided, marketed, and/or sold Vehicle Carrier Services throughout the United States, including in this District, during the Class Period.

IV. AGENTS AND CO-CONSPIRATORS

58. Each Defendant acted as the principal of or agent for the other Defendants with respect to the acts, violations, and common course of conduct alleged herein.

59. Various persons, partnerships, sole proprietors, firms, corporations, and individuals not named as Defendants in this lawsuit, and individuals, the identities of which are presently unknown, have participated as co-conspirators with Defendants 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.

60. 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.

V. FACTUAL ALLEGATIONS

A. The Vehicle Carrier Industry

61. The ocean shipping industry is comprised of multiple sectors and multiple types of vessels, including bulk carriers, tankers, and vehicle carriers. The

conduct at issue occurred in the Vehicle Carriers industry. In addition to shipping 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.

62. The Vehicle Carriers industry consists of RoRo ships. A RoRo ship is a special type of ocean vessel that allows wheeled Vehicles to be driven and parked on its decks for long voyages. These ships, also known as Vehicle Carriers, have special ramps to permit easy access, high sides to protect the cargo during transport, and numerous decks to allow storage of a large number and variety of Vehicles.

63. There are different types of RoRo ships. A Pure Vehicle Carrier (“PCC”) can be thought of as a parking garage and transports only Vehicles. The layout is designed to purely carry Vehicles and is fixed. Generally, there are multiple levels of parking for Vehicles, and often the levels are movable for high and heavy cargo. A Pure Car and Truck Carrier (“PCTC”) transports cars, trucks, and other four-wheeled vehicles and has a slightly different configuration..



WW ASA's MV Tønsberg RoRo vessel

Side View of Pure Car Carrier (PCC)



Inside of PCC



Roll-on and Roll-off way

1 Pure Car Carrier

Appendix

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

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

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

66. 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 Vehicles by sea because any alternatives, such as air transportation, would be too costly.

67. Defendants and their co-conspirators provide Vehicle Carrier Services to original equipment manufacturers (“OEMs”) – mostly large automotive, construction, and agricultural manufacturers – for transportation of Vehicles from

their country of origin to the country where they will be sold, including to the United States, at which point the Vehicles are delivered to Plaintiffs and the Auto Dealer Classes.

68. Defendants' customers include: Honda, Daimler, Mercedes-Benz, BMW, Ford, Subaru, Mazda, Suzuki, Mitsubishi, Nissan, Kia, Hyundai, and Volvo, among others. These OEMs directly purchase Vehicle Carrier Services from Defendants, usually pursuant to shipping contracts they have entered into with Defendants. Plaintiffs and the Auto Dealer Classes are then billed in full and pay in full for the Vehicle Carrier Services when they purchase Vehicles from OEMs. Thus, Plaintiffs and members of the proposed Auto Dealer Classes purchase Vehicle Carrier Services indirectly from Defendants and their co-conspirators by virtue of their purchase of new Vehicles during the Class Period.

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

70. The contract period between a non-Japanese OEM and a Defendant vehicle carrier is typically two or three years. The contract period between a Japanese OEM and a Defendant Vehicle Carrier is typically one year.

71. 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.

72. American OEMs often rely on tenders to award business to a Defendant vehicle carrier.

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

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

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

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

77. 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

78. 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

79. 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.

80. There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Transporting 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.¹

81. Additionally, the nature of the Vehicle Carrier Services industry requires the establishment of a network of routes to serve a particular set of customers with whom Defendants establish long-term relationships. The existence of these established routes and long-term contracts increase switching costs for shippers and present an additional barrier to entry.

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

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

¹ Asaf Ashar, *Marine Highways' New Direction*, J. OF COM. 38 (Nov. 21, 2011).

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

2. There is Inelasticity of Demand for Vehicle Carrier Services

83. “Elasticity” is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be “inelastic” if an increase in the price of a product results in only a small decline 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.

84. 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.

85. Demand for Vehicle Carrier Services is highly inelastic. This is because there are no close substitutes for this service. A Vehicle Carrier is the

only ocean vessel that has the carrying capacity for a large number of Vehicles. A Vehicle Carrier is also more versatile than other substitutes because it is built to adjust to various shapes and sizes. 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. Foreign OEMs must employ Vehicle Carrier Services to facilitate the sale of their Vehicles in North America, regardless of whether prices are kept at supra-competitive levels. There is simply no alternative for high volume transoceanic transportation of Vehicles to the United States.

3. The Market for Vehicle Carriers Is Highly Concentrated

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

87. Defendants dominate the global Vehicle Carrier Services market, controlling over 70 percent of the Vehicle Carrier Services market during the Class Period.²

² Source: Hesnes Shipping AS, The Car Carrier Market 2010

4. The Services Provided by Vehicle Carriers Are Highly Homogeneous

88. Vehicle Carrier Services are a commodity-like service, which is interchangeable among Vehicle Carriers.

89. 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.

90. Vehicle Carrier Services are qualitatively the same across different carriers. Each Defendant 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 Defendants' conspiracy by making coordination on price much simpler than if Defendants had numerous distinct products or services with varying features.

5. Defendants Had Ample Opportunities to Meet and Conspire

91. The shipping industry has been characterized as a small world where many of the key figures know each other. Among the key figures are NYK's

[REDACTED] MOL's [REDACTED] and "K" Line's [REDACTED]
[REDACTED]

92. Defendants 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 conferences³ and the biennial RoRo trade show in Europe.

93. Many employees of Defendants have spent their entire careers in the shipping industry. In several instances, key employees have transferred between the Defendant 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 for the conspiracy. For

³ 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/>.

example, [REDACTED]
[REDACTED]
[REDACTED]

94. Defendants are members of several trade associations that provide opportunities to meet under the auspices of legitimate business. For example, several Defendants 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 [REDACTED] (of NYK) and attended by [REDACTED] (of “K” Line), [REDACTED] (of MOL), and [REDACTED] (of NYK).

95. Defendants 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.

96. Defendants “K” Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

97. Defendants “K” Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

98. Defendants 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.

99. Defendants “K” Line, MOL, NYK America, and WWL America are members of the New York Shipping Association, Inc.

100. Defendants “K” Line, MOL (through its subsidiary, MOL (America) Inc.), NYK Line, and WWL are members of the Pacific Maritime Association.

101. Defendants CSAV, “K” Line, MOL, NYK Line, and WWL are members of the World Shipping Council.

102. Defendants CSAV, “K” Line, MOL, and NYK Line were members of the European Liner Affairs Association, which was later absorbed by the World Shipping Council.

103. Defendants NYK Line, “K” Line, and MOL are members of the Japan Shipowners’ Association, a trade association based in Japan.

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

105. Defendants 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.

106. 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.

107. 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.

108. While ostensibly entered into to optimize utilization capacity and increase efficiency, such sharing and chartering agreements also provide opportunities for Defendants 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.

109. The very nature of the negotiations between Vehicle Carriers and OEMs also facilitates collusion among Vehicle Carriers. [REDACTED]

[REDACTED] WWL [REDACTED] 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 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.⁴

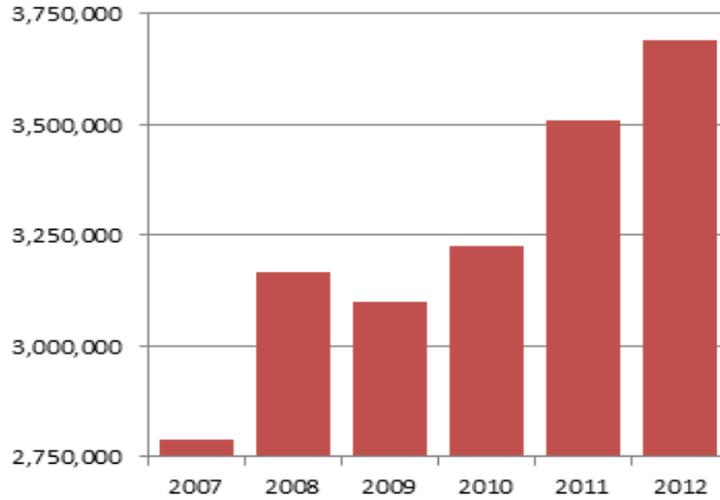
6. The Market for Vehicle Carrier Services Has Experienced Excess Capacity

110. 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.⁵ 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 Vehicles has increased since 2007, the utilization rate of Vehicle Carriers has fallen, and remained stable at a rate of approximately 83 percent since 2010.

⁴ *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/>

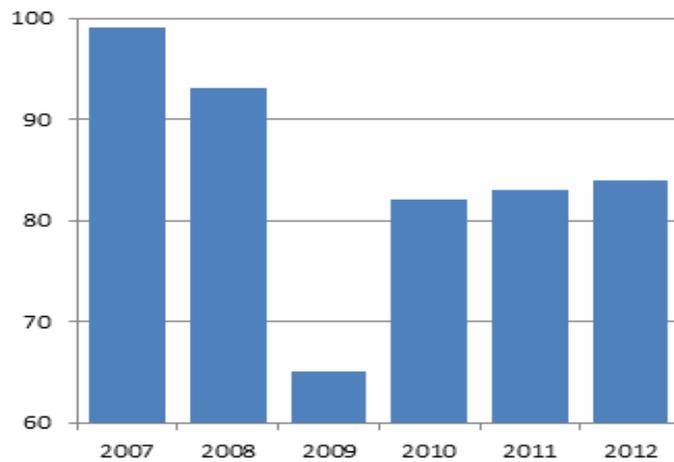
⁵ See Benoit, J. and V. Krishna, *Dynamic Duopoly: Prices and Quantities*, REV. OF ECON. STUDIES, 54, 23-36 (1987); Davidson, Carl & Raymond Deneckere, *Excess Capacity and Collusion*, INT'L ECON. REV., 31(3), 521-41 (1990); *In re High Fructose Corn Syrup Antitrust Litig.*, 295 F.3d 651, 657 (7th Cir. 2002).

**Capacity of Vehicle Carriers
(in cars)**



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

**Vehicle Carrier Fleet Utilization Rate
(% of ships used in operations)**



Source: The Platou Report 2004-2012

111. In the face of such excess capacity, Defendants agreed to reduce capacity and increase prices through 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.

112. Defendants’ 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. Witnesses Confirmed Evidence of Collusion in the Vehicle Carrier Services Market

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

a. Coordination of Price Increases

113. Defendants discussed vehicle carrier services pricing from as early as February 1997. Specifically, in February 1997, Defendants “K” Line, MOL, and NYK Line met several times in Tokyo to discuss Honda’s upcoming renewal for the Japan to the United States route. Representatives included [REDACTED] [REDACTED] “K” Line and [REDACTED] NYK at one or more of these meetings.

114. 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 Defendants’ meeting in February 1997, “K” Line, MOL, and NYK agreed to separately request a price increase from Honda on the Japan to the United States route. Defendants 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.

115. In 2002, Defendants “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.

116. 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.

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

a. In November 2007, [REDACTED] MOL [REDACTED] and [REDACTED] NYK agreed to increase prices in 2008 and to persuade “K” Line to do the same.

b. In December 2007, [REDACTED] [REDACTED] MOL [REDACTED] and [REDACTED] NYK 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, [REDACTED] had a lunch meeting, which included [REDACTED] “K” Line. At this meeting, MOL, NYK, 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 then had a follow-up meeting in which they discussed how to implement the coordinated price increases. They agreed that each Defendant would take the lead to increase prices with those OEMs with whom it had the strongest business relationship.

d. On January 28, 2008, [REDACTED] “K” Line, [REDACTED] MOL, and [REDACTED] NYK Line met to discuss the 2008 price increase further and agreed on a target increase of 10 percent. [REDACTED] [REDACTED] “K” Line, [REDACTED] and [REDACTED] then met the following month in furtherance of the agreement.

118. 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 Defendants serviced.

b. Coordination of Responses to Price Reduction Requests

119. In the fall of 2008, [REDACTED] MOL, [REDACTED] NYK, and [REDACTED] K Line communicated about price increases and price negotiations with Mitsubishi. They agreed on the price increase that each would seek from Mitsubishi.

120. In 2009, Mitsubishi requested a price reduction from “K” Line, MOL, and NYK Line equal to the price increase in 2008 and retroactive application of this reduction. Defendants 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.

121. In 2009, Suzuki sought a price reduction from, MOL, NYK, and “K” Line. [REDACTED] MOL’s [REDACTED] [REDACTED] NYK; and [REDACTED] “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.

122. In September 2011, Toyota informed MOL that MOL's BAF and CAF surcharges were higher than its competitors and requested a price reduction.

[REDACTED] MOL [REDACTED] [REDACTED] discussed its pricing for Toyota with [REDACTED] NYK Line and [REDACTED] "K" Line. MOL subsequently agreed to Toyota's request.

123. In 2012, Subaru sought a price reduction from MOL and NYK. Historically, NYK was the lead Vehicle Carrier Services provider for Subaru. [REDACTED] [REDACTED] MOL and [REDACTED] NYK Line collusively agreed to limit the amount of their price reduction and bid their existing prices.

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

124. In or around 2001, MOL and Höegh discussed American Honda business from the United States to the Middle East. MOL told 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.

125. 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”⁶ for MOL’s incumbent business with GM. WWL agreed. MOL likewise asked NYK to submit a bid higher than MOL’s and gave NYK a rate to bid. NYK agreed and submitted MOL’s preferred bid.

126. 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, and 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 not to 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.

⁶ “Respect” is a term of art in Japanese business culture, which in this context may mean not bidding at all, or bidding a higher price.

127. 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.

128. In the fall of 2008, [REDACTED] MOL, [REDACTED] NYK, and [REDACTED] K Line had discussions about an upcoming Mitsubishi tender. The parties agreed on the routes each would seek. NYK and K Line sought business to the West Coast of the United States, and the three companies shared Mitsubishi's East Coast business.

129. In 2008 or 2009, MOL asked "K" Line to respect its incumbent status for Chrysler business from the United States to South America. K Line agreed in return for respect from MOL on K Line's routes from Brazil to the United States and Argentina.

130. 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.

131. In 2010, CSAV asked MOL to respect its GM business on routes from the United States to Columbia. MOL agreed and submitted a bid at a non-

competitive price provided by CSAV. This tender covered business for the years 2010 to 2012.

132. In February and/or March 2012, [REDACTED] MOL and [REDACTED] WWL met to discuss their companies' American Honda contracts. MOL and WWL agreed not to compete on certain routes from the U.S. 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. Defendants Conspired to Restrict Capacity for Vehicle Carrier Services

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

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

135. In or around 2008 or 2009, demand for Vehicle Carrier Services fell as result of the worldwide financial crisis. Thereafter, [REDACTED] MOL, [REDACTED] NYK, and [REDACTED] "K" Line met to discuss fleet reductions. MOL, NYK, and "K" Line agreed to scrap vessels, and as a general matter, they

also discussed and agreed on the need to resist price reduction requests from OEMs. [REDACTED] WWL, and [REDACTED] Höegh also spoke about the need for fleet reductions. As a result of these agreements:

- 136. MOL scrapped approximately 40 vessels.
- 137. NYK scrapped approximately 40 vessels.
- 138. “K” Line scrapped approximately 25 vessels.
- 139. WWL engaged in cold lay-ups.
- 140. Höegh engaged in cold lay-ups.

4. Guilty Pleas in the Vehicle Carrier Services Industry

141. On February 27, 2014, the DOJ announced that Defendant CSAV had 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 Vehicle Carrier Services of RoRo cargo to and from the United States and elsewhere from at least January 2000 to September 2012 in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

142. On September 26, 2014, the DOJ announced that Defendant “K” Line had agreed to pay a \$67.7 million criminal fine and to plead guilty to engaging in a conspiracy to suppress and eliminate competition by allocating customers and routes, rigging bids, and fixing prices for the sale of international Vehicle Carrier

Services of RoRo cargo to and from the United States and elsewhere from at least February 1997 to September 2012 in violation of the Sherman Act.

