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July 24, 2008

Karen V. Gregory  
Assistant Secretary  
Federal Maritime Commission  
Room 1046  
800 North Capitol Street, N.W.  
Washington, D.C. 20573

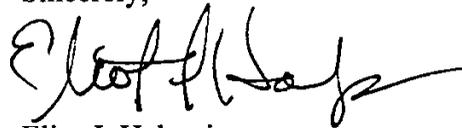
Re: Docket No. 07-10  
*Kawasaki Kisen Kaisha, Ltd. v. Fashion Accessories Shippers Association,  
Inc. and Gemini Shippers Association, Inc.*

Dear Ms. Gregory:

Enclosed for filing in the captioned proceeding are the original and fifteen copies of Kawasaki Kisen Kaisha, Ltd.'s Opposition to Respondents' Motion for Dispositive Ruling.

An additional copy is enclosed. Please stamp it "Received" and return it to the courier.

Sincerely,



Eliot J. Halperin

Enclosures

cc: Hon. Clay G. Guthridge  
John P. Meade, Esq.

CC: OS/CGE  
ORIGINAL ALJ(G)  
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BEFORE THE FEDERAL MARITIME COMMISSION RECEIVED

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FEDERAL MARITIME COMMISSION

KAWASAKI KISEN KAISHA, LTD.,

Complainant,  
v.

FASHION ACCESSORIES SHIPPERS  
ASSOCIATION, INC. AND GEMINI  
SHIPPERS ASSOCIATION, INC.

Respondents.

Docket No. 07-10

KAWASAKI KISEN KAISHA, LTD.'S  
MOTION FOR DISPOSITIVE RULING

July 23, 2008



|             |   |    |
|-------------|---|----|
| <b>II.</b>  | <b>FACTS</b> .....  | 8  |
|             | A. FASA Corp’s Structure and Governance Versus<br>Law and Corporate Bylaws .....                                    | 8  |
|             | 1. Election of the Governing Board and Delaware Law.....  | 8  |
|             | 2. Bylaw Amendment by Members is Blocked .....  | 10 |
|             | 3. Inspection of Books and Records is Refused .....   | 11 |
|             | 4. Required Annual Membership Meetings are Omitted.....   | 11 |
|             | B. FASA Corp Operations .....   | 11 |
|             | 1. Contracting .....  | 11 |
|             | 2. Royalties, not “Dues,” are Paid to FASA Corp, Burdening the<br>Shippers and Carriers for FASA Corp’s Profit..... | 12 |
|             | C. FASA Corp’s Finances .....   | 13 |
|             | D. FASA Corp’s Contracts with “K” Line .....  | 14 |
|             | 1. The Royalty Clause .....   | 14 |
|             | 2. The Exclusive Dealing Clause.....  | 14 |
|             | a. Bag Bazaar.....  | 15 |
|             | b. Samsonite.....   | 16 |
|             | c. Ann Taylor.....  | 16 |
|             | 3. No Contract Negotiations Without the Anti-Competitive Clause .....   | 17 |
|             | E. FASA Corp Compared to Other Associations.....  | 17 |
|             | F. FASA Corp’s Benefits to its Members.....   | 18 |
|             | G. FASA Corp’s Arbitration Seeking Penalties from “K” Line .....  | 19 |
| <b>III.</b> | <b>ARGUMENT</b> .....   | 19 |
|             | A. FMC Strictly Enforces Eligibility for Service Contract Participation.....  | 19 |

|     |  |           |
|-----|--|-----------|
| B.  | The Criteria for Qualifying as a “Shippers’ Association” under the Shipping Act Derive from the Statutory Definition and its Historical, Legislative and Judicial Context..... | 20        |
| 1.  | History .....  | 21        |
| 2.  | Legislative Background.....  | 21        |
| 3.  | Judicial Interpretation .....  | 23        |
| C.  | The Commission Carefully Scrutinizes Claims of Shippers’ Association Service Contract Status.....  | 24        |
| D.  | FASA Corp Is Not a “Shippers’ Association” Under the Shipping Act .....  | 26        |
| 1.  | Purpose of the Act .....   | 26        |
| 2.  | Federal Tax Law Provides Favorable Treatment for Shippers’ Associations Operating on a Cooperative Basis.....  | 27        |
| 3.  | FASA Corp’s Claimed Tax-Exempt Status is Inimical to the Concept of a Shippers’ Association.....   | 29        |
| a.  | FASA Corp is not Legally Tax-Exempt as It is Operated.....   | 30        |
| b.  | FASA Corp Knows It Is Not Exempt.....  | 33        |
| 4.  | Benefits to Members are Minimal.....   | 36        |
| E.  | The Royalty Clause Violates the Act .....  | 36        |
| F.  | The Exclusive Dealing Clause Violates the Act.....   | 37        |
| 1.  | Anticompetitive Fixing of Rate Levels .....  | 37        |
| 2.  | The Clause is Vague and Incomplete .....   | 38        |
| 3.  | Compliance with the Clause Requires Refusal to Deal.....   | 39        |
| G.  | FASA Corp’s “Ratification” Defense.....  | 39        |
| H.  | The Unlawful Royalties Squeezed out of “K” Line .....  | 40        |
| IV. | <b>CONCLUSION AND REQUEST FOR ORAL ARGUMENT.....</b>   | <b>41</b> |

BEFORE THE FEDERAL MARITIME COMMISSION

|                              |   |                  |
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| KAWASAKI KISEN KAISHA, LTD., | ) |                  |
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| Complainant,                 | ) |                  |
| v.                           | ) |                  |
|                              | ) | Docket No. 07-10 |
| FASHION ACCESSORIES SHIPPERS | ) |                  |
| ASSOCIATION, INC. AND GEMINI | ) |                  |
| SHIPPERS ASSOCIATION, INC.   | ) |                  |
|                              | ) |                  |
| Respondents.                 | ) |                  |
| _____                        | ) |                  |

KAWASAKI KISEN KAISHA, LTD.'S  
MOTION FOR DISPOSITIVE RULING

I. INTRODUCTION

A. The Legal Issues

This case concerns the legality of FMC Service Contracts Nos. 14042, 14682 and 15115, between Complainant Kawasaki Kisen Kaisha, Ltd. ("K' Line") and Fashion Accessories Shippers Association, Inc. ("FASA Corp"). In the Appendices of those Contracts (apparently unbeknownst to FASA Corp "members") is a clause mis-named "no back soliciting." The clause actually bars, not "back soliciting," but independent contracting by carriers with FASA Corp's members or former members without FASA Corp approval. The proximate cause of this case is FASA Corp's demand in arbitration for penalties from "K" Line for its independent contracting with a disenchanted former member (violating FASA Corp instructions regarding the contract rates) and the European arm of a member, which alerted "K" Line to the for-profit nature of FASA

Corp and to where "K" Line's payments to FASA Corp actually were going. The deadline for documentary discovery in this case has passed, with Respondents repeatedly rebuffing discovery in various areas.

The primary legal issue is the entitlement of FASA Corp, regardless of the appellation it assumes, to make service contracts as a "shippers' association" under the Shipping Act. That issue is clearly within Commission jurisdiction. If an entity does not fit the definition of "shippers' association," it cannot make lawful service contracts with ocean carriers, and obviously cannot collect penalties when the ocean carrier contracts with association members or former members. Other Shipping Act issues have arisen as the factual picture has come into focus.

The definition as originally transplanted from the Interstate Commerce Act was somewhat inapt for the ocean shipping industry, since shippers' associations in foreign commerce are not identical to those in domestic commerce. However, the complete history is pertinent and persuasive. Legislative comment on the definition in the 1984 Shipping Act bluntly made compliance with the definition the *sine qua non* for a shipper group's eligibility to make lawful service contracts.

Complainant "'K' Line,"<sup>1</sup> submits that this entitlement issue and the bulk of other Shipping Act issues raised by the Complaint are amenable to and appropriate for resolution at this stage of the proceeding, despite FASA Corp's refusal to comply fully with discovery requests. We suggest there is no point in postponing resolution of ripe issues which are a drag on the proceeding. Respondents have made the statement that

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<sup>1</sup> "K" Line is represented in the United States by its agent "K" Line America, Inc. ("KAM"). The "K" Line actions discussed herein were taken by KAM employees acting for "K" Line (Exhibit A, Affidavit of Thomas Aldridge at ¶ 2).

there are no fact issues<sup>2</sup> and that is correct as to the fundamental facts. The evidence available to "K" Line now would have to be supplemented to complete the whole FASA/Gemini picture, but is adequate for disposition of major issues herein. If the Administrative Law Judge disagrees on the adequacy of the present record, "K" Line submits FASA Corp should be ordered to comply fully with all outstanding timely discovery requests and deposition notices.