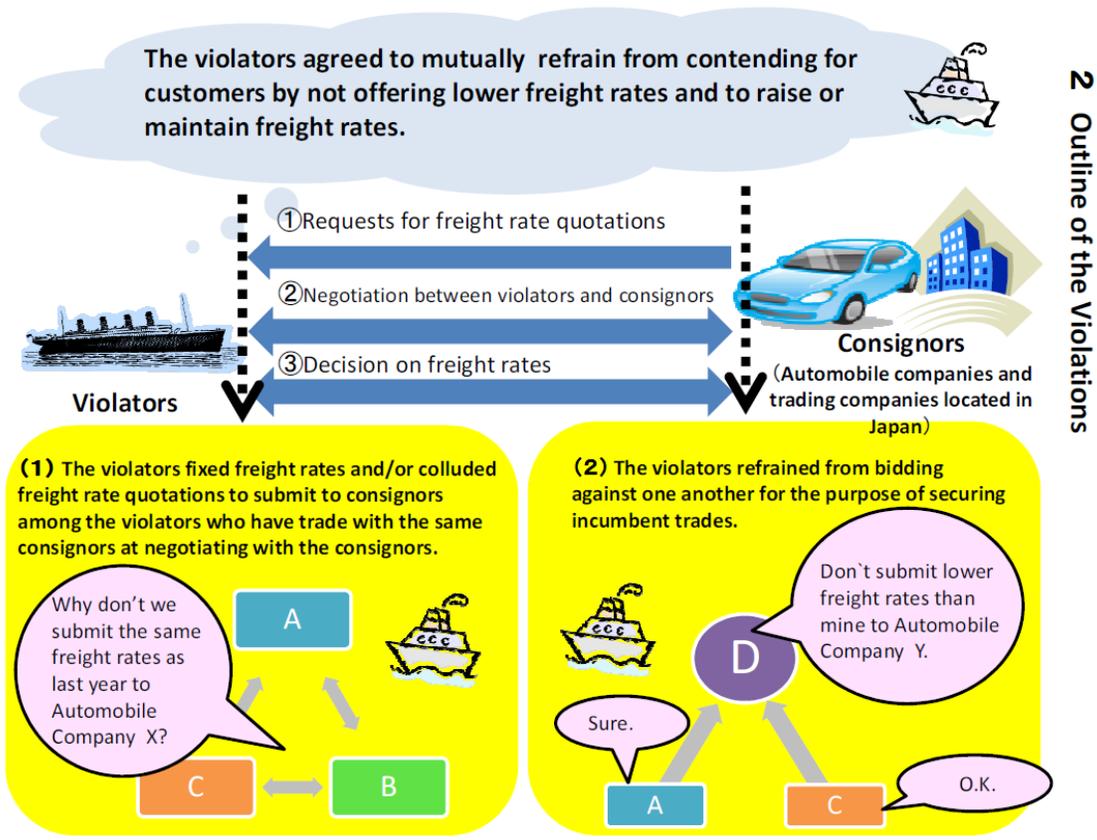
143. According to the criminal Information filed, to form and carry out the Vehicle Carrier Services conspiracy, Defendant CSAV and its co-conspirators:

- a. attended meetings or otherwise engaged in communications regarding certain bids and tenders for international Vehicle Carrier Services for RoRo 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 under each other's prices; submitted bids in accordance with the agreements reached; and
- e. provided international Vehicle Carrier Services for certain roll-on, roll-off cargo to and from the United States and elsewhere at collusive and non-competitive prices.

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

5. Government Fines in the Vehicle Carrier Services Industry

145. On March 19, 2014, the JFTC announced cease and desist orders and surcharge payment orders against four Defendants 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 Defendants NYK \$128.4 million, "K" Line \$55.9 million, and Nissan Motor Car Carrier Co. Ltd. \$4.1 million. It also fined WWL \$34.3 million. NYK Line and WWL control about 70 percent of the global market for carrying cars. The JFTC illustrated the violations in the figure below.



146. According to the JFTC, in accordance with the agreements,

Defendants:

- 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.

147. The JFTC found that NYK Line, K Line, WWL, and Mitsui OSK Lines Ltd. (“MOL”) price-fixed Vehicle Carrier Services on the “North American route,” which comprises of routes between ports in Japan and ports in the United

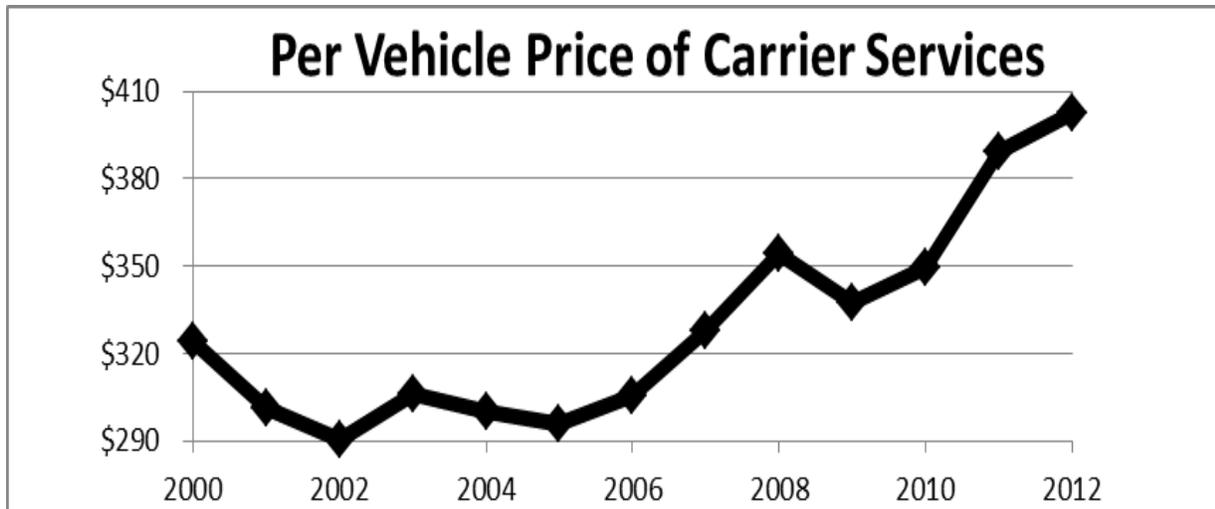
States (including Puerto Rico), Canada, or Mexico. The JFTC investigated but did not fine MOL because it had stopped participating in the alleged conduct prior to a 2012 investigation of its offices and the JFTC granted its application for leniency.

148. The EC and CCB are also part of the Vehicle Carrier antitrust probe. 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 Japan competition authorities. The EC had reasons to believe that the companies concerned may have violated Article 101 of the Treaty on the Functioning of the European Union, which prohibits cartels and restrictive business practices. On September 7, 2012, Defendant WWL confirmed that it had received requests for information from United States, Japan, European, and Canada 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.”

D. Other Evidence of Collusion in the Vehicle Carrier Service Market

1. Defendants Raised Prices at a Rate that Far Exceeded Demand

149. Prices for Vehicle Carrier Services have been generally increasing since 2006.



150. 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.

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

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

153. 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. Defendants Previously Colluded in Different Markets

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

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

156. 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 Defendant "K" Line; Yusen Air & Sea Services Co., Ltd., a subsidiary of Defendant NYK Line; and MOL Logistics (Japan) Co., Ltd., a subsidiary of Defendant MOL.

157. 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 Aircargo Forwarders Association.

158. Yusen Logistics Co., Ltd.⁷ filed a complaint in April 2009 requesting a hearing to review the JFTC's orders. The Tokyo High Court upheld the JFTC orders on November 9, 2012.

159. 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;

⁷ On October 1, 2010, Yusen Air & Sea Services Co., Ltd. and NYK Logistics merged under the name Yusen Logistics Co., Ltd..

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.

160. On March 28, 2012, the EC fined 14 international groups of companies, including Yusen Shenda Air & Sea Service (Shanghai) Ltd., a subsidiary of Defendant NYK Line, a total of \$219 million for their participation in the air cargo cartels and violating European Union antitrust rules. According to the EC, “[i]n four distinct cartels, the cartelists established and coordinated four different surcharges and charging mechanisms, which are component elements of the final price billed to customers for these services.”

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

VI. CLASS ACTION ALLEGATIONS

162. Plaintiffs 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 equitable and injunctive relief on behalf of the following class (the “Nationwide Class”):

All automobile dealers that purchased new Vehicles shipped during the Class Period as to which one or more Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator provided Vehicle Carrier Services.

163. Plaintiffs also bring this action on behalf of themselves and as a class action under Rule 23(a) and (b)(3) of the Federal Rules of Civil Procedure seeking damages pursuant to the common law of unjust enrichment and the state antitrust, unfair competition, and consumer protection laws of the states listed in the Second and Third Claims for Relief (the “Indirect Purchaser States”) on behalf of the following class (the “Damages Class”):

All automobile dealers doing business in the Indirect Purchaser States that purchased new Vehicles shipped during the Class Period as to which one of the Defendants or any current or former subsidiary or

affiliate thereof or any co-conspirator provided Vehicle Carrier Services.

164. The Nationwide Class and the Damages Class are referred to herein as the “Auto Dealer Classes.” Excluded from the Auto Dealer Classes are Defendants; 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 any judge assigned to hear this matter at either the district or appellate level and any employees or agents of those judges.

165. While Plaintiffs do not know the exact number of the members of the Auto Dealer Classes, Plaintiffs have reason to believe there are thousands of members in each Auto Dealer Class.

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

a. Whether Defendants 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. The identity of the participants of the alleged conspiracy;
- c. The duration of the alleged conspiracy and the acts carried out by Defendants and their co-conspirators in furtherance of the conspiracy;
- d. Whether the alleged conspiracy violated the Sherman Act, as alleged in the First Claim for Relief;
- e. Whether the alleged conspiracy violated state antitrust, unfair competition law, and/or state consumer protection law, as alleged in the Second and Third Claims for Relief;
- f. Whether Defendants unjustly enriched themselves to the detriment of the Plaintiffs and the members of the Auto Dealer Classes, thereby entitling Plaintiffs and the members of the Auto Dealer Classes to disgorgement of all benefits derived by Defendants, as alleged in the Fourth Claim for Relief;
- g. Whether the conduct of Defendants and their co-conspirators, as alleged in this Complaint, caused injury to the business or property of Plaintiffs and the members of the Auto Dealer Classes;
- h. The effect of the alleged conspiracy on the prices of Vehicle Carrier Services sold in the United States during the Class Period;
- i. Whether Plaintiffs and members of the Auto Dealer Classes had any reason to know or suspect the conspiracy, or any means to discover the conspiracy;

j. Whether Defendants and their co-conspirators fraudulently concealed the conspiracy's existence from Plaintiffs and the members of the Auto Dealer Classes;

k. The appropriate injunctive and related equitable relief for the Nationwide Class; and

l. The appropriate class-wide measure of damages for the Damages Class.

167. Plaintiffs' claims are typical of the claims of the members of the Auto Dealer Classes, and Plaintiffs will fairly and adequately protect the interests of the Auto Dealer Classes. Plaintiffs and all members of the Auto Dealer Classes are similarly affected by Defendants' wrongful conduct in that they paid artificially inflated prices for Vehicle Carrier Services purchased indirectly from the Defendants and/or their co-conspirators.

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

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

170. 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.

171. The prosecution of separate actions by individual members of the Auto Dealer Classes would create a risk of inconsistent or varying adjudications, establishing incompatible standards of conduct for Defendants.

VII. PLAINTIFFS AND THE AUTO DEALER CLASSES SUFFERED ANTITRUST INJURY

172. Defendants' price-fixing, bid-rigging, customer-allocation, and capacity-reduction conspiracies 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. Defendants charged artificially inflated Vehicle Carrier prices to purchasers of their Vehicle Carrier Services; and

d. Having paid higher prices for shipment of the Vehicles they sold to Plaintiffs and the Auto Dealer Classes, firms who sold Vehicles to Plaintiffs and the Auto Dealer Classes passed Defendants' Vehicle Carrier overcharges on to them in full;

e. Defendants' overcharges passed through each level of distribution as they traveled to Plaintiffs and the Auto Dealer Classes; and

f. Plaintiffs and the Auto Dealer Classes paid Defendants' artificially inflated prices for Vehicle Carrier Services, during the Class Period, as a result of the Defendants' conspiracy and have been deprived of free and open competition.

173. During the Class Period, Plaintiffs and the members of the Auto Dealer Classes paid supra-competitive prices for Vehicle Carrier Services.

174. The market for Vehicle Carrier Services and the market for Vehicles are inextricably linked and intertwined because the market for Vehicle Carrier Services exists to serve the Vehicle market. Without the Vehicles, the Vehicle

Carrier Services have little to no value because they have no independent utility.

Indeed, the demand for Vehicles creates the demand for Vehicle Carrier Services.

175. Vehicle Carrier Services are identifiable, discrete services that remain essentially unchanged when incorporated into the cost of Vehicles sold to Plaintiffs and the members of the Auto Dealer Classes. As a result, the cost of Vehicle Carrier Services follow a traceable chain from the Defendants to Plaintiffs and the members of the Auto Dealer Classes, and any costs attributable to Vehicle Carrier Services can be traced through the chain of Vehicle distribution to Plaintiffs and the members of the Auto Dealer Classes.

176. Hence, the inflated prices of Vehicle Carrier Services in new Vehicles resulting from Defendants' price-fixing conspiracy have been passed on to Plaintiffs and the other members of the Auto Dealer Classes by OEMs. Those overcharges have unjustly enriched Defendants.

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

178. By reason of the alleged violations of the antitrust laws and other laws alleged herein, Plaintiffs and the members of the Auto Dealer Classes have sustained injury to their businesses or property, having paid higher prices for

Vehicle Carrier Services than they would have paid in the absence of the Defendants' illegal contract, combination, or conspiracy and, as a result, have suffered damages in an amount presently undetermined. This is an antitrust injury of the type that the antitrust laws were meant to punish and prevent.

179. The common and consistent impact of Defendants' conspiracy on Plaintiffs' businesses was substantial. Plaintiffs and the members of the Auto Dealer Classes were substantially injured by higher but for prices for Vehicle Carrier Services regardless of the pass on of some portion of such prices to end users.

180. Given the nature of their business, Plaintiffs and similarly situated members of the Auto Dealer Classes had to and did absorb a significant portion of the overcharges that they paid due to Defendants' illegal activities. Plaintiffs and similarly situated member of the Auto Dealer Classes did not "pass on" all of the overcharges or higher but for prices caused by Defendants' illegal activities.

181. Plaintiffs have standing, and have suffered damage, in the states where they reside, compensable by indirect purchaser laws, and they and members of the Auto Dealer Classes they seek to represent have sustained significant damage and injury as a result of Defendants' conspiracy and unlawful and unfair trade practices.

VIII. PLAINTIFFS' CLAIMS ARE NOT BARRED BY THE STATUTE OF LIMITATIONS

A. The Statute of Limitations Did Not Begin to Run Because The Plaintiffs Did Not and Could Not Discover Their Claims

182. Plaintiffs repeat and re-allege the allegations set forth above.

183. Plaintiffs and members of the Auto Dealer Classes had no knowledge of the combination or conspiracy alleged herein, or of facts sufficient to place them on inquiry notice of the claims set forth herein, until shortly before the filing of this Complaint.

184. Plaintiffs and members of the Auto Dealer Classes did not discover, and could not have discovered through the exercise of reasonable diligence, the existence of the conspiracy alleged herein until, at the very earliest, September 6, 2012, the date the JFTC announced raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

185. Plaintiffs and members of the Auto Dealer Classes are automobile dealers that indirectly purchased Vehicle Carrier Services. They had no direct contact or interaction with the Defendants and had no means from which they could have discovered the combination and conspiracy described in this Complaint before the September 6, 2012 raids alleged above.

186. No information in the public domain was available to Plaintiffs and members of the Auto Dealer Classes prior to the public announcement of raids on

September 6, 2012 that revealed sufficient information to suggest that the Defendants were involved in a criminal conspiracy to fix the prices charged for Vehicle Carrier Services. Plaintiffs and members of the Auto Dealer Classes had no means of obtaining any facts or information concerning any aspect of Defendants' dealings with OEMs or other direct purchasers, much less the fact that they had engaged in the combination and conspiracy alleged herein.

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

B. Fraudulent Concealment Tolled the Statute of Limitations

188. In the alternative, application of the doctrine of fraudulent concealment tolled the statute of limitations as to the claims asserted herein by Plaintiffs and the Auto Dealer Classes. Plaintiffs and members of the Auto Dealer Classes did not know, and could not discover through the exercise of reasonable diligence, the existence of the conspiracy and unlawful combination alleged herein until, at the earliest, the September 6, 2012 public announcement of the government investigations into price fixing of Vehicle Carrier charges and the JFTC raids of certain Defendants' offices for their role in the criminal price-fixing conspiracy alleged herein.

189. Because Defendants' agreements, understandings, and conspiracy were kept secret until September 6, 2012, Plaintiffs and members of the Auto Dealer Classes were unaware before that time of Defendants' 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 Plaintiffs and members of the Auto Dealer Classes that even hinted to Plaintiffs and the members of the Auto Dealer Classes that they were being injured by Defendants' unlawful conduct.