Despite discovery gaps, the interests of economy would be served by resolution of legal issues which do not require further factual presentation, otherwise wasteful discovery disputes will continue to stall the case. A ruling on the disputed discoverability of financial information would end that discovery standoff. On the other hand, a ruling based on the materials available that Respondents, as currently structured and functioning, are not entitled to shippers' association status would end the case on the merits, leaving only the remedy to be fashioned for Shipping Act violations which flow therefrom.

FASA Corp is the legal entity at the heart of the "Gemini" setup, and is the other contracting party in the "K" Line service contracts under scrutiny in this case. The other Respondent, Gemini Shippers Association, Inc., plays some supporting role in the drama (including use of its name). The checkered history of earlier "FASA" or "Gemini" service contracts was covered in the Complaint and Amended Complaint. Whether FASA Corp is indeed a "nonprofit" shippers' association within the Act's definition, in its structure, governance and operation, is logically the first question to be answered.

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<sup>2</sup> Fashion Accessories Shippers Association, Inc.'s and Gemini Shippers' Association, Inc.'s Opposition to Motion to Compel Production of Documents", FMC Docket 07-10, June 9, 2008 at 4.

**B. The Exclusive Dealing Clause**

Other Shipping Act issues include the legality of FASA Corp's carrier commission system and, another major issue, the legality of its vague and incomplete "exclusive dealing" contract provision.

The Exclusive Dealing Clause (Exhibit A, Attachment 1) gives FASA Corp's controllers a veto over carriers' independent contracting with members or former members (and the pricing therein). The clause lies buried in contract appendices and is almost certainly unknown to the FASA Corp "members."

**C. The Practical Issue**

FASA Corp has built up a surplus we estimate at over \$10 Million. The disposition of the surplus is at stake here.

**D. FASA Corp Is Unlike Other Nonprofit Associations**

Our random sample of ten shippers' associations shows FASA Corp to be the "odd man out" in the universe of shippers' associations. Web site information indicates FASA Corp resembles those ten only in a thin cosmetic layer, beneath which it is unique in blocking independent contracting, fixing rates, collecting commissions used to amass a huge surplus, and generally operating in a self-centric rather than member-centric fashion. Our sample shows that under its protective coloration mimicking other associations, FASA Corp is a very different, reclusive (and rich) animal in comparison to its *frères* (Exhibit B).

We submit the available evidence proves that the royalties paid FASA Corp by carriers have not, in the main, benefited its members or the industry in which they operate. We have the proof that these monies neither flow to the members, nor are

controlled by them in any fashion, but accumulate in a bloated fund disposable at the whim of FASA Corp's non-member controllers (whomever they may ultimately be). Over a million dollars was paid in 2006 to unspecified "professionals" (Exhibit C) and FASA Corp will not divulge recipients of those payments and what the payments bought.

No document produced by Respondents indicates FASA Corp members have any say in its governance or any knowledge of how it conducts its financial affairs, in fact quite the opposite (Exhibit D). Testimony from members would only underscore their obvious exclusion from participation in or knowledge of FASA Corp affairs.

The former member with whom Complainant contracted revealed that Ms. Mayes, president of FASA Corp, denied that member's request to see FASA Corp's books (not based on form of the request) (Exhibit A, Affidavit of Thomas Aldridge at ¶ 14). FASA Corp follows neither its own bylaws (Exhibit E) nor Delaware law in its corporate governance. We daresay the amount of its surplus and its professional fee payments would be news to its members. All these peculiarities are antithetical to the concept of a "shippers' association."

Our analysis of FASA Corp's structure and operations shows it is not operating in accord with any reasonable definition of "nonprofit," and is not operating for the good of its members or their industry, both contrary to the concept of a shippers' association. FASA Corp's over-riding concern is with its own profit. It is putting aside the bulk of carriers' payments, presumably, to be used for its non-member controllers' own purposes.

FASA Corp's obsession with punishing independent contracting has led it to spend hundreds of thousands trying to collect \$75,000 in penalties from "K" Line in the New York arbitration which gave rise to this case (Exhibit A, Affidavit of Thomas

Aldridge at ¶¶ 22-23). This exemplifies total focus on objectives of FASA Corp's non-member controllers to the exclusion of benefit to its "members."

There is no compensating benefit to the members from legal expenses wasted in trying to block their and non-members' rights to independent contracting (quite the opposite); the only arguable benefit from the Samsonite arbitration effort might be as a police action to warn carriers off contracting independently with members, but the Bag Bazaar portion can be nothing but a punitive action for "K" Line's temerity in contracting with a disillusioned former member, an ill-considered gamble on recovering legal costs. It would be reasonable for FASA Corp to block carriers from soliciting members for independent contracting, but such activity is not the issue in the arbitration.

**E. The Royalty Clause**

The FASA Corp device of collecting royalties from the carriers (labeled as "dues") to hoard as surplus has its own baggage of Shipping Act violations, since the royalties are paid to FASA Corp by the carriers out of their own funds, not paid by the shippers to FASA Corp, and the net profits are not shared with the members. "K" Line's royalty checks were made out to "Gemini Shippers' Association," and deposited by FASA Corp in its bank account (Exhibit F).

KAM tried to withhold the final payment due to the dubious nature of the royalties, but FASA Corp forced payment by an arbitration demand (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 22-26).

**F. FASA Corp Price-Fixing**

We believe FASA Corp violated the Sherman Act, sec. 1 (15 U.S.C. § 1), in insisting that "K" Line charge higher rates to a former member in an independent contract

than it charged that shipper under its FASA Corp contract, and seeking arbitration penalties to enforce that price-fixing attempt when "K" Line disregarded the instruction. "K" Line refused to be a party to this price-fixing (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 17-18 and 22-24). We anticipate FASA Corp's excuse to be that its president does not order "K" Line to obtain higher rates, rather to give some sort of lower rates or a penalty for giving competitive rates to the former members. It is still price-fixing enforced by arbitration claims.

FASA Corp's hubris is monumental. It assumes the mantle of an association benefiting shipper members, then takes expensive legal action to block independent contracting by both members and non-members, unless its price-fixing demands are met.

**G. Appropriate Remedies**

FASA Corp, unlike other shippers' associations, seems to be following a play book which is incompatible with the Shipping Act definition of "shippers' association" and the Shipping Act purpose of promoting competitive and efficient ocean transport and reliance on the market place and otherwise in violation of the Act. This is no fault of FASA Corp members.

If the Commission finds FASA Corp has engaged in service contracting improperly or otherwise operated in violation of the Act, "K" Line submits any action should be taken against Respondents, not the innocent victims who have no control over Respondents: the FASA Corp "members." FASA Corp should be prohibited from acting as a shippers' association until it distributes its retained surplus to members, and proves it is following its charter, bylaws, applicable law regarding governance and disclosure, and the Shipping Act.

## II. FACTS

“K” Line incorporates by reference paragraph “1.” of the “Introduction” to the verified Amended Complaint at p. 3 filed in this Docket, also paragraphs “1.” through “6.”, and “9.” through “14.” of the “Facts” section of the verified Amended Complaint at pp. 4 through 9 (Exhibit G). These excerpts show FASA Corp’s organization; FASA Corp’s solicitation of shippers; “K” Line’s negotiation of shipper-specific rates with shippers; “K” Line’s entering into service contracts with FASA Corp and its predecessors; FASA Corp’s inclusion of the “royalty clause”; “K” Line’s entering into service contracts with a “member” and “former member”; FASA Corp’s commencement of the New York arbitration; FASA Corp’s refusal to negotiate a new contract unless “K” Line conceded in the arbitration; FASA Corp’s requirements under the “exclusive dealing” clause; FASA Corp’s members’ knowledge/lack of knowledge of the “royalty” and “exclusive dealing” clauses; and FASA Corp’s request for a business review letter (BRL) and Department of Justice’s response (Exhibits H and I). Although FASA Corp has refused to reveal its finances, inferences flowing inevitably from what has been uncovered will substitute in part for the hidden information.

### **A. FASA Corp’s Structure and Governance Versus Law and Corporate Bylaws**

#### **1. Election of the Governing Board and Delaware Law**

FASA Corp is organized as a nonstock membership corporation under Delaware law (equivalent to a nonprofit). Under Delaware law, members of a nonstock corporation have the right to elect members of the governing board (Del. Code Ann. tit. 8, § 215(c)(3)). FASA Corp’s bylaws provide that directors serve for three-year terms, thus

elections should be held every three years (Exhibit E, Bylaws, Article VII, Section 1.A). However, according to documents produced in discovery, only one meeting of members has been held and that was on March 19, 2003 – over 5 years ago (Exhibit D). The right of members of a nonstock corporation to elect the governing board is so central to the concept of a membership organization that Delaware law authorizes the Court of Chancery to summarily order such an election on the application of any member of the corporation if the election is not held at the time provided in a corporation’s bylaws (Del. Code Ann. tit. 8, § 215(d)).

The right of FASA Corp’s members to elect the governing body (the “Board”) is severely restricted by FASA Corp’s bylaws. The bylaws provide for a Board “consisting of five (5) Directors selected from the current Industry active past presidents of the National Fashion Accessories Association, Inc. . . . [(“NFAA”), an organization that merged into FASA Corp in 2004] or [FASA Corp] who shall elect a fifth Director from the” same group (Exhibit E, Bylaws, Article VII, Section 1.A).

While it is not clear which individuals are eligible to serve as a Director under this provision, it is clear that the members’ rights to participate in the governance of FASA Corp through the election of the Board are limited to candidates from a group chosen by the Board. The members’ rights are so limited because the officers—i.e., those who are eligible to be elected to the Board—are themselves elected by the Board. In other words, only those who have been chosen by the Board to serve as president of FASA Corp or who served as president of NFAA can be elected to the Board. These provisions give the Board tight control over the election of directors.

The Board's control is further enhanced by the bylaws' provision that candidates for election to the Board be nominated by a Nominating Committee which consists of three members, two of whom are elected by the Board and one of whom is appointed by the President. The bylaws also provide that the members elect four directors and that those four directors appoint the fifth director (Exhibit E, Bylaws, Article VII, Section 10). This provision is inconsistent with Delaware law which vests the right to elect directors in the members. Moreover, there are no term limits on service as President or as a Director. Thus, through these bylaw provisions, the Board has effectively created a self-perpetuating Board, despite the clear requirement of Delaware law that members shall have authority to elect the governing body.

**2. Bylaw Amendment by Members is Blocked**

FASA Corp's bylaws can be amended by the members only if the amendment is approved by a majority of the Board. Thus, the members cannot amend the bylaws to expand the class of individuals who are eligible to serve on the Board unless the Board approves such an amendment. If the Board approved such an amendment, it would permit members to have meaningful participation in the governance of FASA Corp. Indeed, such an amendment would give the members the ability to replace the current Board with a board of its own choosing.

Election of the Board is a right that Delaware law grants to members of nonstock corporations, but those who control FASA Corp have effectively denied its members this right through carefully crafted bylaws.

**3. Inspection of Books and Records is Refused**

Delaware law gives any member, in person or by attorney or other agent, upon written demand under oath stating the purpose thereof, the right during the usual hours of business to inspect for any proper purpose, and to make copies and extracts, from a corporation's list of members and its other books and records (Del. Code Ann. tit. 8, § 220(a), (b)). As with election of the governing board, a member may apply to the Court of Chancery for an order to compel such inspection.

FASA Corp has refused this right to at least one of its members, Bag Bazaar. While Bag Bazaar did not submit a written request, the refusal was summary, not based on a defect in form of the request (Exhibit A, Affidavit of Thomas Aldridge at ¶ 14).

**4. Required Annual Membership Meetings are Omitted**

Article IV, Section 1 of FASA Corp's bylaws (Exhibit E) provides that the annual membership meeting of FASA Corp will be held on the first Thursday of June, each year or such other time during the year as the Board may designate. FASA Corp's last membership meeting (per Respondents' documents) was held on March 19, 2003 (Exhibit D).

**B. FASA Corp Operations**

**1. Contracting**

The primary activity of FASA Corp, in the person of its president, Ms. Mayes, is negotiating certain accessorial charges and rates of general applicability with ocean carriers. Insofar as "K" Line's experience indicates, the carriers negotiate the principal commodity rates directly with the shippers, present the results to Ms. Mayes for signing, and then file under their FMC service contract (Exhibit A, Affidavit of Thomas Aldridge

at ¶ 12). Ms. Mayes therefore has knowledge of the confidential rates of all the carriers, which opens the door to favoritism and manipulation of rates.

**2. Royalties, not “Dues,” are Paid to FASA Corp, Burdening the Shippers and Carriers for FASA Corp’s Profit**

“K” Line entered into Contract Nos. 14042, 14682 and 15115, with FASA Corp. The most recent contract, No. 15115, provided for payments by “K” Line to FASA Corp on a per container basis for all containers carried under the contract, including the charge of \$55 per dry forty-foot container (Exhibit A, Attachment 5). FASA Corp refuses to reveal any part of their contracts with other carriers on any kind of confidential basis, but it is a fair inference that its charges to other carriers are similar. The FASA Corp members themselves made no payments to FASA Corp under Contract No. 15115 to support the FASA Corp operation. The “dues” were paid by “K” Line to FASA Corp according to the service contract (Exhibit A, Attachment 5). FASA Corp’s website (Exhibit J) states “dues charged only on containers shipped under Gemini contracts,” omitting identification of the payor. The website intentionally blurs the reality that FASA Corp demands royalty payments from the carriers in order for the carriers to be rewarded with increased cargo volumes. Contract No. 15115 defines the payments as “Association Volume Incentive,” (Exhibit A, Attachment 5) but a per-box royalty is not a “volume incentive.” The “incentive” was for “K” Line to make the royalty payments in order to obtain more cargo volume through FASA Corp (Attachment A, Affidavit of Thomas Aldridge at ¶ 11). The “dues” label is a façade.

The per-container charge FASA Corp Contracts impose on the carriers goes primarily into FASA Corp’s accumulated surplus, not into operations, to the tune of \$7 Million as of 2006 (Exhibit C). “K” Line resisted paying this charge for years, but finally

relented based on Ms. Mayes's threat/promise that unless "K" Line agreed, "K" Line would not enjoy referrals of increased volumes from FASA Corp (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 4 and 11).

FASA Corp has stated that more than 60,000 containers are moving annually under their contracts (Exhibit J), which would put FASA Corp current gross income in the range of \$3.3 Million annually. FASA Corp has turned over no evidence that it has distributed any monies to FASA Corp members, so it must be concluded there has been no such distribution.

**C. FASA Corp's Finances**

Although Respondents will reveal no financial information at all, information has been gleaned from publicly-available tax Forms 990 for the years 2004-2006. In round numbers, FASA Corp's identifiable overhead is about \$1 Million annually. It usually pays legal fees in the lower six figures. It pays unidentified "professional fees" of about \$1 Million (Exhibits C, K and L).

As of tax year 2006, FASA Corp had accumulated almost \$8 Million in surplus (\$2 Million came from a merger in 2004) (Exhibits C and K). By now that should have grown to over \$10 Million. It is a virtual certainty that FASA Corp's members are ignorant about this surplus and about the \$1 Million in annual professional fees paid to unknown recipients (whose identity FASA Corp should be required to reveal). Only one of the ten randomly selected associations whose web sites we looked at has filed a Form 990 (Exhibit M). That Form 990 lists a similar amount in consulting fees, but identified the payment properly on the Form as fees for management (Exhibit M).

**D. FASA Corp's Contracts with "K" Line**

**1. The Royalty Clause**

The Royalty Clause is one of the paragraphs in the Annex to Contract No. 15115 (Exhibit A, Attachment 5). Under its service contracts with FASA Corp, the first of which covered the 2004/2005 contract year, "K" Line has paid FASA Corp a total of \$123,459 in royalties (stated as "dues") for containers it carried under Contract No. 15115 (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 25-26).

The latest invoiced amount of \$25,042.00, under Contract No. 15115, was paid under FASA Corp's threat of collection by arbitration (Exhibit N), which carries a penalty of attorneys' fees (Exhibit A, Affidavit of Thomas Aldridge at ¶ 25). "K" Line had contracts with other FASA/Gemini related entities dating back to 2001. The Royalty Clause was resisted by "K" Line until the 2006/2007 Contract (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 4, 11 and 25).