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

191. By its very nature, the Defendants' anticompetitive conspiracy and unlawful combinations were inherently self-concealing. Defendants 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.

192. Plaintiffs and members of the Auto Dealer Classes 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 Defendants and their co-conspirators to avoid detection of, and fraudulently conceal, their conduct.

193. Defendants affirmatively concealed their conspiracy by falsely claiming that the Vehicle Carrier Services market was competitive and creating the illusion that prices were rising as a result of increased demand and tight supply.

For example, Defendants stated:

- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2003, at pg. 10.
- “CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport.” *Id.* at pg. 23.
- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2005, at pg. 19.
- “CSAV participates in a very competitive market in which variations in global economic growth directly affect demand for cargo transport.” *Id.* at pg. 42.
- “CSAV participates in a highly competitive market in which cargo volumes are directly affected by the fluctuations in the global economic growth.” *Id.* at pg. 152.
- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2006, at pg. 15.
- “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at pg. 38.

- “CSAV participates in a highly competitive market in which demand for cargo transport is directly affected by fluctuations in global economic growth.” *Id.* at pg. 149.
- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2007, at pg. 15.
- “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at pg. 39.
- “The ‘K’ Line Group is doing business in all international markets, and is involved in competition with many shipping companies at home and abroad.” “K” Line Annual Report 2008, at g. 55.
- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2008, at pg. 17.
- “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at pg. 35.
- “The ‘K Line Group promises to comply with applicable laws, ordinances, rules and spirit of the international community and conduct its corporate activities through fair, transparent and free competition.” “K” Line Annual Report 2009, at pg. 1.
- “Global automobile marine transport volume was robust through the middle of 2008, resulting in a severe shortage of vessels in the marine transport market, a market in which prices are based on the relationship between supply and demand. As a result, shipping rates were on the increase.” NYK Annual Report 2009, at pg. 8.
- “Demand for ocean transportation of ro-ro cargo to Oceania remained at low levels through the year, while car volumes rose in the latter half of the year. Trades involving emerging markets such as China, South America, India and Africa offered

relatively healthy volumes through most of the year, although fierce competition put significant pressure on rates.” Wil. Wilhelmsen ASA Annual Report 2009, at pg. 11.

- The shipping business is very competitive and is noted for its sensitivity to changes in economic activity. CSAV Annual Report 2009, at pg. 17.
- “CSAV works in a very competitive environment, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at pg. 36.
- “Through its capital intensity and cyclical nature, the shipping segment has historically represented higher volatility and financial risk than maritime services. The car/ro-ro shipping has during the recent history also represented the single largest investment area and exposure for the group and its shareholders....Demand for transportation of cars and other cargo has improved significantly, primarily during the second half of the year, and combined with better mix of cargo types this has positively affected the profitability of the fleet.” Wil. Wilhelmsen ASA Annual Report 2010, at pg. 19-20.
- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2010, at pg. 15.
- “CSAV works in a very competitive market, in which variations in global economic growth directly affect the demand for cargo transport.” *Id.* at pg. 35.
- “The results of the car-carrying services were severely affected by the fall in global demand seen in 2011...[a]dded to the weak global demand for car carriers and the consequent under-utilization of ships was a sharp rise in oil prices.” CSAV Annual Report 2011, at pg. 22.
- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” CSAV Annual Report 2011, at pg. 15.

- “The shipping business is very competitive and is noted for its sensitivity to changes in economic activity.” *Id.* at pg. 19.
- “In addition to Japanese marine transport operators, the NYK Group competes with international shipping companies operating throughout the globe, and the competitive situation is growing more intense.” NYK Annual Report 2012, at pg. 102.

194. Because the alleged conspiracy was both self-concealing and affirmatively concealed by Defendants and their co-conspirators, Plaintiffs and members of the Auto Dealer Classes had no knowledge of the alleged conspiracy, or of any facts or information that would have caused a reasonably diligent person to investigate whether a conspiracy existed, until September 6, 2012, when the JFTC announced raids of certain Defendants’ offices for their role in the criminal price-fixing conspiracy alleged herein.

195. For these reasons, the statute of limitations applicable to Plaintiffs’ and the Auto Dealer Classes’ claims was tolled and did not begin to run until September 6, 2012.

FIRST CLAIM FOR RELIEF
Violation of Section 1 of the Sherman Act
(on behalf of Plaintiffs and the Nationwide Class)

196. Plaintiffs repeat and re-allege the allegations set forth above.

197. Defendants and unnamed conspirators entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

198. The acts done by each of the Defendants as part of, and in furtherance of, their contract, combination, or conspiracy were authorized, ordered, or done by their officers, agents, employees, or representatives while actively engaged in the management of Defendants' affairs.

199. During the Class Period, Defendants and their co-conspirators entered into a continuing agreement, understanding, and conspiracy in restraint of trade to artificially fix, raise, stabilize, and control prices for Vehicle Carrier Services, thereby creating anticompetitive effects.

200. The anticompetitive acts were intentionally directed at the United States market for Vehicle Carrier Services and had a substantial and foreseeable effect on interstate commerce by raising and fixing prices for Vehicle Carrier Services throughout the United States.

201. The conspiratorial acts and combinations have caused unreasonable restraints in the market for Vehicle Carrier Services.

202. As a result of Defendants' unlawful conduct, Plaintiffs and other similarly situated indirect purchasers in the Nationwide Class who purchased Vehicle Carrier Services have been harmed by being forced to pay inflated, supra-competitive prices for Vehicle Carrier Services.

203. In formulating and carrying out the alleged agreement, understanding, and conspiracy, Defendants and their co-conspirators did those things that they

combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth herein.

204. Defendants' conspiracy had the following effects, among others:

- a. Price competition in the market for Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the United States;
- b. Prices for Vehicle Carrier Services provided by Defendants and their co-conspirators have been fixed, raised, maintained, and stabilized at artificially high, non-competitive levels throughout the United States;
- c. Prices for Vehicles purchased by Plaintiffs and the members of the Nationwide Class and shipped by Defendants and their coconspirators were inflated; and
- d. Plaintiffs and members of the Nationwide Class who purchased Vehicles shipped by Defendants and indirectly paid Defendants and their co-conspirators for Vehicle Carrier Services have been deprived of the benefits of free and open competition.

205. Plaintiffs and members of the Nationwide Class have been injured and will continue to be injured in their business and property by paying more for Vehicle Carrier Services than they would have paid and will pay in the absence of the conspiracy.

206. Plaintiffs and members of the Nationwide Class will continue to be subject to Defendants' price-fixing, bid-rigging, and market allocations, which will deprive Plaintiffs and members of the Nationwide Class of the benefits of free competition, including competitively-priced Vehicle Carrier Services.

207. Plaintiffs and members of the Nationwide Class will continue to lose funds due to overpayment for Vehicle Carrier Services because they are required to purchase Vehicles that are imported on RoRos owned and operated by Defendants and their co-conspirators to continue to operate their businesses.

208. Plaintiffs and members of the Nationwide Class continue to purchase Vehicles that are imported on RoRos owned and operated by Defendants and their co-conspirators, on a regular basis, and to pay fees for Vehicle Carrier Services.

209. Defendants and their co-conspirators continue to charge fees for their Vehicle Carrier Services that are inflated, fixed, and maintained by their conspiracy.

210. The alleged contract, combination, or conspiracy is a *per se* violation of the federal antitrust laws.

211. Plaintiffs and members of the Nationwide Class will be at the mercy of Defendants' unlawful conduct until the Court orders an injunction.

212. Plaintiffs and members of the Nationwide Class are entitled to an injunction against Defendants, preventing and restraining the violations alleged herein.

SECOND CLAIM FOR RELIEF
Violation of State Antitrust Statutes
(on behalf of Plaintiffs and the Damages Class)

213. Plaintiffs repeat and re-allege the allegations set forth above.

214. During the Class Period, Defendants and their co-conspirators engaged in a continuing contract, combination, or conspiracy with respect to the provision of Vehicle Carrier Services in unreasonable restraint of trade and commerce and in violation of the various state antitrust statutes set forth below.

215. The contract, combination, or conspiracy consisted of an agreement among the Defendants and their co-conspirators to fix, raise, inflate, stabilize, and/or maintain at artificially supra-competitive prices for Vehicle Carrier Services, to rig bids for Vehicle Carrier Services, and to allocate customers for Vehicle Carrier Services in the United States.

216. In formulating and effectuating this conspiracy, Defendants and their co-conspirators performed acts in furtherance of the combination and conspiracy, including:

- a. participating in meetings and conversations among themselves in the United States and elsewhere during which they agreed to price Vehicle

Carrier Services at certain levels, and otherwise to fix, increase, inflate, maintain, or stabilize effective prices paid by Plaintiffs and members of the Damages Class, with respect to Vehicle Carrier Services provided in the United States;

b. allocating customers and markets for Vehicle Carrier Services provided in the United States in furtherance of their agreements; and

c. participating in meetings and conversations among themselves in the United States and elsewhere to implement, adhere to, and police the unlawful agreements they reached.

217. Defendants and their co-conspirators engaged in the actions described above for the purpose of carrying out their unlawful agreements to fix, increase, maintain, or stabilize prices and to allocate customers with respect to Vehicle Carrier Services.

218. Defendants' anticompetitive acts described above were knowing, willful, and constitute violations or flagrant violations of the following state antitrust statutes.

219. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Arizona Revised Statutes, §§ 44-1401, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Arizona; (2) Vehicle Carrier Services prices were

raised, fixed, maintained, and stabilized at artificially high levels throughout Arizona; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Arizona commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants entered into agreements in restraint of trade in violation of Ariz. Rev. Stat. §§ 44-1401, *et seq.*

Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Ariz. Rev. Stat. §§ 44-1401, *et seq.*

220. Defendants have entered into an unlawful agreement in restraint of trade in violation of the California Business and Professions Code, §§ 16700, *et seq.*

a. During the Class Period, Defendants and their co-conspirators entered into and engaged in a continuing unlawful trust in restraint of the trade and commerce described above in violation of Section 16720 of the California Business and Professions Code. Defendants, each of them, have acted in violation

of Section 16720 to fix, raise, stabilize, and maintain prices of, and allocate markets for, Vehicle Carrier Services at supra-competitive levels.

b. The aforesaid violations of Section 16720, California Business and Professions Code, consisted, without limitation, of a continuing unlawful trust and concert of action among the Defendants and their co-conspirators, the substantial terms of which were to fix, raise, maintain, and stabilize the prices of, and to allocate markets for, Vehicle Carrier Services.

c. For the purpose of forming and effectuating the unlawful trust, Defendants and their co-conspirators have done those things which they combined and conspired to do, including but not limited to the acts, practices, and course of conduct set forth above and the following: (1) Fixing, raising, stabilizing, and pegging the price of Vehicle Carrier Services; and (2) Allocating among themselves the provision of Vehicle Carrier Services.

d. The combination and conspiracy alleged herein has had, *inter alia*, the following effects: (1) Price competition in the provision of Vehicle Carrier Services has been restrained, suppressed, and/or eliminated in the State of California; (2) Prices for Vehicle Carrier Services sold by Defendants and their co-conspirators have been fixed, raised, stabilized, and pegged at artificially high, non-competitive levels in the State of California and throughout the United States;

and (3) Those who purchased Vehicle Carrier Services from Defendants and their co-conspirators have been deprived of the benefit of free and open competition.

e. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property in that they paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. As a result of Defendants' violation of Section 16720 of the California Business and Professions Code, Plaintiffs and members of the Damages Class seek treble damages and their cost of suit, including a reasonable attorney's fee, pursuant to Section 16750(a) of the California Business and Professions Code.

221. Defendants have entered into an unlawful agreement in restraint of trade in violation of the District of Columbia Code Annotated §§ 28-4501, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout the District of Columbia; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout the District of Columbia; (3) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in the District

of Columbia; and (4) Plaintiffs and members of the Damages Class, including those who resided in the District of Columbia and/or purchased Vehicles in the District of Columbia that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in the District of Columbia.

b. During the Class Period, Defendants' illegal conduct substantially affected District of Columbia commerce.

c. As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of District of Columbia Code Ann. §§ 28-4501, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under District of Columbia Code Ann. §§ 28-4501, *et seq.*

222. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Hawaii Revised Statutes Annotated §§ 480-1, *et seq.*

a. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier price competition was restrained, suppressed, and eliminated throughout Hawaii; (2) Vehicle Carrier Services prices were raised, fixed,

maintained, and stabilized at artificially high levels throughout Hawaii; (3) Plaintiff and members of the Damages Class were deprived of free and open competition; and (4) Plaintiff and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Hawaii commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiff and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Hawaii Revised Statutes Annotated §§ 480-4, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Hawaii Revised Statutes Annotated §§ 480-4, *et seq.*

223. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Illinois Antitrust Act, 740 Illinois Compiled Statutes 10/1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier price competition was restrained, suppressed, and eliminated throughout Illinois; (2) Vehicle Carrier Services prices were raised,

fixed, maintained, and stabilized at artificially high levels throughout Illinois; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Illinois commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 740 Illinois Compiled Statutes 10/1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under 740 Illinois Compiled Statutes 10/1, *et seq.*

224. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Iowa Code §§ 553.1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Iowa; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Iowa; (3) Plaintiffs and members of the Damages Class were deprived of free and open

competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Iowa commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Iowa Code §§ 553.1, *et seq.*

Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Iowa Code §§ 553.1, *et seq.*

225. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Kansas Statutes Annotated, §§ 50-101, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Kansas; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Kansas; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Kansas commerce.

c. As a direct and proximate result of defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Kansas Stat. Ann. §§ 50-101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all forms of relief available under Kansas Stat. Ann. §§ 50-101, *et seq.*

226. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Maine Revised Statutes, Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Maine; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Maine; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Maine commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Maine Rev. Stat. Ann. 10, §§ 1101, *et seq.*

227. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Michigan Compiled Laws Annotated §§ 445.771, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Michigan; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Michigan; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Michigan commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Michigan Comp. Laws Ann. §§ 445.771, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Michigan Comp. Laws Ann. §§ 445.771, *et seq.*

228. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Minnesota Annotated Statutes §§ 325D.49, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Minnesota; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Minnesota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Minnesota commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Minnesota Stat. §§ 325D.49, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Minnesota Stat. §§ 325D.49, *et seq.*

229. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Mississippi Code Annotated §§ 75-21-1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Mississippi; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Mississippi; (3) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Vehicles in Mississippi that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in Mississippi; and (4) Plaintiffs and members of the Damages Class, including those who resided in Mississippi and/or purchased Vehicles in Mississippi that were shipped by Defendants or their co-conspirators,

paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in Mississippi.

b. During the Class Period, Defendants' illegal conduct substantially affected Mississippi commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Mississippi Code Ann. § 75-21-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Mississippi Code Ann. § 75-21-1, *et seq.*

230. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nebraska Revised Statutes §§ 59-801, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nebraska; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nebraska; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Nebraska commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nebraska Revised Statutes §§ 59-801, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nebraska Revised Statutes §§ 59-801, *et seq.*

231. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Nevada Revised Statutes Annotated §§ 598A.010, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Nevada; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout Nevada; (3) Plaintiffs and members of the Damages Class, including those who resided in Nevada and/or purchased Vehicles in Nevada that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in Nevada; and (4) Plaintiffs and members of the Damages, including those who resided in Nevada and/or purchased Vehicles in Nevada that were shipped by

Defendants or their co-conspirators, Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in Nevada.

b. During the Class Period, Defendants' illegal conduct substantially affected Nevada commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Nevada Rev. Stat. Ann. §§ 598A, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Nevada Rev. Stat. Ann. §§ 598A, *et seq.*

232. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Hampshire Revised Statutes §§ 356:1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Hampshire; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Hampshire; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages

Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected New Hampshire commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Hampshire Revised Statutes §§ 356:1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Hampshire Revised Statutes §§ 356:1, *et seq.*

233. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New Mexico Statutes Annotated §§ 57-1-1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of New Mexico Stat. Ann. §§ 57-1-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New Mexico Stat. Ann. §§ 57-1-1, *et seq.*

234. Defendants have entered into an unlawful agreement in restraint of trade in violation of the New York General Business Laws §§ 340, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New York; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Vehicles in New York that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in New York; and (4) Plaintiffs and members of the Damages Class, including those who resided in New York and/or purchased Vehicles in New York

that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in New York when they purchased Vehicles transported by Vehicle Carrier Services, or purchased products that were otherwise of lower quality, than would have been absent the Defendants' illegal acts, or were unable to purchase products that they would have otherwise have purchased absent the illegal conduct.