**2. The Exclusive Dealing Clause**

The FASA Corp Exclusive Dealing Clause (Exhibit A, Attachment 1) is in an Appendix to the three FASA Corp contracts which were signed on behalf of "K" Line by its North American agent, "K" Line America, Inc. ("KAM"). Mr. Aldridge and, to his knowledge, everyone at KAM, was unaware until a 2004 dispute arose of any impediment to contracting contained in this so-called "No Back Soliciting" Clause. Since "no back soliciting" was and is "K" Line policy, Aldridge had no reason to scrutinize a clause so labeled (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 7, 9, 13 and 15). Had there been an appreciation of the true nature of the clause, signing the contracts would not

constitute a “waiver” (Exhibit A, Attachment 2) or otherwise neutralize the unlawful nature of the Clause.

The benign heading of the Exclusive Dealing Clause is “Contract-to-Contract MFS; No Back Soliciting” (Exhibit A, Attachment 1). This disarms the reader. Actually, the clause has nothing to do with contract-to-contract MFS and is really a “No Contracting Without Approval Clause” covering members and former members. The Clause prohibits independent contracting, not “back soliciting,” blocking contracting either with a member or (ad infinitum) with a former member. So, once the shipper marries FASA Corp, it is forever, so far as carriers who contract with FASA Corp. If a carrier steps on the trap, it discovers there is nothing benign about the clause. FASA Corp will pursue a carrier ferociously (at any cost) for contracting with a member or former member.

**a. Bag Bazaar**

The FASA Corp member known as Bag Bazaar or Accessory Exchange had concluded in 2005 that FASA Corp did not afford benefits to justify the per container surcharge imposed on the carrier, and so informed the FASA Corp president, Ms. Mayes (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 12-18).

Bag Bazaar had been importuning “K” Line representatives repeatedly in 2005/2006 about contracting independently with them, but “K” Line had declined. Finally, the pressure caused KAM personnel to approach Ms. Mayes in 2006 about independent contracting. Her response was that the rate should be higher than the rate given Bag Bazaar under its FASA Corp contract. The KAM representatives made such an offer (advising Ms. Mayes about it), but it was rejected by the customer, who then

suspended its shipments with "K" Line, in May, 2006. The KAM reps then offered Bag Bazaar a rate below the rate in the FASA Corp umbrella contract, which was accepted and became Contract No. 15121. FASA Corp promptly retaliated with an arbitration complaint demanding damages to penalize "K" Line for contracting with its former member (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 12-18 and 22-23).

**b. Samsonite**

Samsonite (Belgium) solicited the carrier world with its Global RFP (Exhibit A, Attachment 3). FASA Corp did not respond (obviously it could not do so the way it is structured and operates).

There was nothing for "K" Line to discuss with FASA Corp about this RFP, since it emanated from Belgium and in the nature of an RFP, "K" Line had to make its best offer. It did so and Samsonite awarded it a contract, No. 15118 (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 19-21). FASA Corp sought arbitration penalties for this exercise of free contracting as well (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 22-23).

**c. Ann Taylor**

In 2004, Ann Taylor (a shipper "K" Line had brought to FASA Corp) approached "K" Line for an independent contract upon its resignation from membership in FASA Corp. The reason given was that a consultant had recommended that Ann Taylor contract outside of FASA Corp because the royalty payments were not justified (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 5-6).

KAM suggested that Ann Taylor should proceed to tender its resignation to FASA Corp as it intended to do before contract discussions began. Assuming that this had been done, "K" Line contracted with Ann Taylor independently in No. 15669. Ms. Mayes

learned of this Contract and repeatedly complained of it. Explanations that Ann Taylor made unsolicited overtures were rejected, but Mr. Aldridge, having been informed by Ms. Mayes that there was a contractual problem with signing Ann Taylor, requested a waiver, which was granted (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 7-10).

**3. No Contract Negotiations Without the Anti-Competitive Clause**

In the 2007 contracting season, FASA Corp conditioned contract negotiations with “K” Line on “K” Line conceding the arbitration and “K” Line’s accepting the exclusive dealing clause. “K” Line, now fully informed about the anti-competitive thrust of the clause, declined (Exhibit A, Affidavit of Thomas Aldridge at ¶ 24 and Attachment 4).

**E. FASA Corp Compared to Other Associations**

We have attached as Exhibit B a spreadsheet comparing what we know about FASA Corp with salient features of ten other shippers’ associations chosen at random, distilled from their web sites. We need not belabor the details, since the chart speaks plainly about the unique thrust of FASA Corp’s closely-held business operations, its affording flimsy information to members, restricting governance to the elite few non-members, hoarding a massive surplus, interfering with freedom of contract (both with current and former members), and charging inflated royalties but no dues (as the FASA Corp web site proclaims) (Exhibit B). This latter is not to say that the members do not feel an effect from FASA Corp’s royalty system, because the rates they pay are perforce affected by the hefty royalty charge every carrier must factor into its rate quotes.

If a member-controlled board of directors approved legitimate overhead of, say, \$1 Million, it would be covered by a ten-dollar surcharge if 100,000 containers move

under the FASA Corp contract. It may be argued that, if FASA Corp actually negotiates all the rates for a small shipper, it justifies the shipper's supporting FASA Corp's excessive per-box fee, but such an argument holds no water in light of the retained surplus. Some other associations have a per-box fee, but those other associations turn surpluses back to their members, so the members only end up paying the cost of the association's actual operations; no hidden payouts or hoards of treasure (Exhibit B).

**F. FASA Corp's Benefits to its Members**

We use the term "members" advisedly, since FASA Corp does not appear to give the majority of shippers who subscribe as "members" any membership rights or valuable membership benefits other than the use of the FASA Corp umbrella service contract with its general charges and rates. Based on the documents produced in discovery, FASA Corp's actual activities, outside of limited contract negotiation and rate filing, give no member value comparable to the royalties received (Exhibit B). There is a bit of grandiose rhetoric on the FASA/Gemini web site about member benefits, but they amount to little in actual practice compared to a royalty of \$55 a forty-footer.

Other shippers' associations' web sites are extensive, and information from them is shown in snapshot by Exhibit B. Samples from the web sites are attached as Exhibit O, and the "full service" nature of these associations is displayed there. The web sites of the associations we surveyed display conscientious attention to maintenance of a true association in structure, operations and finances (Exhibit B). Perhaps FASA Corp performs services not apparent to the naked eye, but it looks like no more than a skeletal operation, heavily focused on signing off on rates negotiated by its members and collecting royalties (Exhibit J).

**G. FASA Corp's Arbitration Seeking Penalties from "K" Line**

Bag Bazaar executives had discussed independent contracting with Ms. Mayes, culminating in the email to Ms. Mayes attached hereto as Exhibit P. Reneging on Ms. Mayes's assurances to Bag Bazaar that there were no obstacles to or penalties for contracting outside the FASA Corp umbrella, FASA Corp claimed \$75,000 in penalties (plus legal fees) from "K" Line in a New York arbitration for the Bag Bazaar and Samsonite contracting (Exhibit A, Affidavit of Thomas Aldridge at ¶¶ 22-26; Exhibit N). Apparently FASA Corp thinks royalties on the Bag Bazaar containers carried for the disgruntled former member would somehow have magically flowed to FASA Corp but for "K" Line's contract with the former member.

"K" Line's contract with Samsonite was pursuant to an RFP from Belgium (Exhibit A, Attachment 3), which gave no heed to FASA Corp and to which FASA Corp did not respond (by its nature it could not quote responsive rates for an RFP). The New York arbitration brought by FASA Corp (without member authorization) is still in the discovery stage, with FASA Corp refusing to reveal its financials for "K" Line to use for its defense.

**III. ARGUMENT**

**A. FMC Strictly Enforces Eligibility for Service Contract Participation**

The Commission has a strong interest in ensuring that only proper parties are signatories to service contracts. When ineligible parties participate in a service contract, a fundamental aspect of shipping regulation is defeated. A purpose of the Shipping Act is "to establish a nondiscriminatory regulatory process for the common carriage of goods." 46 U.S.C. § 40101(1); and that purpose is defeated when ineligible service contract

parties receive service contract benefits to which they are not entitled and obtain transportation at contract rates below those to which they are lawfully allowed to have access. 46 U.S.C. § 41102(a). Such cheating violates the public policy of non-discrimination in the Shipping Act

FMC regulations state that “shipper” parties to a service contract must be a cargo owner, a non-vessel-operating common carrier (NVOCC), a shippers’ association or “other.” 46 C.F.R. § 530.6(a). The determination as to whether a party meets one of the statutory definitions is essential. The Commission will determine whether “members” of a shippers’ association are qualified for membership and therefore whether the association qualifies as a “legitimate shippers’ association” under the Shipping Act (*Rose International, Inc. v. Overseas Moving Network International, Ltd., et al.*, 29 S.R.R. 119, 162-163 (FMC 2001)).

Compliance with the definitional terms is equally essential for shippers’ associations. Congress made that unmistakably clear, saying that a shippers association can “negotiate rates on behalf of its members.” (Rpt. 98-600, 98<sup>th</sup> Cong., 2d Sess. (February 23, 1984) at p. 28.) A shippers’ association must operate “on a nonprofit basis for the members of the group” to obtain volume rates or service contracts (46 U.S.C. § 40102(23)).

**B. The Criteria for Qualifying as a “Shippers’ Association” under the Shipping Act Derive from the Statutory Definition and its Historical, Legislative and Judicial Context**

Shippers’ association status under the Shipping Act should not be taken lightly; it depends on the presence of essential elements as they have developed from the

recognition of shippers' associations historically in domestic commerce under the Interstate Commerce Act (ICA) and, presently, the Shipping Act.

### **1. History**

The Shipping Act's introduction of shippers' associations to the ocean regulatory framework has an antecedent in concepts earlier used in the ICA, both as to the definition and the underlying aspect of nonprofit operation. To this extent, the basis of shippers' associations' status is similar under domestic land transportation and international ocean transportation. Under the ICA, the essential element of shippers' associations qualification was operating on a nonprofit basis for the benefit of its members. That factor distinguished between shippers' associations, which were cooperative associations, and freight forwarders, which were for profit, commercial enterprises (*Freight Consolidators Cooperative, Inc., et al. v. United States, et al.*, 230 F. Supp. 692, 695-696; 1964 U.S. Dist. LEXIS 8276). The former were exempt from regulation while the latter were not.

Under the Shipping Act, the nonprofit element was intended by Congress to be similarly essential. Congress deliberately included the term "on a nonprofit basis" in the Shipping Act definition, as that term was also used identically in the ICA. Congress specifically referred to a shippers' association as a "cooperating group" engaged in "cooperative activities" (Rpt. 98-600, *supra* at 38).

### **2. Legislative Background**

In the legislative background of the Shipping Act of 1984, the term "shippers' association," appeared for the first time in the conference committee report resolving differences between the House and Senate bills that led to the 1984 Act. *Id.* at 27-28.

The conferees agreed to the addition of this defined term, having accepted the Senate's language regarding the implementation of service contracts and having substituted "shippers' association" for the draft bill's "shipper joint venture" as a permissible service contract party (*Id.* at 9-10 and 38-39).

The Shipping Act definition of shippers' association derives from the Interstate Commerce Act, 49 U.S.C. § 10562(3) (Supp.1980) (formerly codified at 49 U.S.C. § 1002(c)). As further discussed below, the Interstate Commerce Act exempted from ICC jurisdiction shippers' associations who, by definition, were a shipper or a group of shippers engaged "in consolidating or distributing freight on a nonprofit basis, for the shipper or members of the group to secure carload, truckload or other volume rates". Congress used almost the same language in defining shippers' associations for purposes of ocean common carriage in the U.S. foreign commerce, the Shipping Act version being: "a group of shippers that consolidates or distributes freight on a nonprofit basis for the members of the group to obtain carload, truckload, or other volume rates or service contracts" (46 U.S.C. § 40102(23)).

The regulatory genesis of shippers' associations under the ICC provides a framework for present-day understanding and analysis. The ICC strictly regulated shippers' associations if they were not nonprofit but were engaged in performing transportation-related services as freight forwarders for profit in interstate commerce, which required ICC operating authority (Interstate Commerce Act, 49 U.S.C. §§ 1002(a)(5) and 1010(a)). Conversely, the ICA precluded ICC jurisdiction over bona fide shippers' associations operating as "a shipper or a group of shippers in consolidating or distributing freight on a nonprofit basis, for the shipper or members of the group to secure

carload, truckload, or other volume rates; . . .” (Interstate Commerce Act, 49 U.S.C. § 10562(3) (Supp.1980) (formerly codified at 49 U.S.C. § 1002(c)).

### 3. Judicial Interpretation

Although freight forwarders and shippers’ associations engaged in similar activities, “they [were], nevertheless, separated by sharply defined differences in operation, differences which Congress clearly recognized and provided for in the Freight Forwarders Act” (*Freight Consolidators Cooperative, supra* at 696). When confronted with the task of determining whether a shippers’ association was subject to ICC jurisdiction as a freight forwarder, both the ICC and the courts applied a fact intensive examination of the form, function and activities of the association, focusing particularly on the profit versus nonprofit status of the entity (*Id.*). The court in *Freight Consolidators Cooperative, Id.* unequivocally stated:

. . . a true shippers association is a non-profit cooperative association, the members bear the burdens as well as share the benefits of its operations. They bear the expenses of the consolidation and distribution operation as well as sharing in any surplus monies that remain in the association’s treasury at the end of the year. See *Atlanta Shippers Ass’n, Inc.*, 316 I.C.C. 259, 273-279, 294-295 (1962); *Federal Shippers Ass’n, Inc.*, 316 I.C.C. 523, 533 (1962); *Carload Shippers Ass’n, Inc.*, 316 U.S.C. 259, 273-279 (1962) [*sic*]. ‘In short, the operations conducted in the name of a purported shipper association, in order to come within the statutory exclusion, must be conducted by the association which at all times acts as agent for its shipper members who, as its principals, (1) possess the exclusive right and ability to control the operations, and (2) assume, both jointly and severally, the essential risks entailed in conducting such operations. *Atlanta Shippers Ass’n, Inc.*, *supra* at 278 (emphasis in original). Cf. *Pacific Coast Wholesalers Ass’n v United States*, 81 *F.Supp* 991 (*S.D Cal.* 1949) *aff’d per curiam*, 338 *U.S.* 689, 70 *S. Ct.* 411, 94 *L.Ed.* 474 (1950).

The court in *Freight Consolidators Cooperative* was astounded by the plaintiffs’ unsupported declarations, comparing them to the “old story of the wolves in sheep’s clothing, but in a more modern setting” and decrying the plaintiffs’ “self-styled title to

shippers association” (*Id.* at 697). The court upheld the ICC’s finding that the entity was not nonprofit, stating:

[T]hese plaintiffs would have this court believe that they are a bona fide shippers association simply because they say they are. But the substantial evidence before the Court points to a contrary conclusion. The record details the plaintiffs’ method of operations and amply supports the finding of the [Interstate Commerce] Commission.

*Id.*

To operate as a shippers’ association under the Shipping Act, FASA Corp has styled itself as such an association, apparently on the sole basis that it was established as a nonstock (nonprofit) corporation (“Fashion Accessories Shippers’ Association, Inc.’s and Gemini Shippers Association, Inc.’s Opposition to Motion to Compel Production of Documents” at 10). However, as the *Freight Consolidators* court said, what counts is not what an entity calls itself, but what the entity actually does (*Possible Violations of Section 18(a) of the Shipping Act, 1916, and Section 2 of the Intercoastal Shipping Act Arising from Charging Higher Rates than Specified by Current Tariff*, 16 S.R.R. 425, 434-435 (ID 1975), Administratively Final November 6, 1975). The importance of adherence to the definition is a mandate from Congress: “If a group of shippers meets the definition, it can negotiate rates on behalf of its members . . .” (Rpt. 98-600, *supra* at 28).

The application of the definition here means that the practical issue should be resolved by distribution of the \$10 Million to the members, if FASA Corp wants to be a Shipping Act shippers’ association.

**C. The Commission Carefully Scrutinizes Claims of Shippers’ Association Service Contract Status**

Commission authority to examine a shippers’ association claim of eligibility to service contract is essential. These contracts are filed confidentially, possibly facilitating

discriminatory conduct by entities ineligible for contract participation. Such group contractors, like FASA Corp, must not be left to pursue their own, rather than their members' interest.

In a complaint proceeding, the Commission analyzed an entity claiming to be a shippers' association, measuring it against the definitional elements of a shippers' association. In that proceeding, the issue was whether the entity met the definitional requirement that its members be "shippers" as defined in the Shipping Act. The Commission agreed with the Administrative Law Judge that the entity "was a proper shippers' association" (*Rose International, Inc., supra* at 161-162).

Squarely before the Commission in this case is another element of the definition: whether FASA Corp operates "on a nonprofit basis for the members of the group." Complainant submits that it is not enough that FASA Corp has established itself under Delaware's nonstock corporation law as, in effect, nonprofit. FASA Corp must also adhere to the requirements of Delaware law applicable to nonprofit membership corporations and it must also operate on a nonprofit basis for the benefit of its members. In the words of the court in *Freight Consolidators Cooperative, supra*, it must operate as a "non-profit cooperative association."