b. During the Class Period, Defendants' illegal conduct substantially affected New York commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of the New York Donnelly Act, §§ 340, *et seq.* The conduct set forth above is a *per se* violation of the Act. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under New York Gen. Bus. Law §§ 340, *et seq.*

235. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Carolina General Statutes §§ 75-1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed,

and eliminated throughout North Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in North Carolina; and (4) Plaintiffs and members of the Damages Class, including those who resided in North Carolina and/or purchased Vehicles in North Carolina that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in North Carolina

b. During the Class Period, Defendants' illegal conduct substantially affected North Carolina commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Carolina Gen. Stat. §§ 75-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Carolina Gen. Stat. §§ 75-1, *et seq.*

236. Defendants have entered into an unlawful agreement in restraint of trade in violation of the North Dakota Century Code §§ 51-08.1-01, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Dakota; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on North Dakota commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of North Dakota Cent. Code §§ 51-08.1-01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under North Dakota Cent. Code §§ 51-08.1-01, *et seq.*

237. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Oregon Revised Statutes §§ 646.705, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Oregon; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Oregon; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Oregon commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Oregon Revised Statutes §§ 646.705, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Oregon Revised Statutes §§ 646.705, *et seq.*

238. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of S.C. Code Ann. §§ 39-5-10, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under S.C. Code Ann. §§ 39-5-10, *et seq.*

239. Defendants have entered into an unlawful agreement in restraint of trade in violation of the South Dakota Codified Laws §§ 37-1-3.1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed,

and eliminated throughout South Dakota; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Dakota; (3) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Vehicles in South Dakota that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in South Dakota; and (4) Plaintiffs and members of the Damages Class, including those who resided in South Dakota and/or purchased Vehicles in South Dakota that were shipped by Defendants or their co-conspirators, paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in South Dakota.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on South Dakota commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of South Dakota Codified Laws Ann. §§ 37-1, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under South Dakota Codified Laws Ann. §§ 37-1, *et seq.*

240. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Utah Code Annotated §§ 76-10-911, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Utah; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Utah; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Utah commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Utah Code Annotated §§ 76-10-911, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Utah Code Annotated §§ 76-10-911, *et seq.*

241. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Vermont Stat. Ann. 9 §§ 2451, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Vermont commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of 9 Vermont Stat. Ann. §§ 2451, *et seq.* Plaintiffs are entitled to relief pursuant to 9 Vermont Stat. Ann. § 2465 and any other applicable authority. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under 9 Vermont Stat. Ann. §§ 2451, *et seq.*

242. Defendants have entered into an unlawful agreement in restraint of trade in violation of the West Virginia Code §§ 47-18-1, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout West Virginia; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout West Virginia; (3) Plaintiffs and members of the Damages Class, including those who resided in West Virginia and/or purchased Vehicles in West Virginia that were shipped by Defendants or their co-conspirators, were deprived of free and open competition, including in West Virginia; and (4) Plaintiffs and members of the Damages, including those who resided in West Virginia and/or purchased Vehicles in West Virginia that were shipped by Defendants or their co-conspirators, Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services, including in West Virginia.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on West Virginia commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of West Virginia Code §§ 47-18-1, *et*

seq. Accordingly, Plaintiffs and members of the Damages Class seek all relief available under West Virginia Code §§ 47-18-1, *et seq.*

243. Defendants have entered into an unlawful agreement in restraint of trade in violation of the Wisconsin Statutes §§ 133.01, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Wisconsin; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Wisconsin; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on Wisconsin commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. By reason of the foregoing, Defendants have entered into agreements in restraint of trade in violation of Wisconsin Stat. §§ 133.01, *et seq.* Accordingly, Plaintiffs and members of the Damages Class seek all relief available under Wisconsin Stat. §§ 133.01, *et seq.*

244. Plaintiffs and members of the Damages Class in each of the above states have been injured in their business and property by reason of Defendants' unlawful combination, contract, conspiracy, and agreement. Plaintiffs and members of the Damages Class have paid more for Vehicle Carrier Services than they otherwise would have paid in the absence of Defendants' unlawful conduct. This injury is of the type the antitrust laws of the above states were designed to prevent and flows from that which makes Defendants' conduct unlawful.

245. In addition, Defendants have profited significantly from the aforesaid conspiracy. Defendants' profits derived from their anticompetitive conduct come at the expense and detriment of members of the Plaintiffs and the members of the Damages Class.

246. Accordingly, Plaintiffs and the members of the Damages Class in each of the above jurisdictions seek damages (including statutory damages where applicable), to be trebled or otherwise increased as permitted by a particular jurisdiction's antitrust law, and costs of suit, including reasonable attorneys' fees, to the extent permitted by the above state laws.

THIRD CLAIM FOR RELIEF
Violation of State Consumer Protection Statutes
(on behalf of Plaintiffs and the Damages Class)

247. Plaintiffs repeat and re-allege the allegations set forth above.

248. Defendants knowingly engaged in unlawful, unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of the state consumer protection and unfair competition statutes listed below.

249. Defendants have knowingly entered into an unlawful agreement in restraint of trade in violation of the Arkansas Code Annotated, § 4-88-101.

a. Defendants knowingly agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Arkansas and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. The aforementioned conduct on the part of the Defendants constituted “unconscionable” and “deceptive” acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10).

c. Defendants’ unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Arkansas; (2) p Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Arkansas; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

d. During the Class Period, Defendants' illegal conduct substantially affected Arkansas commerce and consumers.

e. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

f. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Arkansas Code Annotated, § 4-88-107(a)(10) and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

250. Defendants have engaged in unfair competition or unfair, unconscionable, deceptive, or fraudulent acts or practices in violation of California Business and Professions Code §§ 17200, *et seq.*

a. During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in California and committed and continue to commit acts of unfair competition, as defined by Sections 17200, *et seq.* of the California Business and Professions Code, by engaging in the acts and practices specified above.

b. During the Class Period, Defendants' illegal conduct substantially affected California commerce and consumers.

c. This claim is instituted pursuant to Sections 17203 and 17204 of the California Business and Professions Code, to obtain restitution from these Defendants for acts, as alleged herein, that violated Section 17200 of the California Business and Professions Code, commonly known as the Unfair Competition Law.

d. Defendants' conduct as alleged herein violated Section 17200. The acts, omissions, misrepresentations, practices, and non-disclosures of Defendants, as alleged herein, constituted a common, continuous, and continuing course of conduct of unfair competition by means of unfair, unlawful, and/or fraudulent business acts or practices within the meaning of California Business and Professions Code, Section 17200, *et seq.*, including, but not limited to, the following: (1) the violations of Section 1 of the Sherman Act, as set forth above; and (2) the violations of Section 16720, *et seq.*, of the California Business and Professions Code, set forth above;

e. Defendants' acts, omissions, misrepresentations, practices, and non-disclosures, as described above, whether or not in violation of Section 16720, *et seq.*, of the California Business and Professions Code, and whether or not concerted or independent acts, are otherwise unfair, unconscionable, unlawful, or fraudulent;

f. Defendants' acts or practices are unfair to purchasers of Vehicle Carrier Services (or Vehicles transported by them) in the State of

California within the meaning of Section 17200, California Business and Professions Code; and

g. Defendants' acts and practices are fraudulent or deceptive within the meaning of Section 17200 of the California Business and Professions Code.

h. Plaintiffs and members of the Damages Class are entitled to full restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business acts or practices.

i. The illegal conduct alleged herein is continuing and there is no indication that Defendants will not continue such activity into the future.

j. The unlawful and unfair business practices of Defendants, and each of them, as described above, have caused and continue to cause Plaintiffs and the members of the Damages Class to pay supra-competitive and artificially-inflated prices for Vehicle Carrier Services (or Vehicles transported by them). Plaintiffs and the members of the Damages Class suffered injury in fact and lost money or property as a result of such unfair competition.

k. The conduct of Defendants as alleged in this Complaint violates Section 17200 of the California Business and Professions Code.

1. As alleged in this Complaint, Defendants and their co-conspirators have been unjustly enriched as a result of their wrongful conduct and by Defendants' unfair competition. Plaintiffs and the members of the Damages Class are accordingly entitled to equitable relief including restitution and/or disgorgement of all revenues, earnings, profits, compensation, and benefits that may have been obtained by Defendants as a result of such business practices, pursuant to the California Business and Professions Code, Sections 17203 and 17204.

251. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201, *et seq.*

a. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Florida; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Florida; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supracompetitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Florida commerce and consumers.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Florida Stat. § 501.201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

252. Defendants have engaged in unfair competition or unlawful, unfair, unconscionable, or deceptive acts or practices in violation of the Massachusetts Gen. Laws, Ch 93A, § 1 *et seq.*

a. Defendants were engaged in trade or commerce as defined by G.L. 93A. Defendants, in a market that includes Massachusetts, agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Massachusetts and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. The aforementioned conduct on the part of the Defendants constituted “unfair methods of competition and unfair or deceptive acts or practices

in the conduct of any trade or commerce,” in violation of Massachusetts Gen. Laws, Ch 93A, § 2, 11.

c. Defendants’ unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Massachusetts; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Massachusetts; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

d. During the Class Period, Defendants’ illegal conduct substantially affected Massachusetts commerce and consumers.

e. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

f. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Massachusetts Gen. Laws, Ch 93A, §§ 2, 11, that were knowing or willful, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute, including multiple damages.

253. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the Montana Unfair Trade Practices and Consumer Protection Act of 1970, Mont. Code, §§ 30-14-201, *et. seq.*

a. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Montana; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Montana; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct substantially affected Montana commerce and consumers.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of Mont. Code, §§ 30-14-201, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

254. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of the New Mexico Stat. § 57-12-1, *et seq.*

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling, and/or maintaining at non-competitive and artificially inflated levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in New Mexico and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. The aforementioned conduct on the part of the Defendants constituted “unconscionable trade practices,” in violation of N.M.S.A. Stat. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for Vehicle Carrier Services as set forth in N.M.S.A., § 57-12-2E. Plaintiffs were not aware of Defendants’ price-fixing conspiracy and were therefore unaware that they were being unfairly and illegally overcharged. There was a gross disparity of bargaining power between the parties with respect to the price charged by Defendants for Vehicle Carrier Services. Defendants had the sole power to set that price and Plaintiffs had no power to negotiate a lower price. Moreover, Plaintiffs lacked any meaningful choice in purchasing Vehicle Carrier Services because they were unaware of the unlawful overcharge and there was no

alternative source of supply through which Plaintiffs could avoid the overcharges. Defendants' conduct with regard to sales of Vehicle Carrier Services, including their illegal conspiracy to secretly fix the price of Vehicle Carrier Services at supra-competitive levels and overcharge Plaintiffs and the Damages Class, was substantively unconscionable because it was one-sided and unfairly benefited Defendants at the expense of Plaintiffs and the public. Defendants took grossly unfair advantage of Plaintiffs.

c. The aforementioned conduct on the part of the Defendants constituted "unconscionable trade practices," in violation of N.M.S.A. § 57-12-3, in that such conduct, *inter alia*, resulted in a gross disparity between the value received by Plaintiffs and the members of the Damages Class and the prices paid by them for the Vehicle Carrier Services as set forth in N.M.S.A. § 57-12-2E, due to the inflated prices paid by Plaintiffs and Damages Class members for the Vehicles and the Vehicle Carrier Services.

d. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New Mexico; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New Mexico; (3) Plaintiffs and the members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and the members of the Damages

Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

e. During the Class Period, Defendants' illegal conduct substantially affected New Mexico commerce and consumers.

f. As a direct and proximate result of the unlawful conduct of the Defendants, Plaintiffs and the members of the Damages Class have been injured in their business and property and are threatened with further injury.

g. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of New Mexico Stat. § 57-12-1, *et seq.*, and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

255. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of N.Y. Gen. Bus. Law § 349, *et seq.*

a. Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in New York and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. Defendants and their co-conspirators made public statements about the prices of Vehicle Carrier Services that either omitted material information that rendered the statements that they made materially misleading or affirmatively misrepresented the real cause of price increases for Vehicle Carrier Services, and Defendants alone possessed material information that was relevant to Plaintiffs and the Damages Classes but failed to provide the information.

c. Because of Defendants' unlawful trade practices in the State of New York, New York class members who indirectly purchased Vehicle Carrier Services were misled to believe that they were paying a fair price for Vehicle Carrier Services or the price increases for Vehicle Carrier Services were for valid business reasons, and similarly situated class members were potentially affected by Defendants' conspiracy.

d. Defendants knew that their unlawful trade practices with respect to pricing Vehicle Carrier Services would have an impact on New York class members and not just the Defendants' direct customers.

e. Defendants knew that their unlawful trade practices with respect to pricing Vehicle Carrier Services would have a broad impact, causing class members who indirectly purchased Vehicle Carrier Services to be injured by paying more for Vehicle Carrier Services than they would have paid in the absence of Defendants' unlawful trade acts and practices.

f. The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of N.Y. Gen. Bus. Law § 349, which resulted in consumer injury and broad adverse impact on the public at large, and harmed the public interest of New York State in an honest marketplace in which economic activity is conducted in a competitive manner.

g. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout New York; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout New York; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

h. During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in New York, and Defendants' illegal conduct substantially affected New York commerce and consumers.

i. During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed Vehicle Carrier Services in New York.

j. Plaintiffs and members of the Damages Class seek all relief available pursuant to N.Y. Gen. Bus. Law § 349(h).

256. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*

a. Defendants agree to, and did in fact, act in restraint of trade or commerce by affecting, fixing, controlling and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed or obtained in North Carolina and took efforts to conceal their agreements from Plaintiffs and members of the Damages Class.

b. Defendants' price-fixing conspiracy could not have succeeded absent deceptive conduct by Defendants to cover up their illegal acts. Secrecy was integral to the formation, implementation, and maintenance of Defendants' price-fixing conspiracy. Defendants committed inherently deceptive and self-concealing actions, of which Plaintiffs could not possibly have been aware. Defendants and their co-conspirators publicly provided pre-textual and false justifications regarding their price increases. Defendants' public statements concerning the price of Vehicle Carrier Services created the illusion of competitive pricing controlled by market forces rather than supra-competitive pricing driven by Defendants' illegal conspiracy. Moreover, Defendants deceptively concealed their unlawful activities by mutually agreeing not to divulge the existence of the conspiracy to outsiders.

c. The conduct of the Defendants described herein constitutes consumer-oriented deceptive acts or practices within the meaning of North Carolina law, which resulted in consumer injury and broad adverse impact on the public at large and harmed the public interest of North Carolina Plaintiffs and the Damages Classes in an honest marketplace in which economic activity is conducted in a competitive manner.

d. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout North Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout North Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

e. During the Class Period, Defendants marketed, sold, or distributed Vehicle Carrier Services in North Carolina, and Defendants' illegal conduct substantially affected North Carolina commerce and consumers.

f. During the Class Period, each of the Defendants named herein, directly, or indirectly and through affiliates they dominated and controlled, manufactured, sold and/or distributed Vehicle Carrier Services in North Carolina.

g. Plaintiffs and members of the Damages Class seek actual damages for their injuries caused by these violations in an amount to be determined at trial and are threatened with further injury. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of North Carolina Gen. Stat. § 75-1.1, *et seq.*, and accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

257. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of South Carolina Unfair Trade Practices Act, S.C. Code Ann. §§ 39-5-10, *et seq.*

a. Defendants' combinations or conspiracies had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout South Carolina; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout South Carolina; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

b. During the Class Period, Defendants' illegal conduct had a substantial effect on South Carolina commerce.

c. As a direct and proximate result of Defendants' unlawful conduct, Plaintiffs and members of the Damages Class have been injured in their business and property and are threatened with further injury.

d. Defendants have engaged in unfair competition or unfair or deceptive acts or practices in violation of S.C. Code Ann. §§ 39-5-10, et seq., and, accordingly, Plaintiffs and the members of the Damages Class seek all relief available under that statute.