The Commission's jurisdiction under the Shipping Act to find violations of the Act by shippers' associations in connection with service contracts (*Id.*) and to find violations of the Act by any person, was set out in the "JURISDICTION" section of the verified Amended Complaint. The Commission plainly has jurisdiction over the violations in connection with FASA Corp's illegitimacies in service contracting as a shippers' association, which are as follows:

**D. FASA Corp Is Not a “Shippers’ Association” Under the Shipping Act**

FASA Corp is not a Shipping Act “shippers’ association” for the following

reasons:

1. FASA Corp is not governed as a cooperative association or according to legal and organizational requirements applicable to Delaware membership corporations;
2. FASA Corp serves private purposes far beyond any public or membership purposes;
3. FASA Corp does not meet the “nonprofit” requirement within the Shipping Act definition; and
4. FASA Corp does not perform services for members commensurate with the royalties it collects, the majority of which are held as surplus.

Whatever FASA Corp is, it does not appear to be a shippers’ association under the Act. As to negotiating shipper-specific rates, “K” Line’s own experience and impression are that high-volume shippers do the heavy lifting of negotiating their specific commodity rates with carriers (Exhibit A, Affidavit of Thomas Aldridge at ¶ at 12), which may have suited them up to now, but they of course are in the dark as to FASA Corp’s financial setup. For the important parts of substantial service contracts, FASA Corp seems to be merely a rubber-stamping service. This gives FASA Corp, a freewheeling business enterprise, access to all the confidential rate information, with no safeguards protecting that confidentiality.

**1. Purpose of the Act**

While the purposes of the Shipping Act referenced in its preamble language are not often referred to in Commission rulings, we suggest the purpose included on enactment of the Shipping Act of 1984 has a place in contemplation of the concept of “nonprofit” expressed in the shippers’ association definition. The concept, by its very

nature, must exclude material private aggrandizement and control of contracting and rates from the goals and methods of an association, since these practices are antithetical to “competitive and efficient ocean transportation” and “greater reliance on the marketplace” (46 U.S.C. § 40101(4)).

While an association can be expected to reasonably require some surplus funds for unanticipated contingencies, a fund of ten times overhead is well beyond the bounds of reason. Excluding shippers from governance of their own association and from knowledge of its finances, and spending seven-figure sums with no apparent services in return are out of step with the purpose of the Act.

The genius of the FASA Corp setup is blocking the shippers from information and control. Without knowledge the members are powerless, but with knowledge and a say in governance the setup would self-police. Key elements to the definition of a shippers’ association should be “transparency” and “reasonableness,” and given transparency, reasonableness will follow, because operation in the interest of the membership will follow. The status of “shippers’ association” gives a license to make contracts for the benefit of shipper members; it is not in furtherance of the purpose of the Act for it to be used as a license for accumulation of riches and uncontrolled spending of association funds by an elite group of non-members with self-perpetuating status.

**2. Federal Tax Law Provides Favorable Treatment for Shippers’ Associations Operating on a Cooperative Basis**

Just as the Shipping Act provides favorable contracting status for shippers’ associations that operate “on a nonprofit basis for the members of the group,” federal tax law provides favorable tax treatment for corporations “operating on a cooperative basis.” See IRC §§ 1381-1388. The definitions of a shippers’ association and a cooperative are

similar. A shippers' association and a cooperative must both operate for the benefit of their members. They must also operate on a nonprofit basis. The Shipping Act of 1984 includes this requirement in the statutory definition of a shippers' association. The federal tax law has imposed the requirement of operating on a nonprofit basis through case law.

The three principles that define a cooperative for Federal tax purposes were set out by the U.S. Tax Court in the leading case of *Puget Sound Plywood, Inc. v Comm'r*, 44 T.C. 305 (1965), *acq.*, 1966-1 C.B. 3. The first principle is that capital must be subordinated, which means that control of the cooperative must be vested in its members rather than its shareholders and that strict limits must be placed on the amount that can be distributed to shareholders. The second principle is democratic control by the members which generally requires that each member has a single vote regardless of the number of shares owned. The third principle is proportionate allocation of profits, which requires that profits be distributed to members based on the amount of business they transact with the cooperative, *i.e.*, "patronage," rather than based on stock ownership. See generally Freitag, 744-2d Tax Management Portfolio, *Taxation of Cooperatives and Their Patrons* (2007).

A cooperative is a taxable corporation but, unlike other corporations, it is entitled to deduct from its taxable income amounts distributed as patronage dividends. See IRC § 1382(b). Patronage dividends are payments to patrons which are based on the quantity or value of business transacted between the cooperative and the patron and are determined by reference to the corporation's net earnings from business done with or for its patrons. See IRC 1388(a). Thus, if a shippers' association operates at cost, distributing all its

income to its members as patronage dividends, it can operate on a tax-exempt basis. (To permit cooperatives to retain funds for operating and capital needs, patronage dividends are not required to be paid in cash. They may be paid by giving the patrons a notice or certificate that can later be redeemed (See IRC § 1382(b)).

It appears that many shippers' associations are operated as cooperatives for Federal tax purposes. The website of the American Institute of Shippers' Associations, under the heading "About Shippers' Associations" states: "As cooperatives, Associations [sic] are entitled to special treatment under federal taxing laws if they issue patronage dividends to their members." (See <http://www.shippers.org/shippers.html> (last visited on July 1, 2008)). Additionally, four of the ten shippers' associations whose websites we reviewed stated that surplus funds are distributed to members. The other six websites did not contain sufficient information for us to determine whether surplus funds are distributed to members.

### **3. FASA Corp's Claimed Tax-Exempt Status is Inimical to the Concept of a Shippers' Association**

FASA Corp's claimed tax-exempt status is part of the FASA Corp structure which is inimical to the proper structure of a shippers' association. If FASA Corp were taxable, it would have to return surpluses to its members as a cooperative to avoid paying taxes, would have to be controlled by its members, and would have to inform members as to its finances. FASA Corp has the best of both worlds: It pays no taxes, builds up its stash of cash, and pays nothing out to the members.

FASA Corp's tax-exempt status is pertinent in evaluating FASA Corp's status as a shippers' association: FASA Corp has avoided taxation on millions of dollars of retained earnings claiming that it is an organization described in section 501(c)(6) of the

Internal Revenue Code of 1986, as amended (the "Code"). Pursuant to Code sections 501(a) and 501(c)(6), "business leagues ...not organized for profit and no part of the net earnings of which inures to the benefit of any private shareholder or individual" are exempt from federal income tax. Treasury regulations promulgated under Code Section 501(c)(6) provide that, as a condition of tax-exempt status as a business league (commonly referred to as a trade association today), an organization must be:

[A]n association of persons having a common business interest, the purpose of which is to promote such common interest and not to engage in a regular business of a kind ordinarily carried on for profit. . . . Thus, its activities should be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons. An organization whose purpose is to engage in a regular business of a kind ordinarily carried on for profit, even though the business is conducted on a cooperative basis or produces only sufficient income to be self sustaining, is not a business league. . . .

Treas. Reg. § 1.501(c)(6)-1.

**a. FASA Corp is not Legally Tax-Exempt as It is Operated**

FASA Corp is actually not qualified for exemption from federal income tax, for several reasons. First, its primary activity is negotiating service contracts with ocean carriers for the shipment of freight for its members. This activity does not meet the requirements for tax-exempt status under Code Section 501(c)(6) because it is not directed toward the improvement of business conditions for the fashion accessories industry but, rather, is to some extent an activity that provides services to its members. It is well established that an organization whose principal purpose is to provide services to members and promote the business interests of members only, rather than the industry as a whole, is not tax-exempt under Code section 501(c)(6) (See, *e.g.*, Treas. Reg. § 1.501(c)(6)-1 (commodity and stock exchanges, which serve their members as a

convenience and economy in buying and selling not exempt); Rev. Rul. 68-264, 1968-1 C.B. 264 (traffic bureau that arranges shipments and billings for a fee not exempt); *Growers Cold Storage Warehouse Co. v Comm'r*, 17 B.T.A. 1279 (1929) (operation of a cold storage warehouse for members on a cooperative basis not exempt); *Florists' Tel. Delivery Ass'n, Inc. v Comm'r*, 47 B.T.A. 1044 (1942) (organization of florists promoting exchange of orders among its members not exempt); *Indiana Retail Hardware Ass'n, Inc. v United States*, 366 F.2d 998 (Ct. Cl. 1966) (organization formed to facilitate the purchase of supplies and equipment and to supply management services for its members not exempt)).

Second, FASA Corp fails to qualify as a tax-exempt organization under Code section 501(c)(6) because its primary purpose is to engage in a regular business of a kind ordinarily carried on for profit (See, *supra* Treas. Reg. § 1.501(c)(6)-1). FASA Corp reported on IRS Form 990, *Return of Organization Exempt from Income Tax*, for 2004, 2005 and 2006 that its only source of income, other than interest on its retained earnings, is "membership dues and assessments" of \$2.8 million to \$2.9 million each year (Exhibits C, K and L). This revenue, however, is not from membership dues and assessments as that term is commonly understood. FASA Corp's membership application and a PowerPoint presentation indicate there is no charge to become a member (Exhibits Q and R). The ocean carrier vendors under the FASA Corp umbrella service contract pay a flat fee of \$55 for each of the most common type of container shipped (Exhibit A, Attachment 5). These fees, which are the source of FASA Corp's revenue, are not member assessments but are in the nature of brokerage commissions or fees paid to FASA Corp by ocean carriers for the referral of business.

Whether FASA Corp's revenue is correctly described as commissions paid by the ocean carriers or fees indirectly paid in part by the members for services, the result is the same under the federal tax law. FASA Corp's only source of revenue is from the operation of a business providing limited services to its members or a kind of brokerage to ocean carriers, and that activity does not qualify for tax exemption under Code Section 501(c)(6) (See, e.g., *Indiana Retail Hardware Association*, 366 F.2d 998, *supra*; Rev. Rul. 68-264, *supra*).

Third, FASA Corp may have engaged in prohibited private inurement and, if so, it would not qualify for tax-exempt status under Code section 501(c)(6) even if its primary activities satisfied the definition of a business league. In somewhat arcane language, Code section 501(c)(6) requires that "no part of the net earnings of ... [the organization may] inure[s] to the benefit of any private shareholder or individual." In this context, the term private shareholder or individual refers to "persons having a personal and private interest in the activities of the organization." Treas. Reg. § 1.501(a)-1(c). These persons, often referred to as "insiders," are those who, by virtue of a special relationship with the organization in question, are able to influence the expenditure of its funds or the use of its assets.

In a typical inurement case, the connection between the payments received by an insider and the value of the services provided by the insider cannot be established or, if there is a connection, the payments are out of proportion to the value provided by the insider to the organization (*Founding Church of Scientology v United States*, 412 F.2d 1197 (Ct. Cl. 1969), *cert. denied*, 397 U.S. 1009 (1970); *Chandler v Comm'r*, 54 T.C.M. (CCH) 1040 (1987)). On its Form 990 for 2005 and 2006, FASA Corp reported that its

Executive Director, Harold Sachs, and its President, Sara Mayes, are related to each other through their ownership of consulting firms known as Lafayette Consulting Co., Inc. and Dorea International, Inc (Exhibits L and C, Part V-A, line 75b and Statement 9). FASA Corp also reported on its Form 990 in years 2004, 2005 and 2006 that it paid over \$1 million in professional fees in each year (Exhibits K, L and C).

Complainant has tried to determine from financial records whether the consulting firms in which Sachs and Mayes share ownership, or some other insiders, are the recipients of these fees, but FASA Corp has refused to respond to the document requests. If FASA Corp has paid over \$1 million a year to firms in which its officers or some other insiders have an interest and those fees exceed the value of the services received by FASA Corp, then FASA Corp has engaged in private inurement and is not entitled to tax-exempt status.

**b. FASA Corp Knows It Is Not Exempt**

FASA Corp appears to be aware that its primary activity does not qualify for tax-exempt status. As an organization claiming tax-exempt status under Code section 501(c)(6), FASA Corp is permitted, but not required, to file an application for tax-exempt status with the IRS. No such application has been produced in discovery and, thus, we assume that the Internal Revenue Service has not made a determination that FASA Corp qualifies for tax-exempt status. Organizations claiming tax-exempt status under Code section 501(c)(6) are, however, required to file an annual return with the IRS on Form 990.

Despite the fact that all its revenue is derived from royalties on shipping of members' freight and despite the fact that its Certificate of Incorporation (Exhibit S)

describes operating as a shippers' association under the Shipping Act of 1984 as one of its purposes, FASA Corp does not even mention facilitating or negotiating service contracts for shipping of members' freight as one of its activities on its Form 990 for 2004, 2005 or 2006 (Exhibits K, L and C). This material omission from a filing with the IRS looks like a badge of FASA Corp's knowledge that its primary activity would doom its claimed tax-exemption. Discovery of FASA Corp's tax preparer has been sought and refused.

That FASA Corp knows a shippers' association does not qualify for tax-exempt status under Code section 501(c)(6) is further evidenced by its efforts to take on the appearance of a trade association. In its original Certificate of Incorporation (Exhibit T), which was filed with the State of Delaware on November 3, 1986, FASA Corp stated that its sole purpose was to act as a shippers' association under the Shipping Act of 1984. On May 10, 1990, it amended its purposes to include purposes normally associated with a trade association (Exhibit S). Specifically, its amended purposes include:

To advance and promote the general welfare of shippers of fashion accessories and the members of the corporation.

To foster and promote a high standard of business ethics among shippers of fashion accessories.

To provide a forum for the exchange of ideas and useful, technical information concerning problems, improvements, and developments in the transportation of fashion accessories.

To collect, distribute, and make available information and economic data pertaining to the shipment and transportation of fashion accessories.

To promote activities relating to technical research and development in the transportation of fashion accessories.

To assist legislative and governmental bodies and agencies and to present the views of its members to such entities concerning matters affecting the welfare and interests of fashion accessories.

However, while it expanded its purposes in its Certificate of Incorporation, information provided in discovery<sup>3</sup> shows no meaningful activities of this nature. Another step toward the appearance of a trade association was taken by the merger of NFAA into FASA Corp in 2004. While it appears FASA Corp has engaged in some activities which advance the common interests of the fashion accessories industry such as lobbying on legislation of interest to the industry, these activities are a minimal part of its overall activities. According to the information produced, only \$240,000 of revenue of almost \$2.8 million in 2004—or ten percent—was spent on lobbying (Exhibit K). Such incidental activities are not sufficient to justify tax-exempt status under Code section 501(c)(6) (See, e.g., *Florists' Tel. Delivery Ass'n, Inc.*, 47 B.T.A. 1044, *supra*).

FASA Corp also produced Alerts & Bulletins prepared by a law firm from February 1, 2001 to February 1, 2002 and a cover letter from the law firm indicating copies had been sent to the firm's clients (Exhibit U). Based on the information produced, the Alerts & Bulletins were not made available to the industry as a whole and thus were not used for the tax-exempt purpose of advancing the common interests of the industry. At best, this information was used to advance the interests of FASA Corp's members. An organization that conducts research and makes it available only to members is not exempt under Code section 501(c)(6) (*Glass Container Indus. Research Corp. v. United States*, No. 68-409, 1970 WL 280 (W.D. Pa. Jan. 16, 1970); Rev. Rul 69-106, 1969-1 C.B. 153).

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<sup>3</sup> Respondents produced no index or dividers relating its documents to Complainant's documents requests. If any documents were overlooked, Respondents are to blame.

#### **4. Benefits to Members are Minimal**

The FASA Corp Forms 990 and the FASA Corp responses to document requests for proof of FASA Corp activities are bereft of any indicia that FASA Corp benefits its members or the industry to any meaningful extent by its activities. In fact, the Forms 990 portray a corporation sitting on a hoard of cash to be used for unknown purposes. The Forms 990 give no hint that FASA Corp revenues are spent on the members or their interests.

#### **E. The Royalty Clause Violates the Act**

The Royalty Clause (Exhibit A, Attachment 5) channels freight monies paid by shipper members back to the shippers' association, the holder of the service contract. The "dues" label in the service contract appendices carries no weight: if it quacks and waddles, then we know what it is, even if it is called a poodle.

The royalties are not "dues," if only because they do not, except to a minor extent, find their way into any association purpose. They are not a time/volume rate or some kind of VIP refund, because FASA Corp does not pay the freight. Neither are they classic rebates for the same reason. They challenge clear labeling, but seem to be a kind of brokerage/referral fee, or "tea money," not identified in the service contract or any tariff. As such, they are prohibited by the Act at least insofar as they do not go for legitimate nonprofit purposes or back to the members.

The nature of the royalties as a kind of brokerage is highlighted by the emphasis placed by Ms. Mayes on the connection between FASA Corp's referral of business to "K" Line and "K" Line's acceptance of the Royalty Clause in its Contract with FASA Corp.