258. Defendants have engaged in unfair competition or unfair, unconscionable, or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*

a. Defendants agreed to, and did in fact, act in restraint of trade or commerce in a market that includes Vermont, by affecting, fixing, controlling, and/or maintaining, at artificial and non-competitive levels, the prices at which Vehicle Carrier Services were sold, distributed, or obtained in Vermont.

b. Defendants deliberately failed to disclose material facts to Plaintiffs and members of the Damages Class concerning Defendants' unlawful activities and artificially inflated prices for Vehicle Carrier Services. Defendants owed a duty to disclose such facts, and Defendants breached that duty by their silence. Defendants misrepresented to all purchasers during the Class Period that Defendants' Vehicle Carrier Services prices were competitive and fair.

c. Defendants' unlawful conduct had the following effects: (1) Vehicle Carrier Services price competition was restrained, suppressed, and eliminated throughout Vermont; (2) Vehicle Carrier Services prices were raised, fixed, maintained, and stabilized at artificially high levels throughout Vermont; (3) Plaintiffs and members of the Damages Class were deprived of free and open competition; and (4) Plaintiffs and members of the Damages Class paid supra-competitive, artificially inflated prices for Vehicle Carrier Services.

d. As a direct and proximate result of the Defendants' violations of law, Plaintiffs and members of the Damages Class suffered an ascertainable loss of money or property as a result of Defendants' use or employment of unconscionable and deceptive commercial practices as set forth above. That loss was caused by Defendants' willful and deceptive conduct, as described herein.

e. Defendants' deception, including their affirmative misrepresentations and omissions concerning the price of Vehicle Carrier Services, likely misled all purchasers acting reasonably under the circumstances to believe that they were purchasing Vehicle Carrier Services at prices set by a free and fair market. Defendants' misleading conduct and unconscionable activities constitutes unfair competition or unfair or deceptive acts or practices in violation of 9 Vermont § 2451, *et seq.*, and, accordingly, Plaintiffs and members of the Damages Class seek all relief available under that statute.

FOURTH CLAIM FOR RELIEF
Unjust Enrichment
(on behalf of Plaintiffs and the Damages Class)

259. Plaintiffs repeat and reallege the allegations set forth above.

260. Plaintiffs bring this claim under the laws of all states listed in the Second and Third Claims, *supra*.

261. As a result of their unlawful conduct described above and their violations of the antitrust and consumer protection laws set forth above, Defendants have and will continue to be unjustly enriched. Defendants have been unjustly enriched by the receipt of, at a minimum, unlawfully inflated prices and unlawful profits on sales of Vehicle Carrier Services.

262. Defendants have benefited from their unlawful acts, and it would be inequitable for Defendants to be permitted to retain any of the ill-gotten gains resulting from the overpayments made by Plaintiffs and the members of the Damages Class for Vehicle Carrier Services.

263. Plaintiffs and the members of the Damages Class are entitled to the amount of Defendants' ill-gotten gains resulting from their unlawful, unjust, and inequitable conduct. Plaintiffs and the members of the Damages Class are entitled to the establishment of a constructive trust consisting of all ill-gotten gains from which Plaintiffs and the members of the Damages Class may make claims on a pro rata basis.

264. Pursuit of any remedies against the firms from whom Plaintiffs and the Damages Class members purchased Vehicles shipped by Defendants subject to Defendants' conspiracy would have been futile, given that those firms did not take part in Defendants' conspiracy.

PRAYER FOR RELIEF

Accordingly, Plaintiffs respectfully request that:

1. The Court 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 Auto Dealer Classes;

2. The unlawful conduct, contract, conspiracy, or combination alleged herein be adjudged and decreed:

a. An unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;

b. A *per se* violation of Section 1 of the Sherman Act;

c. An unlawful combination, trust, agreement, understanding, and/or concert of action in violation of the state antitrust and unfair competition and consumer protection laws as set forth herein; and

d. Acts of unjust enrichment by Defendants as set forth herein.

3. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed under such laws, and that a joint and several judgment in favor of Plaintiffs and the members of the Damages Class be entered against Defendants in an amount to be trebled to the extent such laws permit;

4. Plaintiffs and the members of the Damages Class recover damages, to the maximum extent allowed by such laws, in the form of restitution and/or disgorgement of profits unlawfully gained from them;

5. Defendants, their affiliates, successors, transferees, assignees and other officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf or in concert with them, be permanently enjoined and restrained from in any manner continuing, maintaining or renewing the conduct, contract, conspiracy, or combination alleged herein, or from entering into any other contract, conspiracy, or combination having a similar purpose or effect, and from adopting or following any practice, plan, program, or device having a similar purpose or effect;

6. Plaintiffs and the members of the Damages Class be awarded restitution, including disgorgement of profits Defendants obtained as a result of their acts of unfair competition and acts of unjust enrichment;

7. Plaintiffs and the members of the Auto Dealer Classes be awarded pre- and post- judgment interest as provided by law and that such interest be

awarded at the highest legal rate from and after the date of service of this Complaint;

8. Plaintiffs and the members of the Auto Dealer Classes recover their costs of suit, including reasonable attorneys' fees, as provided by law; and

9. Plaintiffs and members of the Auto Dealer Classes have such other and further relief as the case may require and the Court may deem just and proper.

JURY DEMAND

Plaintiffs demand a trial by jury, pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, of all issues so triable.

DATED: October 6, 2014

Respectfully submitted,

/s/ Peter S. Pearlman

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EXHIBIT “B”

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

**IN RE VEHICLE CARRIER SERVICES
ANTITRUST LITIGATION**

This Document Relates To All Actions

**Master Docket No.: 13-3306 (ES)
(MDL No. 2471)**

OPINION

SALAS, DISTRICT JUDGE

I. INTRODUCTION

In this multidistrict litigation (“MDL”), purchasers of vehicle carrier services allege a conspiracy among ocean shipping companies to fix prices, allocate customers and routes, and restrict capacity. Direct Purchaser Plaintiffs (“DPPs”) filed a consolidated class action complaint against Defendants¹ seeking treble damages and costs of suit under section 4 of the Clayton Act, 15 U.S.C. § 15, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1. (D.E. No. 142, Direct Purchaser Plaintiff Consolidated Amended Class Action Complaint (“DPP Compl.”) ¶ 4). Indirect Purchaser Plaintiffs (“IPPs”) collectively include End-Payors, Automobile Dealers (“Auto Dealers”), and Truck & Equipment Dealers, each of whom filed consolidated class action complaints against Defendants seeking equitable and injunctive relief under section 16 of the Clayton Act, 15 U.S.C. § 26, for violation of section 1 of the Sherman Act, 15 U.S.C. § 1, and treble damages and costs of suit under various state antitrust, consumer protection, and unjust

¹ “Defendants” collectively include: Nippon Yusen Kabushiki Kaisha and NYK Line North America Inc. (“NYK Defendants”); Kawasaki Kisen Kaisha, Ltd. and “K” Line America, Inc. (“K-Line Defendants”); Wallenius Wilhelmsen Logistics AS, Wallenius Wilhelmsen Logistics America LLC, and EUKOR Car Carriers, Inc. (“WWL/EUKOR Defendants”); Compañía Sud Americana de Vapores, S.A. and CSAV Agency, LLC (“CSAV Defendants”); Höegh Autoliners AS and Höegh Autoliners, Inc. (“Höegh Defendants”); and Mitsui O.S.K. Lines, Ltd., Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc., and World Logistics Service (U.S.A.) Inc. (“MOL Defendants”). The Court notes that a “settlement in principal” was reached between certain IPPs and the K-Line Defendants, (July 23, 2015 Transcript (“Tr.”) at 11), and additionally notes that a “settlement agreement” was reached between IPPs and the MOL Defendants, for which the parties “request that the Court stay all proceedings as they relate to [the MOL Defendants].” (D.E. No. 272 at 1). The Court nevertheless must necessarily address the consolidated motions, which include the K-Line Defendants and the MOL Defendants.

enrichment laws. (D.E. No. 183, End-Payor Plaintiff Second Consolidated Amended Class Action Complaint (“End-Payor Compl.”) ¶¶ 11, 213–85; D.E. No. 199, Automobile Dealer Second Consolidated Amended Class Action Complaint (“Auto Dealer Compl.”) ¶¶ 11, 213–60; No. 14-4469, D.E. No. 1, Truck and Equipment Dealer Class Action Complaint (“Truck Center Compl.”) ¶¶ 12, 197–242).²

Before the Court are the following motions: Defendants’ Consolidated Motion to Dismiss the Indirect Purchasers’ Complaints, (D.E. No. 209); End-Payor Plaintiffs’ Request for Judicial Notice in Support of Response to Defendants’ Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212); Defendants’ Consolidated Motion to Dismiss the Direct Purchasers’ Complaint, (D.E. No. 218); Defendant EUKOR Car Carriers, Inc.’s Motion to Dismiss All Complaints, (D.E. No. 214); Höegh Defendants’ Motion to Dismiss the Direct Purchasers’ Complaint, (D.E. No. 227); and Höegh Defendants’ Motion to Dismiss the Indirect Purchasers’ Complaints, (D.E. No. 230). The Court heard oral argument on July 23, 2015. (Tr.). Because the Shipping Act of

² End-Payers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (End-Payor Compl. ¶¶ 213–53; *see also* Tr. at 107 (withdrawing Tennessee antitrust claim)); and they allege violation of the consumer protection laws of the District of Columbia and the following states: Arkansas, California, Florida, Hawaii, Massachusetts, Missouri, Montana, New Mexico, New York, North Carolina, Rhode Island, South Carolina, Vermont. (End-Payor Compl. ¶¶ 254–85).

Auto Dealers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Illinois, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Carolina, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (Auto Dealer Compl. ¶¶ 213–46); they allege violation the following state consumer protection laws: Arkansas, California, Florida, Massachusetts, Montana, New Mexico, New York, North Carolina, South Carolina, (Auto Dealer Compl. ¶¶ 247–58; *see also* Tr. at 107 (withdrawing Vermont consumer protection claim)); and they allege claims of unjust enrichment “under the laws of all states listed in the Second [state antitrust] and Third [state consumer protection] Claims.” (Auto Dealer Compl. ¶ 260).

Truck and Equipment Dealers allege violations of the antitrust statutes of the District of Columbia and the following states: Arizona, California, Hawaii, Iowa, Kansas, Maine, Michigan, Minnesota, Mississippi, Nebraska, Nevada, New Hampshire, New Mexico, New York, North Carolina, North Dakota, Oregon, South Dakota, Utah, Vermont, West Virginia, Wisconsin, (Truck Center Compl. ¶¶ 197–228); they allege violation of the following state consumer protection laws: Arkansas, California, Florida, Massachusetts, Montana, New Mexico, New York, North Carolina, South Carolina, (Truck Center Compl. ¶¶ 229–40; *see also* Tr. at 107 (withdrawing Vermont consumer protection claim)); and they allege claims of unjust enrichment “under the laws of all states listed in the Second [state antitrust] and Third [state consumer protection] Claims.” (Truck Center Compl. ¶ 242).

1984 bars Clayton Act claims and preempts state law claims under the theory of conflict preemption, the motions to dismiss are granted.

II. FACTUAL BACKGROUND

Defendants are ocean shipping companies engaged in the transportation of large numbers of cars, trucks, and other vehicles, including agricultural and construction equipment, between foreign countries and the United States using Roll On/Roll Off (“RO/RO”) or specialized car carrier vessels. (DPP Compl. ¶¶ 16–22, 25–28; End-Payor Compl. ¶¶ 2, 59–72; Auto Dealer Compl. ¶¶ 2, 44–57; Truck Center Compl. ¶¶ 3, 45–47). As alleged in the complaints, “vehicle carrier services” refer to the paid ocean transportation of new, assembled motor vehicles by RO/RO or specialized vehicle carrier vessels. (End-Payor Compl. ¶ 2; Auto Dealer Compl. ¶ 2; Truck Center Compl. ¶ 3).

Defendants sell vehicle carrier services to original equipment manufacturers (“OEMs”)—mostly large automotive, construction and agricultural manufacturers such as Honda, Volkswagen, Mitsubishi, Toyota, Nissan, and Subaru—which purchase vehicle carrier services from Defendants to transport vehicles manufactured by the OEMs outside of the United States to purchasers in the United States. (End-Payor Compl. ¶ 82; Auto Dealer Compl. ¶¶ 21, 23, 27, 33, 37, 39, 41; Truck Center Compl. ¶¶ 21, 23, 25, 27, 29, 31, 33, 35, 37, 39, 41, 43).

Both DPPs and IPPs allege that Defendants entered into various collusive, secret agreements to fix and increase the prices for vehicle carrier services to and from the United States. These include:

- (i) coordination of price increases, (DPP Compl. ¶¶ 62, 63; End-Payor Compl. ¶¶ 125–30; Auto Dealer Compl. ¶¶ 113–18; Truck Center Compl. ¶¶ 108–18);

- (ii) agreements not to compete, including coordination of responses to price reduction requests made by the OEMs and allocation of customers and routes, (DPP Compl. ¶¶ 64, 65; End-Payor Compl. ¶¶ 131–45; Auto Dealer Compl. ¶¶ 119–32; Truck Center Compl. ¶¶ 119–32); and
- (iii) agreements to restrict capacity by means of agreed upon fleet reductions, (DPP Compl. ¶¶ 55–61; End-Payor Compl. ¶¶ 146–48; Auto Dealer Compl. ¶¶ 133–40; Truck Center Compl. ¶¶ 133–35).

DPPs allege they have directly purchased vehicle carrier services from Defendants, and were directly injured as a result. (DPP Compl. ¶¶ 13–15, 91). DPPs also “include companies that arrange for the international ocean transportation of vehicles.” (*Id.* ¶ 30).

As mentioned above, IPPs include Auto Dealers, Truck & Equipment Dealers, and End-Payers. The Auto Dealers and the Truck & Equipment Dealers are automobile dealers and truck & equipment dealers, respectively, in the United States that allege that they purchased automobiles or trucks & equipment from the OEMs that were transported to the United States in Defendants’ RO/RO or specialized vehicle carrier vessels. (Auto Dealer Compl. ¶¶ 21–43; Truck Center Compl. ¶¶ 21–44). The End-Payers are individuals who allege that they purchased or leased automobiles from Auto Dealers in the United States. (End-Payor Compl. ¶¶ 20–58). Each of the IPPs alleges that they are “indirect purchasers” of vehicle carrier services because, purportedly, the cost paid by the OEMs for vehicle carrier services was passed on to them as part of the purchase or lease price they paid for the automobiles or trucks. (End-Payor Compl. ¶¶ 10, 182, 183; Auto Dealer Compl. ¶¶ 10, 172–76; Truck Center Compl. ¶¶ 10, 157–62).

III. PROCEDURAL BACKGROUND

These civil antitrust actions were precipitated by the disclosure in September 2012 of raids upon certain Defendants' offices by governmental agencies in connection with antitrust investigations. (See DPP Compl. ¶¶ 66–71; End-Payor Compl. ¶¶ 6–8, 190–92; Auto Dealer Compl. ¶¶ 6–8, 184–86; Truck Center Compl. ¶¶ 4, 5, 7, 169–71). On May 24, 2013, the first of the cases that comprise this MDL was filed in this Court. (See D.E. No. 1). On October 8, 2013, the Judicial Panel on Multi-District Litigation selected this Court as the transferee court in this MDL for coordinated or consolidated pretrial proceedings, pursuant to 28 U.S.C. § 1407. (D.E. No. 21).³

On June 13, 2014, United States Magistrate Judge Joseph A. Dickson issued MDL Order Number 4, which set a global briefing schedule for the pending motions to dismiss. (D.E. No. 156). The motions were fully briefed and filed on January 26, 2015. The Court heard oral argument on July 23, 2015 and thereafter received supplemental briefing on the issue of conflict preemption.⁴ The motions are now ripe for resolution.

IV. LEGAL STANDARD

To withstand a motion to dismiss for failure to state a claim, “a complaint must contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is plausible on its face.’”

³ A review of the docket as of this writing indicates that this MDL currently consists of thirty-one member cases. (See No. 13-3306 docket sheet).

⁴ The Court has reviewed and considered the following written submissions: End-Payor Plaintiff's Request for Judicial Notice (D.E. No. 212), and Defendants' Consolidated Brief in Opposition (D.E. No. 213); Defendants' Consolidated Motion to Dismiss the IPP Complaints (D.E. No. 209), IPP Opposition Brief (D.E. No. 210), Defendants' Consolidated Reply Brief (D.E. No. 211), End-Payor Letter Brief RE: *Oneok* (D.E. No. 251), Defendants' Consolidated Letter Brief in Response (D.E. No. 252), Defendants' Consolidated Supplemental Brief RE: Conflict Preemption (D.E. No. 269), and IPP Supplemental Brief RE: Conflict Preemption (D.E. No. 270); Defendants' Consolidated Motion to Dismiss the DPP Complaint (D.E. No. 218), DPP Opposition Brief (D.E. No. 219), and Defendants' Consolidated Reply Brief (D.E. No. 220); EUKOR's Motion to Dismiss All Complaints (D.E. No. 214), DPP Opposition Brief (D.E. No. 215), IPP Opposition Brief (D.E. No. 216), and EUKOR Reply Brief (D.E. No. 217); Höegh's Motion to Dismiss the DPP Complaint (D.E. No. 227), DPP Opposition Brief (D.E. No. 228), and Höegh's Reply Brief (D.E. No. 229); Höegh's Motion to Dismiss the IPP Complaints (D.E. No. 230), IPP Opposition Brief (D.E. No. 231), and Höegh's Reply Brief (D.E. No. 232).

Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). “A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.” *Iqbal*, 556 U.S. at 678. “The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Id.*

To determine the sufficiency of a complaint under *Twombly* and *Iqbal* in the Third Circuit, the court must take three steps: first, the court must take note of the elements a plaintiff must plead to state a claim; second, the court should identify allegations that, because they are no more than conclusions, are not entitled to the assumption of truth; finally, where there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement for relief. See *Burtch v. Milberg Factors, Inc.*, 662 F.3d 212, 221 (3d Cir. 2011) (citations omitted).

“In deciding a Rule 12(b)(6) motion, a court must consider only the complaint, exhibits attached to the complaint, matters of the public record, as well as undisputedly authentic documents if the complainant’s claims are based upon these documents.” *Mayer v. Belichick*, 605 F.3d 223, 230 (3d Cir. 2010). Among the public records a court may examine in order to resolve a motion to dismiss is a judicial proceeding from a different court or case, but a court must be mindful of the distinction between the existence of a fact and its truth. *S. Cross Overseas Agencies, Inc. v. Wah Kwong Shipping Grp. Ltd.*, 181 F.3d 410, 426, 427 n.7 (3d Cir. 1999).

V. ANALYSIS

A. Clayton Act Claims for Damages and Injunctive Relief are Barred by the Shipping Act⁵

Defendants argue that claims for damages and injunctive relief under the Clayton Act are barred by the Shipping Act of 1984 (the “Shipping Act”). (D.E. No. 209-1 at 71; D.E. No. 218-1 at 3–11; D.E. No. 220 at 1–11; Tr. at 112–37, 156–62). The Shipping Act states that “[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by [the Shipping Act].” 46 U.S.C. § 40307(d). Defendants assert that the conduct alleged in the complaints by DPPs and IPPs—namely agreements to fix prices, allocate customers and routes, and restrict capacity—are “prohibited by” the Shipping Act, thus triggering the statutory bar against private antitrust actions under section 40307(d).

DPPs contend that agreements to restrict capacity are not prohibited by the Shipping Act and are therefore subject to private antitrust suits. First, DPPs argue that agreements to restrict capacity are outside of the purview of the Shipping Act and they point to the lack of explicit reference to “capacity restriction” in the Shipping Act and comments made by a former Commissioner of the Federal Maritime Commission (“FMC”) in support. (D.E. No. 219 at 4–7). Second, they argue that even if agreements to restrict capacity were covered, they are not “prohibited acts” sufficient to trigger the bar against Clayton Act claims. (*Id.*).

DPPs concede that claims relating to price fixing and market allocation are prohibited by the Shipping Act and are thus non-actionable under section 40307(d)’s Clayton Act bar. (Tr. at 156). Thus, the precise issue before the Court is whether capacity restrictions, as alleged in the

⁵ Although this point was addressed directly by DPPs for their claims for damages under the Clayton Act, IPPs incorporated and adopted DPPs’ arguments with respect to their claims for injunctive relief under the Clayton Act. (D.E. No. 210 at 72–73).

complaints, are covered by the Shipping Act and subject to section 40307(d)'s statutory bar against private antitrust actions.

In the Third Circuit, “the first step in interpreting a statute is to determine whether the language at issue has a plain and unambiguous meaning with regard to the particular dispute in the case. When the statutory language has a clear meaning, [the court] need not look further.” *Valansi v. Ashcroft*, 278 F.3d 203, 209 (3d Cir. 2002) (internal citation and quotation omitted). “However, if the language of the statute is unclear, [the court] attempt[s] to discern Congress’[s] intent using the canons of statutory construction. If the tools of statutory construction reveal Congress’[s] intent, that ends the inquiry.” *United States v. Cooper*, 396 F.3d 308, 310 (3d Cir. 2005), as amended (Feb. 15, 2005) (internal citations omitted). “If, on the other hand, [the court is] unable to discern Congress’[s] intent using tools of statutory construction, [the court] generally defer[s] to the governmental agency’s reasonable interpretation.” *Id.* at 310–11.

The Court finds that a plain reading of the Shipping Act reveals that capacity restrictions are prohibited by the Shipping Act and that DPPs’ and IPPs’ claims for damages and injunctive relief under Clayton Act are forbidden under section 40307(d). First, capacity restrictions are covered in the “Application” section of the Shipping Act, and so agreements among ocean common carriers (*i.e.*, Defendants) to restrict capacity are required to be filed with the FMC. Second, because ocean common carriers are prohibited from operating under an unfiled agreement that is required to be filed with the FMC, the Shipping Act provides an exemption for claims under the Clayton Act under section 40307(d). The Court discusses each in further detail below.

i. Agreements to Reduce Capacity Fall Within the Shipping Act Purview and Must be Filed with the FMC

The Shipping Act states that agreements between ocean common carriers falling within certain enumerated categories, 46 U.S.C. § 40301(a), “shall be filed” with the FMC, *id.* § 40302(a). Defendants argue that agreements to restrict capacity are covered by the Shipping Act, specifically section 40301(a), which states as follows:

§ 40301. Application

- (a) OCEAN COMMON CARRIER AGREEMENTS.—This part applies to an agreement between or among ocean common carriers to—
- (1) discuss, fix, or regulate transportation rates, including through rates, cargo space accommodations, and other conditions of service;
 - (2) pool or apportion traffic, revenues, earnings, or losses;
 - (3) allot ports or regulate the number and character of voyages between ports;
 - (4) regulate the volume or character of cargo or passenger traffic to be carried;
 - (5) engage in an exclusive, preferential, or cooperative working arrangement between themselves or with a marine terminal operator;
 - (6) control, regulate, or prevent competition in international ocean transportation; or
 - (7) discuss and agree on any matter related to a service contract.

46 U.S.C. § 40301(a). (D.E. No. 218-1 at 9–11; D.E. No. 220 at 3–5). DPPs argue that agreements to restrict capacity are not covered by the Shipping Act, as demonstrated by lack of explicit reference and the comments of a former Commissioner of the FMC. (D.E. No. 219 at 4–7).

The Court holds that a plain reading of the statutory language demonstrates that capacity restrictions, as alleged in the complaints, are covered by the Shipping Act. The complaints allege that Defendants reduced capacity by agreeing to “scrap” (*i.e.*, render non-usable) and “layup” (*i.e.*, take out of commission but not scrap) vessels. (DPP Compl. ¶ 56; End-Payor Compl. ¶ 123; Auto Dealer Compl. ¶ 111; Truck Center Compl. ¶ 106). DPPs allege that the capacity reductions were the result of a “conspiracy and were not caused by natural market

forces” and “resulted in artificially inflated prices for Vehicle Carrier Services.” (DPP Compl. ¶¶ 55, 57). Similarly, IPPs allege that the capacity reductions were the result of “concerted, collusive efforts” and “caused prices to artificially rise.” (End-Payor Compl. ¶ 124; Auto Dealer Compl. ¶ 112; Truck Center Compl. ¶ 107). These allegations plainly and unambiguously fit within the Shipping Act’s parameters, specifically section 40301(a), as set forth above.

When “interpreting a statute, the court will not look merely to a particular clause in which general words may be used, but will take in connection with it the whole statute . . . and the objects and policy of the law, as indicated by its various provisions” *Kokoszka v. Belford*, 417 U.S. 642, 650 (1974) (quoting *Brown v. Duchesne*, 19 How. 183, 194, 15 L.Ed. 595 (1857)); see also *Cooper*, 396 F.3d at 313 (“The Whole Act Rule instructs that subsections of a statute must be interpreted in the context of the whole enactment.”) (citation omitted).

The Court reads section 40301(a) as a whole to cover the type of capacity restrictions alleged by Plaintiffs. Most on point is subpart 6: allegations that Defendants conspired to reduce capacity is clearly an agreement to “control, regulate, or prevent competition.” *Id.* § 40301(a)(6). Similarly, the allegations in the complaint also speak to an agreement to “regulate the number and character of voyages between ports,” *id.* § 40301(a)(3), and an agreement to “regulate the volume or character of cargo or passenger traffic to be carried,” *id.* § 40301(a)(4). More generally, the allegations suggest a “cooperative working arrangement.” *Id.* § 40301(a)(5). Thus, the Court is satisfied that capacity reductions are covered by a plain reading of the Shipping Act’s text. In addition, the regulations promulgated by the FMC further support the conclusion that capacity reductions are within the Shipping Act’s purview. For example, 46 C.F.R. § 535.104(e) defines “capacity rationalization” as “a concerted reduction, stabilization, withholding, or other limitation in any manner whatsoever by ocean common carriers on the size

or number of vessels or available space offered collectively or individually to shippers in any trade or service.” *Id.* The regulations further state that an “agreement that contains the authority to discuss or agree on capacity rationalization” is subject to the Monitoring Report requirements, *id.* § 535.702(a)(1), and also indicate a requirement for a “narrative statement on any significant reductions in vessel capacity,” *id.* § 535.703(c).

The personal remarks of FMC Commissioner Michael A. Khouri relied on by DPPs are not persuasive. (See D.E. No. 219 at 6–7, Ex. C). On May 13, 2010, Mr. Khouri made the following statement as part of a panel discussion at the “International Trade Symposium: Charting New Horizons”:

One final comment—recent reports of increases in annual transpacific contract rates have heightened shipper concerns that these rate hikes are facilitated by carriers using, first, their legal authority to discuss voluntary general rate guidelines with, second, discussions to agree on capacity restriction. The first discussion would be legal under the Shipping Act. The second discussions—if they occurred—would be outside of the Shipping Act purview and would therefore be a violation of the Sherman Act.

(D.E. No. 219, Ex. C at 2). The Court agrees with Defendants that: (i) DPPs’ interpretation of the statement is inconsistent with the statutory language and regulations, (D.E. No. 220 at 9); (ii) the remarks are not entitled to *Chevron* deference because Mr. Khouri explicitly stated that his remarks were his personal views and were not offered as the official position of the FMC,⁶ (*id.* at

⁶ “*Chevron* deference” refers to *Chevron U.S.A. Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984), which “directs courts to accept an agency’s reasonable resolution of an ambiguity in a statute that the agency administers.” *Michigan v. E.P.A.*, 135 S. Ct. 2699, 2701 (2015).

Chevron requires courts to conduct a two-step inquiry. Under the first step, “[w]hen a court reviews an agency’s construction of the statute which it administers,” it must ask “whether Congress has directly spoken to the precise question at issue.” [*Chevron*, 467 U.S.] at 842. If Congress has resolved the question, the clear intent of Congress binds both the agency and the court.” *Id.* . . . Under the second step, if “Congress has not directly addressed the precise question at issue,” because “the statute is silent or ambiguous with respect to the specific issue, the question for the court is whether the agency’s answer is based on a permissible construction of the statute.” [*Id.*] at 843.

Hagans v. Comm’r of Soc. Sec., 694 F.3d 287, 294 (3d Cir. 2012) (parallel citation omitted). Here, even if for argument’s sake the first step were satisfied, a clear “guiding principle” from the Third Circuit is that “*Chevron*

10); (iii) the remarks can alternatively be interpreted as simply indicating that unfiled agreements (*i.e.*, agreements that lack “legal authority”) are outside of the Shipping Act purview, as opposed to agreements involving capacity reductions, (Tr. at 132–33); and (iv) consistent with the Shipping Act, Mr. Khouri’s reference to a Sherman Act violation more likely is in reference to criminal liability as opposed to private antitrust actions, (*id.*).

Thus, the Court finds that agreements to restrict capacity are covered by the Shipping Act. As a result, agreements to restrict capacity are required to be filed with the FMC. Specifically, section 40302 states that, “[a] true copy of every agreement referred to in section 40301(a) . . . of this title *shall be filed* with the Federal Maritime Commission. If the agreement is oral, a complete memorandum specifying in detail the substance of the agreement *shall be filed.*” 46 U.S.C. § 40302(a) (emphasis added). Agreements to restrict capacity are “referred to” in section 40301(a) and thus must be filed under section 40302(a). Here, DPPs and IPPs allege—and Defendants do not dispute—that the agreements to reduce capacity were not filed with the FMC. (*See* DPP Compl. ¶ 72; End-Payor Compl. ¶ 195; Auto Dealer Compl. ¶ 189; Truck Center Compl. ¶ 174).

ii. The Statutory Bar Against Private Antitrust Actions Applies because Ocean Common Carriers are Prohibited from Operating Under an Unfiled Agreement to Reduce Capacity

Section 40307(d) states that “[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by [the Shipping Act].” 46 U.S.C. § 40307(d). Defendants argue

deference is inappropriate for informal agency interpretations,” *id.* at 300 n.14 (citation and internal quotation marks omitted), let alone remarks such as Mr. Khouri’s that are expressly disclaimed as personal views. (*See* D.E. No. 219, Ex. C (“My remarks today reflect my personal views and thoughts and are not offered as the official position of the United States or the Federal Maritime Commission.”)). Thus, Mr. Khouri’s remarks are clearly not entitled to *Chevron* deference.

that the statutory bar against Clayton Act claims is triggered because ocean common carriers are prohibited from operating under an unfiled agreement to restrict capacity, under the “general prohibitions” outlined in the Shipping Act. (D.E. No. 209-1 at 71; D.E. No. 218-1 at 3–11; D.E. No. 220 at 1–11; Tr. at 112–37, 156–62) (citing to 46 U.S.C. § 41102(b)). DPPs contend that operating under unfiled agreements to restrict capacity are not “prohibited acts” sufficient to trigger the bar against Clayton Act claims. (D.E. No. 219 at 4–7). In their briefs, DPPs discussed the lack of reference to capacity restrictions in the “Prohibitions and Penalties” chapter of the Shipping Act. (*Id.*). At oral argument, however, DPPs focused on the “general prohibitions” section.⁷ (*See* Tr. at 137–56).

The Court agrees with Defendants and finds that because ocean common carriers are prohibited from operating under an unfiled agreement that is required to be filed with the FMC, the Shipping Act provides an exemption for claims under the Clayton Act.

Chapter 411 of the Shipping Act is entitled “Prohibitions and Penalties” and is comprised of nine sections. *See* 46 U.S.C. §§ 41101–41109. Prohibited acts include, for example, certain disclosures of information, *id.* § 41103, unreasonably refusing to deal, *id.* § 41104(10), and concerted action among common carriers to allocate shippers, *id.* § 41105(6). Although capacity restrictions are not explicitly referenced within the sections of chapter 411, this is not dispositive as DPPs contend, because of the broad scope of the “general prohibitions” section.⁸

Section 41102 of the Shipping Act covers “general prohibitions” and states in relevant part: “[a] person may not operate under an agreement required to be filed under section 40302

⁷ Although the Court indicated on the record that it might not consider this argument due to waiver resulting from failure to include it in the opposition brief, (*see* Tr. 148), the Court accepts it and takes it under consideration for purposes of deciding the instant motions.

⁸ The Court also notes that other activities that are clearly covered by the Shipping Act (*e.g.*, price fixing) likewise are not explicitly included in the “Prohibitions and Penalties” chapter.

. . . if . . . the agreement has not become effective under section 40304 of this title or has been rejected, disapproved, or canceled.” 46 U.S.C. § 41102(b)(1). As detailed *supra*, agreements relating to capacity restrictions are required to be filed under section 40302. While Defendants argue that the unfiled agreements to restrict capacity at issue fall within section 41102(b)(1)—*i.e.*, that they are prohibited from operating under unfiled agreements relating to capacity restrictions—DPPs contend that section 41102(b)(1) is triggered only if an agreement is filed under section 40304. In other words, DPPs assert that ocean common carriers are prohibited from operating under an agreement to restrict capacity only if they file the agreement with the FMC and it then does not “become effective.” (*See* Tr. at 149–52). Taken to its conclusion, under DPPs’ reading, if an agreement to reduce capacity is not filed with the FMC, then the parties to that agreement are subject to private antitrust suits. But the language of section 41102(b)(1) does not plainly and unambiguously necessitate the conclusion advanced by DPPs. The Court disagrees with DPPs’ interpretation because it results in surplusage and is inconsistent with the overall statutory scheme and the legislative history.

First, DPPs’ reading appears to result in surplusage. Under section 40304, a filed agreement that is not rejected becomes effective after forty-five days. *See* 46 U.S.C. § 40304(c) (“Unless rejected . . . an agreement . . . is effective on the 45th day after filing”) (internal punctuation and subdivision omitted). Thus, under DPPs’ reading of section 41102(b)(1), the phrase “or has been rejected” would be surplusage because if an agreement “has not become effective under section 40304,” it necessarily must have been rejected according to section 40304. Therefore, the fact that “or has been rejected” is in the statute cuts against DPPs interpretation. *See Ki Se Lee v. Ashcroft*, 368 F.3d 218, 223 (3d Cir. 2004) (recognizing “the goal of avoiding surplusage in construing a statute”).

Second, section 41102(b)(1) can just as easily be read to support Defendants' position. For example, the section can be interpreted to prohibit ocean common carriers from operating under an agreement required to be filed simply *if* it has not been filed. In other words, whereas DPPs' interpretation reads the "if" as a prerequisite to filing with the FMC, the "if" can also be read to explain that ocean common carriers are prohibited from operating under "secret" agreements that did not "become effective" because they were never filed in the first place. Where there is more than one reasonable reading of the statute, the Court is guided by the canons of statutory construction. *See Cooper*, 396 F.3d at 310. "When the language of a statute is ambiguous, [courts] look to its legislative history to deduce its purpose." *United States v. Hodge*, 321 F.3d 429, 437 (3d Cir. 2003); *United States v. Gregg*, 226 F.3d 253, 257 (3d Cir. 2000) ("Where the statutory language does not express Congress's intent unequivocally, a court traditionally refers to the legislative history and the atmosphere in which the statute was enacted in an attempt to determine the congressional purpose.").

The legislative history directly supports Defendants' interpretation of section 41102(b)(1). *See* Report of the House Committee on Merchant Marine and Fisheries, H.R. Rep. No. 98-53, pt. 1, at 12 (1983), *reprinted in* 1984 U.S.C.C.A.N. 167, 177 (hereinafter "House Report").⁹ The House Report explicitly discusses antitrust immunity:

[I]f parties who could avail themselves of antitrust immunity by submitting to regulation under the terms of the Shipping Act of [1984] fail to do so, then their knowing conduct, undertaken without the benefit of an agreement being filed and in effect, will subject them to limited antitrust exposure. The antitrust exposure for these so-called "secret" agreements is limited to injunctive and criminal prosecution by the Attorney General, and does not carry with it any private right of action otherwise available under the antitrust laws.

⁹ *See* D.E. No. 209-13, Ex. K to Defendants' Brief in Support of their Motion to Dismiss IPPs Complaints.

House Report at 12, 177. As an initial matter, the legislative history specifically references “secret” agreements as opening the door to antitrust exposure. *Id.* But an agreement filed with the FMC under section 40304—as DPPs contend is required under section 41102—could not realistically be considered “secret.” *See* Black’s Law Dictionary 1556 (10th ed. 2014) (defining “secret” as “[s]omething that is kept from the knowledge of others or shared only with those concerned; something that is studiously concealed”). More to the point, the legislative history specifically states that a “secret” agreement was not intended to give rise to private antitrust actions. As a whole, the legislative history clearly supports Defendants’ interpretation of section 41102(b)(1): if an ocean common carrier enters into an agreement to reduce capacity, and that agreement is not filed with the FMC under section 40304, then the carrier will be subject to injunctive and criminal prosecution by the Attorney General, but not private antitrust actions. House Report at 12, 177 (“The antitrust exposure for . . . so-called ‘secret’ agreements is limited to injunctive and criminal prosecution by the Attorney General, and does not carry with it any private right of action otherwise available under the antitrust laws.”).

The Court therefore finds that the most natural reading of section 41102(b)(1) is that it prohibits ocean common carriers from operating under an unfiled agreement to reduce capacity. Here, as noted *supra*, DPPs and IPPs allege—and Defendants do not dispute—that the agreements to reduce capacity were not filed with the FMC. (*See* DPP Compl. ¶ 72; End-Payor Compl. ¶ 195; Auto Dealer Compl. ¶ 189; Truck Center Compl. ¶ 174). Thus, DPPs and IPPs allege that Defendants engaged in conduct prohibited by the Shipping Act. Accordingly, because “[a] person may not recover damages under section 4 of the Clayton Act (15 U.S.C. 15), or obtain injunctive relief under section 16 of that Act (15 U.S.C. 26), for conduct prohibited by

[the Shipping Act],” 46 U.S.C. § 40307(d), DPPs’ claim under section 4 of the Clayton Act and IPPs’ claims under section 16 of the Clayton Act will be dismissed with prejudice.¹⁰

B. The State Law Claims At Issue are Conflict Preempted by the Shipping Act

Defendants argue that IPPs’ state antitrust and consumer protection claims are impliedly preempted by the Shipping Act and within the exclusive federal jurisdiction of the FMC. First, Defendants argue that Congress intended for the Shipping Act to occupy the field and to displace state law relating to international maritime commerce. (*See* D.E. No. 209 at 52–61; D.E. No. 211 at 36–40). In the alternative, Defendants argue that state laws conflict with the Shipping Act because they stand as an obstacle to Congress’s underlying objectives. (D.E. No. 211 at 40–44; D.E. No. 269 at 2–18).

IPPs contend that Defendants have not met their high burden in showing that preemption applies. IPPs argue that there is no indication that Congress intended for the Shipping Act to occupy the entire field with respect to international maritime commerce. (D.E. No. 210 at 53–64). In a supplemental filing, IPPs argue that conflict preemption is a narrow doctrine that does not apply here because there is no actual conflict between state laws and the Shipping Act, (D.E. No. 270 at 7–12); Congress chose not to limit state antitrust laws when it passed the Shipping Act, (*id.* at 12–14); every court to address whether the Shipping Act preempts state law has held

¹⁰ DPPs argue that the Court should “discount” arguments made by CSAV and K-Line with respect to the statutory bar against private antitrust actions. (*See* D.E. No. 219 at 7–10). DPPs contend that it would be “manifestly unjust” to permit them to raise such arguments when the sentencing Judge in the related criminal actions referenced the pending civil actions when ordering no restitution. (*Id.*). The Court agrees with Defendants that merely acknowledging the existence of civil claims during the plea agreement does not preclude the arguments here, especially because: (i) the Shipping Act was not addressed as part of the criminal proceedings; (ii) CSAV and K-Line did not waive any arguments with respect to the Shipping Act; (iii) even if they had waived a Shipping Act argument, it would not permit a cause of action that is otherwise prohibited by the statute; (iv) there is no indication that approval of the guilty pleas was predicated on civil damages recovery; and (v) plaintiffs can seek reparations through the FMC via 46 U.S.C. § 41305. Thus, the Court finds that DPPs have not established that CSAV and K-Line should be precluded from making arguments with respect to the statutory bar against private antitrust actions. The Court’s ruling with respect to section 40307(d) applies to CSAV and K-Line.

that it does not, (*id.* at 14–16); and Defendants’ reliance on an isolated excerpt from the legislative history is misleading, (*id.* at 16–20).

Article VI of the Constitution provides that the laws of the United States “shall be the supreme Law of the Land; . . . any Thing in the Constitution or laws of any state to the Contrary notwithstanding.” U.S. Const. art. VI, cl. 2. As a result, under the doctrine of preemption, “any state law, however clearly within a State’s acknowledged power, must yield if it interferes with or is contrary to federal law.” *Gade v. Nat’l Solid Wastes Mgmt. Ass’n*, 505 U.S. 88, 89 (1992). “Preemption can apply to all forms of state law, including civil actions based on state law.” *Farina v. Nokia Inc.*, 625 F.3d 97, 115 (3d Cir. 2010). “For the purposes of preemption analysis, it is the cause of action, and not the specific relief requested, that matters. Preemption speaks in terms of claims, not in terms of forms of relief.” *Id.* at 133.

“Often Congress does not clearly state in its legislation whether it intends to pre-empt state laws” *Delaware & Hudson Ry. Co. v. Knoedler Mfrs., Inc.*, 781 F.3d 656, 661 (3d Cir. 2015), *pet. for cert. docketed*, No. 14-1359 (May 14, 2015) (quoting *Malone v. White Motor Corp.*, 435 U.S. 497, 504 (1978)). “When that is the case, ‘courts normally sustain local regulation of the same subject matter unless it conflicts with federal law or would frustrate the federal scheme, or unless the courts discern from the totality of the circumstances that Congress sought to occupy the field to the exclusion of the States.’” *Id.* In other words, state law can be impliedly preempted under the doctrines of field preemption and conflict preemption.

Under field preemption, “the States are precluded from regulating conduct in a field that Congress, acting within its proper authority, has determined must be regulated by its exclusive governance.” *Arizona v. United States*, 132 S. Ct. 2492, 2501 (2012).

The intent to displace state law altogether can be inferred from a framework of regulation “so pervasive . . . that Congress left no room for the States to supplement it” or where there is a “federal interest . . . so dominant that the federal system will be assumed to preclude enforcement of state laws on the same subject.”

Id. (quoting *Rice v. Santa Fe Elevator Corp.*, 331 U.S. 218, 230 (1947)). “To determine the boundaries that Congress sought to occupy within the field, [courts] look to the federal statute itself, read in the light of its constitutional setting and its legislative history.” *Lozano v. City of Hazleton*, 724 F.3d 297, 303 (3d Cir. 2013) *cert. denied sub nom. City of Hazleton, Pa. v. Lozano*, 134 S. Ct. 1491 (2014) (internal quotation and citation omitted).

By contrast, “[c]onflict pre-emption can occur in one of two ways: where ‘compliance with both federal and state regulations is a physical impossibility,’ or ‘where the challenged state law stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Lozano*, 724 F.3d at 303 (quoting *Arizona*, 132 S. Ct. at 2501). “Courts must utilize their judgment to determine what constitutes an unconstitutional impediment to federal law, and that judgment is ‘informed by examining the federal statute as a whole and identifying its purpose and intended effects.’” *Id.* (quoting *Crosby v. Nat’l Foreign Trade Council*, 530 U.S. 363, 373 (2000)). But mere “tension” between federal and state law is “generally not enough” to show an obstacle supporting preemption; rather the “repugnance or conflict” must be “so direct and positive that the two acts cannot be reconciled or consistently stand together.” *MD Mall Assocs., LLC v. CSX Transp., Inc.*, 715 F.3d 479, 495 (3d Cir. 2013), *as amended* (May 30, 2013), *cert. denied*, 134 S. Ct. 905 (2014) (citation and internal quotation marks omitted).

Two overarching principles guide the analysis. *See Farina*, 625 F.3d at 115. First, congressional intent is the “ultimate touchstone” in preemption analysis. *Cipollone v. Liggett*

Grp., Inc., 505 U.S. 504, 516 (1992) (internal quotation and citation omitted). Second, courts generally apply a presumption against preemption, *see id.*, but the presumption is not absolute. *See United States v. Locke*, 529 U.S. 89, 108 (2000) (“[A]n ‘assumption’ of nonpre-emption is not triggered when the State regulates in an area where there has been a history of significant federal presence.”); *cf. Wyeth v. Levine*, 555 U.S. 555, 565 n.3 (2009) (noting that the presumption against preemption “accounts for the historic presence of state law but does not rely on the absence of federal regulation”). In other words, “[t]he presumption [against preemption] applies with particular force in fields within the police power of the state, but does not apply where state regulation has traditionally been absent.” *Farina*, 625 F.3d at 116 (internal citations omitted).

Here, the Court finds that the state laws at issue conflict with the Shipping Act and are therefore preempted because they stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress. Paramount to the Court is the Shipping Act’s express purpose of minimizing government intervention and regulatory costs coupled with exemptions from private antitrust actions under the Clayton Act and the ability of any person to bring claims before the FMC.

i. The Court Does Not Address Whether the Presumption Against Preemption Applies

Several public policy concerns are implicated in the determination of whether a presumption against preemption applies. On the one hand, “monopolies and unfair business practices” are “area[s] traditionally regulated by the States.” *California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989); *see also Pac. Merch. Shipping Ass’n v. Goldstene*, 639 F.3d 1154, 1167 (9th Cir. 2011) (applying the presumption against preemption in maritime-related action,

“[g]iven the ‘historic presence of state law’ in the area of air pollution”). “In areas of traditional state regulation, we assume that a federal statute has not supplanted state law unless Congress has made such an intention clear and manifest.” *Bates v. Dow Agrosciences LLC*, 544 U.S. 431, 449 (2005) (internal quotation marks omitted).

On the other hand, the field of national and international maritime commerce is a field “where the federal interest has been manifest since the beginning of the Republic and is now well established.” *Locke*, 529 U.S. at 90. Where state laws “bear upon national and international maritime commerce, . . . there is no beginning assumption that concurrent regulation by the State is a valid exercise of its police powers. Rather, [courts] must ask whether the local laws in question are consistent with the federal statutory structure” *Id.* at 108.

The Court is thus confronted with a scenario where laws within areas of traditional state regulation (monopolies and unfair business practices) touch upon a field where state regulation has traditionally been absent (international maritime commerce). However, the Court declines to reach a conclusion as to whether a presumption against preemption applies in this context because it finds that the state laws at issue present a sufficient obstacle to the objectives of Congress. *Crosby*, 530 U.S. at 374 n.8 (“We leave for another day a consideration in this context of a presumption against preemption. Assuming, *arguendo*, that some presumption against preemption is appropriate, we conclude, based on our analysis below, that the state Act presents a sufficient obstacle to the full accomplishment of Congress’s objectives under the federal Act to find it preempted.”).

ii. The State Laws are an Obstacle to the Accomplishment of Congress's Objective of Minimal Government Intervention and Regulatory Costs

The Shipping Act has four stated purposes, two of which are pertinent here:

- (1) establish a nondiscriminatory regulatory process for the common carriage of goods by water in the foreign commerce of the United States with a minimum of government intervention and regulatory costs; . . . [and]
- (4) promote the growth and development of United States exports through competitive and efficient ocean transportation and by placing a greater reliance on the marketplace.

46 U.S.C. § 40101.

Defendants argue that IPPs' proposed application of state law stands as an obstacle to the first purpose. (*See* D.E. No. 269 at 4–5). In short, Defendants contend that Congress intended to create an “exclusive system of redress” through the FMC for violations of the Shipping Act and that subjecting the ocean shipping industry to the laws of fifty separate states for the same conduct conflicts with Congress's purpose. (*Id.*).¹¹

IPPs argue that their proposed application of state law does not conflict with the purposes of Congress and that the first purpose relied on by Defendants is “not implicate[d] . . . in a material way.” (D.E. No. 270 at 10–11). Instead, IPPs focus on the fourth purpose—competitive and efficient ocean transportation—and contend that private actions under state law merely complement the FMC and DOJ's enforcement of federal law. (*Id.*).

¹¹ IPPs argue that CSAV and K-Line should be judicially estopped from invoking preemption because they took an “inconsistent position” when they pleaded guilty to the criminal charges. (*See* D.E. No. 210 at 63–64). The Court does not agree. Judicial estoppel applies only if the “(1) the party to be estopped is asserting a position that is irreconcilably inconsistent with one he or she asserted in a prior proceeding; (2) the party changed his or her position in bad faith, *i.e.*, in a culpable manner threatening to the court's authority or integrity; and (3) the use of judicial estoppel is tailored to address the affront to the court's authority or integrity.” *Montrose Med. Group Participating Sav. Plan v. Bulger*, 243 F.3d 773, 777–78 (3d Cir. 2001). Judicial estoppel is a narrow doctrine because it is “an extraordinary remedy that should be employed only when a party's inconsistent behavior would otherwise result in a miscarriage of justice.” *Id.* at 784 (citation and internal quotation marks omitted). For the reasons stated in footnote 10, *supra*, IPPs have not demonstrated that judicial estoppel applies. Thus, the Court's holding with respect to preemption applies to CSAV and K-Line.

Although the Court agrees with IPPs that the state laws at issue may complement the fourth purpose of the Shipping Act—a point not contested by Defendants—the Court cannot simply disregard the Act’s *first* stated purpose. Instead, the Court agrees with Defendants that the state laws at issue conflict with the Act’s first purpose of minimizing government intervention and regulatory costs. Accordingly, the state law claims shall be dismissed as preempted.

The Shipping Act states that agreements between ocean common carriers falling within certain enumerated categories, 46 U.S.C. § 40301(a), “shall be filed” with the FMC, *id.* § 40302(a). If such agreements are filed and become effective, the “antitrust laws do not apply” and the carrier is immune from criminal and civil liability under the Sherman Act and Clayton Act, respectively. 46 U.S.C. § 40307(a); *see also id.* § 40102(2) (defining “antitrust laws” to include the Sherman Act and Clayton Act). On the other hand, if such agreements are not filed with the FMC, then the carrier is subject to criminal liability under the Sherman Act and to sanctions and penalties by the FMC, but private antitrust actions under the Clayton Act remain barred. 46 U.S.C. §§ 41102(b)(1); 40307(d); *see also* Part V.A, *supra*.

Any person may file a complaint with the FMC for violations of the Shipping Act, and may seek reparations for injury if the complaint is filed within three years of the date of accrual. 46 U.S.C. § 41301; *see also* 46 C.F.R. § 502.62 (outlining FMC complaint process). The FMC may award reparations up to double actual damages, *id.* § 41305, and the person to whom the award was made can seek enforcement of the award in a district court, *id.* § 41309. The FMC has broad investigatory powers, including the ability to subpoena witnesses and evidence, *id.* § 41303(a)(1), and issue sanctions for delay, *id.* § 41302(d), which can be enforced via application to a district court, *id.* § 41308. In other words, the FMC possesses power not unlike a district

court. *Fed. Mar. Comm'n v. S. Carolina State Ports Auth.*, 535 U.S. 743, 759 (2002) (“[T]he similarities between FMC proceedings and civil litigation are overwhelming.”). Thus, “while no private party may sue for damages or for injunctive relief under the antitrust laws for conduct [prohibited by the Shipping Act], the FMC is empowered to order reparations, including double damages, to impose sanctions and penalties for prohibited conduct, and to file suit in federal district court against the offending party.” *A & E Pac. Const. Co. v. Saipan Stevedore Co.*, 888 F.2d 68, 71 (9th Cir. 1989).

The Shipping Act is undeniably silent on the availability of private remedies under state law. The Shipping Act defines “antitrust laws” solely by reference to federal antitrust laws, 46 U.S.C. § 40102(2), and specifically bars actions under the Clayton Act for unfiled agreements, *see* 46 U.S.C. §§ 40307(d), 41102(b)(1), but makes no mention of state law remedies. IPPs argue that it can be implied that Congress chose not to preempt state laws. (*See* D.E. Nos. 210 at 57–61, 270 at 12–14). Defendants counter that the lack of reference to state laws is irrelevant. (*See* D.E. No. 269 at 16–17). The Court agrees with Defendants that the Shipping Act’s silence on the availability of private remedies under state law does not necessitate a finding of no preemption.

First, the Court does not find that silence weighs against preemption here. If silence with respect to state laws was dispositive, then the Shipping Act’s grant of immunity from the “antitrust laws” for filed and effective agreements would apply only to federal laws, given the explicit statutory definition in 46 U.S.C. § 40102(2). Thus, under a plain reading of the statute, if an agreement is filed and effective and an ocean common carrier is entitled to full immunity from antitrust liability under the Sherman Act and Clayton Act, a state attorney general or consumer could nevertheless pursue antitrust claims against the carrier for the same agreement

under state law.¹² Although this scenario is admittedly hypothetical (since the facts before the Court involve an unfiled, secret agreement), it demonstrates that the Shipping Act's silence with respect to state law is not dispositive, because such a result is borderline absurd and is clearly at odds with Congress's intent.

Second, the Court is not convinced that specific reference to the Clayton Act in the context of unfiled agreements necessarily implies that state law claims are permitted. Given the outsized federal role in the area of national and international maritime commerce as compared to the states, *see Locke*, 529 U.S. at 99, 108, it does not follow that Congress ever envisaged that myriad state laws would be applied to regulate international maritime commerce. Accordingly, the Court is not persuaded by IPPs' arguments that cases such as *Wyeth* are on point here. (*See* D.E. No. 210 at 59–60; D.E. No. 270 at 12). *Wyeth* stands in part for the proposition that silence on the issue of preemption coupled with awareness of state causes of action in that particular field is evidence that Congress did not intend to preempt state law claims. *Wyeth v. Levine*, 555 U.S. at 575 (“The case for federal pre-emption is particularly weak where Congress has indicated its awareness of the operation of state law in a field of federal interest, and has nonetheless decided to stand by both concepts and to tolerate whatever tension there is between them.”) (quoting *Bonito Boats, Inc. v. Thunder Craft Boats, Inc.*, 489 U.S. 141, 166–67 (1989)). There is nothing in the Shipping Act which suggests that Congress ever indicated its awareness of the operation of state law in the field of national and international maritime commerce when it explicitly carved out causes of action under federal antitrust law. To the contrary, as IPPs themselves point out, the legislative history is “bereft of meaningful discussion of state antitrust laws.” (D.E. No. 270 at 16–17). This lack of discussion makes sense given the dearth of state

¹² Notwithstanding IPPs' conclusory position that state antitrust laws would not apply to a filed and effective agreement. (D.E. No. 270 at 7).

tort litigation in the field of national and international maritime commerce when Congress passed the Shipping Act. Indeed, as IPPs note, “in the [Shipping] Act’s decades long history, *this* action is the first to present the question of state antitrust law’s applicability.” (D.E. No. 270 at 6 n.1) (emphasis in original). In contrast, when Congress passed federal drug labeling laws it was “certain[ly] aware[.]” of the “prevalence of state tort litigation” related to pharmaceuticals. *Wyeth*, 555 U.S. at 575. Thus, cases such as *Wyeth* are distinguishable

In any event, “neither an express pre-emption provision nor a saving clause bars the ordinary working of conflict pre-emption principles.” *Buckman Co. v. Plaintiffs’ Legal Comm.*, 531 U.S. 341, 352 (2001) (citation and internal quotation marks omitted). In other words, even if the Shipping Act were not silent and had indicated approval of state law claims, they could still be subject to conflict preemption.

The legislative history further supports a finding of conflict preemption. “The Shipping Act of 1984 was intended to clarify and broaden the antitrust immunity provided by the previous Shipping Act of 1916.” *Seawinds Ltd. v. Nedlloyd Lines, B.V.*, 80 B.R. 181, 184 (N.D. Cal. 1987) *aff’d*, 846 F.2d 586 (9th Cir. 1988). Judicial interpretations had narrowed the scope of antitrust immunity provided by the Shipping Act of 1916 and created parallel jurisdiction between the regulatory agency and the federal courts in certain cases. *Id.* (citation omitted). Ameliorating the regulatory uncertainty caused by erosion of the protections of the Shipping Act of 1916 was a key concern of at least the Committee on Merchant Marine and Fisheries in crafting the remedial scheme provided in the Shipping Act of 1984:

To avoid the uncertainty created by the vagueness of the 1916 Shipping Act, the Committee intends that violations of this Act not result in the creation of parallel jurisdiction over persons or matters which are subject to the Shipping Act of [1984]; the remedies and sanctions provided in the Shipping Act of [1984] will be the exclusive remedies and sanctions for violations of the Act.

House Report at 12, 177; *see also Am. Ass'n of Cruise Passengers, Inc. v. Carnival Cruise Lines, Inc.*, 911 F.2d 786, 792 (D.C. Cir. 1990) (“Congress was concerned about a carrier being subject to ‘parallel jurisdiction,’ *i.e.* remedies and sanctions for the same conduct made unlawful by both the Shipping Act and the antitrust laws.”). Furthermore, it was intended that the FMC be “provided exclusive jurisdiction in administering all of the provisions of the Shipping Act as they relate to international liner shipping regulations.” House Report at 3, 168.¹³

Thus, “[t]he Shipping Act of 1984 was designed in part to clarify the remedies available and the proper forum for pursuing them.” *Seawinds*, 80 B.R. at 184. As noted above, any person may file a complaint with the FMC for alleged violations of the Shipping Act, and a complainant may receive up to double damages as reparations. 46 U.S.C. §§ 41301, 41305. This remedial scheme was created “[i]n order to counterbalance the elimination of the deterrent force of antitrust laws” *Seawinds*, 80 B.R. at 184.

In sum, “[a]mong the major purposes to be accomplished by the Shipping Act of 1984 were clarification of antitrust immunity for international ocean carriers, vesting in the Federal Maritime Commission of exclusive jurisdiction over administration of the Shipping Act’s provisions, and minimizing government involvement in regulation of shipping operations.” *Id.* (citing House Report at 3–4, 168–69). “By limiting jurisdiction to the FMC, and restricting that Commission’s regulatory scope, Congress implemented the goal of reducing government

¹³ IPPs argue that legislative history which addresses the exclusivity of civil remedies under the Shipping Act should be characterized as “misleading.” (*See* D.E. No. 270 at 16–20). IPPs contend that such comments are ambiguous, and that the Court should focus primarily on the statutory text and discount “cherry-picked” legislative history because the final statutory text was the result of hard-won compromise. (*Id.*). Although it is true that statements of a particular committee cannot be said to stand for the view of Congress more generally, so long as these statements are read as a part of the statute and Congress’s intent as a whole, the Court does not think it improper to consider these portions of the legislative history. “Courts must utilize their judgment to determine what constitutes an unconstitutional impediment to federal law, and that judgment is ‘informed by examining the federal statute as a whole and identifying its purpose and intended effects.’” *Lozano*, 724 F.3d at 303 (quoting *Crosby*, 530 U.S. at 373 (2000)).

involvement in shipping operations. By removing the courts from this regulatory process, Congress removed the potential for continuing regulatory uncertainty.” *Id.* at 184–85.

Despite the persuasive legislative history and caselaw in support, it is true that Defendants did not provide—and the Court could not locate—a case explicitly holding that the Shipping Act impliedly preempts state law claims. Nevertheless, the Court is not otherwise persuaded by the cases cited by IPPs. For example, although *Oneok, Inc. v. Learjet, Inc.* stands for the proposition that the “broad applicability of state antitrust law supports a finding of no [field] pre-emption,” 135 S. Ct. 1591, 1601 (2015), the *Oneok* Court expressly declined to engage in conflict preemption analysis, *see id.* at 1595, 1602. Similarly, in *Aubry* and *Wylie*, reference to the “Shipping Act” is to a different statute than the one before the Court here,¹⁴ and the facts are readily distinguishable since the issue was whether additional employee-related requirements under state law, such as the payment of a higher rate of wages or hiring of additional crew members, conflicted with the statute. *See Pac. Merch. Shipping Ass’n v. Aubry*, 918 F.2d 1409 (9th Cir. 1990) (holding that California overtime pay laws not preempted by 46 U.S.C. § 8104(b)); *Wylie v. Foss Mar. Co.*, No. 06-7228, 2008 WL 4104304 (N.D. Cal. Sept. 4, 2008) (relying on *Aubry* to conclude that California labor statutes not preempted by 46 U.S.C. § 8104(b)). And although the Texas Court of Appeals held in *Zachry-Dillingham v. American President Lines, Ltd.* that conflict preemption did not operate to bar a claim relating to tariff rates under the Texas Deceptive Trade Practices Act (“DTPA”), that decision is entirely devoid of analysis with respect to Congress’s purposes of minimizing government intervention and regulatory costs. *See* 739 S.W.2d 420, 423 (Tex. App. 1987), *writ denied* (Jan. 27, 1988) (“The

¹⁴ Compare 46 U.S.C. §§ 2101–14701 (Subtitle II – Vessels and Seamen), with 46 U.S.C. §§ 40101–41309 (Subtitle IV – Regulation of Ocean Shipping). Indeed, Subtitle II does not mention the FMC, and instead references the Department of Homeland Security. *See, e.g.*, 46 U.S.C. § 2104 note.

grant of immunity from the Texas DTPA would provide carriers with a shield whose existence is not directly related to the accomplishment or the purpose of the tariff filing requirements. Immunity . . . is not necessary to the accomplishment of any congressional objective expressed by the Shipping Act.”). These cases are thus distinguishable from the Court’s analysis.

With this history and caselaw in mind, the Court concludes that IPPs’ proposed application of state law conflicts with the congressional purpose of minimizing government intervention and regulatory costs. 46 U.S.C. § 40101(1). Permitting private actions under a patchwork of state laws for the same exact conduct that is exempt from federal antitrust law, 46 U.S.C. § 40307(d), and within the purview of the FMC complaint process, *id.* § 41301, directly undermines the “certainty and predictability” Congress sought to achieve in passing the Shipping Act of 1984. *See* House Report at 4, 169; *see also id.* at 25, 190 (“[T]o the greatest extent possible, members of the ocean liner industry should be . . . free of . . . vague standards, or threatened penalties under changing interpretations of antitrust laws.”). The state laws at issue cannot consistently stand together with the statutory scheme and Congress’s stated purposes in passing the Shipping Act of 1984 and are therefore preempted.¹⁵ In reaching this holding the Court emphasizes that the putative class members can seek relief before the FMC, 46 U.S.C. § 41301(a), and then bring actions in district court as appropriate and consistent with Congress’s full intent, *see* 46 U.S.C. § 41306 (after filing complaint with FMC, complainant may bring civil action in a district court for injunctive relief); *id.* § 41309 (injured party who is awarded reparations by the FMC may seek enforcement of the order in a district court).

¹⁵ Because the Court concludes that the state laws at issue conflict with the federal law, it does not address whether field preemption applies. *See Crosby*, 530 U.S. at 374 n.8 (declining to address field preemption after finding of conflict preemption).

VI. CONCLUSION

For the reasons above, the motions to dismiss are granted. An appropriate Order accompanies this Opinion.

s/ Esther Salas
Esther Salas, U.S.D.J.

**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE VEHICLE CARRIER SERVICES
ANTITRUST LITIGATION**

This Document Relates To All Actions

**Master Docket No.: 13-3306 (ES)
(MDL No. 2471)**

ORDER

SALAS, DISTRICT JUDGE

Before the Court are the following motions: Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209); End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212); Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218); Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214); Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227); and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230).

For the reasons set forth in the Court's corresponding Opinion,

IT IS on this 28th day of August 2015, hereby

ORDERED that End-Payor Plaintiffs' Request for Judicial Notice in Support of Response to Defendants' Motion to Dismiss Indirect Purchaser Actions, (D.E. No. 212), is GRANTED; and it is further

ORDERED that Defendants' Consolidated Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 209), and Defendants' Consolidated Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 218), are GRANTED; and it is further

ORDERED that Defendant EUKOR Car Carriers, Inc.'s Motion to Dismiss All Complaints, (D.E. No. 214), Höegh Defendants' Motion to Dismiss the Direct Purchasers' Complaint, (D.E. No. 227), and Höegh Defendants' Motion to Dismiss the Indirect Purchasers' Complaints, (D.E. No. 230), are DENIED as moot; and it is further

ORDERED that the Complaints at issue—D.E. No. 142, Direct Purchaser Plaintiff Consolidated Amended Class Action Complaint; D.E. No. 183, End-Payor Plaintiff Second Consolidated Amended Class Action Complaint; D.E. No. 199, Automobile Dealer Second Consolidated Amended Class Action Complaint; No. 14-4469, D.E. No. 1, Truck and Equipment Dealer Class Action Complaint—are hereby dismissed *with prejudice*.

SO ORDERED.

s/ Esther Salas
Esther Salas, U.S.D.J.

EXHIBIT “C”

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**UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY**

**IN RE: VEHICLE CARRIER
SERVICES**

ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

*All Automobile Dealer Actions
Case No. 13-cv-6609*

Master Doc. No. 13-cv-3306 (ES)(JAD)
(MDL No. 2471)

Judge Salas

NOTICE OF APPEAL

PLEASE TAKE NOTICE that Plaintiff Martens Cars of Washington, Inc.; Hudson Charleston Acquisition, LLC; Hudson Nissan; John O'Neil Johnson Toyota, LLC; Hudson Gastonia Acquisition, LLC; HC Acquisition, LLC d/b/a Toyota of Bristol; Desert European Motorcars, Ltd; Hodges Imported Cars, Inc. d/b/a Hodges Subaru; Scotland Car Yard Enterprises d/b/a San Rafael Mitsubishi; Hartley Buick/GMC Truck, Inc. d/b/a Hartley Honda; Panama City Automotive Group, Inc.

d/b/a John Lee Nissan; and Empire Nissan of Santa Rosa, LLC, on behalf of themselves and all others similarly situated,¹ by and through their counsel, hereby appeal to the United States Court of Appeals for the Third Circuit from the Court's Orders” entered August 28, 2015 (Case No. 13-cv-3306, ECF Nos. 275 and 276) and September 10, 2015 (Case No. 13-cv- 06609, EFC No. 27), and all orders subsumed therein.

September 25, 2014

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¹ The Automobile Dealer Class is defined as, “All automobile dealers that purchased new Vehicles shipped during the Class Period as to which one or more Defendants or any current or former subsidiary or affiliate thereof or any co-conspirator provided Vehicle Carrier Services.” *See* Automobile Dealers Second Amended Complaint (ECF No. 133).

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 25th day of September 2015, I will electronically file NOTICE OF APPEAL with the Clerk of the Court using the CM/ECF system, which will then send a notification of such filing (NEF) to all parties of record.

September 25, 2015

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