This link is discussed in the Affidavit of Thomas Aldridge at ¶ 4, where he describes Ms. Mayes's marketing of the Royalty Clause by promising increased business to "K" Line.

**F. The Exclusive Dealing Clause Violates the Act**

**1. Anticompetitive Fixing of Rate Levels**

Exercise by a trade association of contractual power to specify rate levels a carrier offers to former members appears to be a *per se* violation of section 1 of the Sherman Act (15 U.S.C. § 1). We have detailed the erroneous representations made by FASA Corp to the Department of Justice in its application for a Business Review Letter (See Note 4, *infra* and Exhibits H and I). We will not belabor those points, except to point out that important considerations as to freedom of contracting which were considered *de rigueur* by Justice are violated by the Exclusive Dealing Clause.

Exercising contractual power to specify rate levels to current members may not qualify as a *per se* violation of Sherman, but it is anticompetitive in the extreme, without benefit to the members. This aspect of the Exclusive Dealing Clause violates the third purpose of the Act, and is not a legitimate purpose of an association formed for the benefit of the members (46 U.S.C. § 40101(3)). While a policy of "no back soliciting" by carriers seems reasonable, if a member approaches a carrier to contract independently, he should be free of any impediment to so doing, as FASA Corp advised the Department of Justice is the case with FASA Corp.<sup>4</sup>

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<sup>4</sup> See, Exhibits H and I. Therein, FASA Corp requested a business review letter ("BRL") in connection with its formation of the association. FASA Corp's letter specifically affirmed that "FASA members are not obligated to use FASA's services, they are free to use other services for their shipping needs or route their own traffic and deal directly with carriers. They may join other shippers' associations. FASA will simply be one of several alternatives a member may utilize for import transportation services." *Business Review Letter Request, Fashion Accessories Shippers Association*, November 3, 1986, 1986 DOJBRL LEXIS 37.

Specifying rates to be charged current members, which is in effect vetoing any contracting outside FASA, may fall outside *per se* territory, but it certainly is an anticompetitive interference with members' freedom of contract. We find no other association in our sample doing it (Exhibit B).

The Commission has often said it imports antitrust principles into Shipping Act analyses, and this interference with members freedom of contract presents a perfect example of need for that consideration (See, for example, *All Marine Moorings, inc. v ITO Corporation of Baltimore and The Maryland Port Authority*, 27 S.R.R. 539, 546 (FMC 1996)). A member is given the privilege of absorbing at least some part of a charge to the carriers which ends up in FASA Corp's pocket, meanwhile FASA Corp is stifling the member's freedom of contract by penalizing a carrier who presumes to deal with the member at the member's request. The mis-labeled "no back soliciting" clause approaches the issue furtively, but Ms. Mayes boldly misled Bag Bazaar management by advising them there were no penalties connected with independent contracting.

## **2. The Clause is Vague and Incomplete**

The exclusive dealing clause is uncertain and vague. The clause is written to prohibit a carrier from contracting with "any member or former member, except upon notice to the Association and subject to mutual agreement between the carrier and the Association" (Exhibit A, Attachment 1).

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FASA Corp's letter further acknowledged that the members would be charged a "per container" membership fee and that any monies that the association received in excess of administrative and operational expenses would be distributed directly to the members. *Id.*

The BRL said that DOJ had no intention to challenge the FASA association. DOJ conditioned its opinion on FASA's representation that "FASA members will not be required to use any FASA services and they will remain free to use other transportation options, such as making direct arrangements with carriers or participating in other shippers' associations." *Business Review Letter Opinion, Department of Justice Antitrust Division*, March 25, 1986, 1987 DOJBRL LEXIS 18.

When approached by a shipper to negotiate a service contract, the ocean carrier has the burden of determining the past and present status. The carrier would have to retrieve and pore over FASA Corp's records in an attempt to verify whether the shipper had ever been a "member" (the precise meaning of which is unknown). Such an absurd exercise would require reference to documents (if available) not contained in the service contract itself or a public source available and well-known in the industry, in violation of 46 C.F.R. § 530.8(c)(1) and (2).

**3. Compliance with the Clause Requires Refusal to Deal**

If "K" Line agreed to cooperate with FASA Corp in enforcing the exclusive dealing clause, "K" Line could expose itself to allegations of refusal to deal in violation of 46 U.S.C. 41104(10). If "K" Line agreed to FASA Corp's back-room demands to set a floor on pricing, "K" Line might violate the Sherman Act (15 U.S.C. § 1).

**G. FASA Corp's "Ratification" Defense**

FASA Corp's major defense to illegality of the Exclusive Dealing Clause seems to be that "K" Line accepted it in the three contracts with FASA Corp and several prior contracts with a confused succession of related entities (or non-entities as the case may be). The jumbled history of these contracts is set out in the Amended Complaint, Section III. B. 1-6.

Apparently, FASA Corp thinks that, if KAM personnel knew there was a clause labeled "No Back Soliciting" buried in the Contract Appendix, the Clause is purified and all is forgiven.

The Commission has held that such a defense is defective. The Commission has authority to adjudicate issues that could be raised in a Commission instituted complaint

alleging violations of the Shipping Act in connection with a service contract (*Cargo One, Inc. v COSCO Container Lines Co., Ltd.*, 28 S.R.R. 1635 (2000)). Moreover, the Commission has said that it has authority and a duty to rule on the validity of service contracts and their implementation, even where the contract provides for arbitration of contract disputes (*Anchor Shipping Co. v. Alianca Navegacao e Logistica Ltda.*, 30 S.R.R. 991 (FMC 2006)). The fact that "K" Line entered into, filed and implemented the Gemini service contract is no bar to "K" Line now challenging the validity of the contract's terms (*Ceres Marine Terminals, Inc. v Maryland Port Administration*, 29 S.R.R. 356, 369 (FMC 2001)).

**H. The Unlawful Royalties Squeezed out of "K" Line**

"K" Line received an invoice for \$25,042.00 in royalties under the Royalty Clause, from "Gemini Shippers Group," in June/July 2007 (Exhibit A, Affidavit of Thomas Aldridge at ¶ 25 and 26). When "K" Line pointed out it had no contract with such an entity, the FASA Group changed the name on the billhead to "Gemini Shippers Association," and returned it (Exhibit N). When "K" Line did not pay it, FASA Group included this amount as a separate count in their arbitration demand.

Since there was no dispute that the containers had been carried under the Royalty Clause of the FASA Corp Contract, "K" Line's only defense was their illegality, the availability of which to "K" Line as an arbitrable matter in the arbitration was disputed by FASA Corp. "K" Line saw no point in arguing about this money as a separate count, and since rejection of "K" Line's illegality defense as an arbitrable matter would give FASA Corp an excuse to claim attorneys' fees for collecting the monies in the arbitration, "K" Line settled the matter with FASA Corp under protest (Exhibit N).

FASA Corp had been on notice of the illegality of the royalties as a subject of this Docket when it demanded payment of the royalties in the arbitration. "K" Line requests award of reparations in the amount of those payments in this Docket, together with attorneys' fees.

#### **IV. CONCLUSION AND REQUEST FOR ORAL ARGUMENT**<sup>5</sup>

"K" Line submits FASA Corp is in the following position under the Act:

1. It cannot lawfully act as a shippers' association until it pays out the surplus to the members.
2. It cannot lawfully act as a shippers' association until it brings its structure and governance into compliance with law and its bylaws, including full participation by members in governance and complete access by members to financial information.
3. It cannot enforce or include a "dues" clause in contracts unless it spends those monies on proper purposes and pays surpluses out to members.
4. It cannot enforce the Exclusive Dealing Clause (including in the New York arbitration) or include any similar clause in any contract.
5. It cannot collect any charge from the carriers, and must subsist on members' payments.

Violation of any of the above after the effective date of an order herein should result in immediate enforcement action.

"K" Line further submits that, since there are no Commission rules regarding the organization of shippers' associations, it is reasonable for the Commission to allow FASA Corp to correct the errors of its ways without civil penalties. "K" Line does, however, submit that FASA Corp should be required to pay reparations to "K" Line in the amount

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<sup>5</sup> "K" Line's Motion for Dispositive Ruling is filed under Commission Rule 502.73, 46 C.F.R. § 502.73.

of the unlawful royalties "K" Line was forced to pay under protest to FASA Corp (Exhibit N) by threat of penalty and attorney's fees in the New York arbitration, and to pay "K" Line's attorney's fees and expenses regarding this proceeding.

"K" Line respectfully requests that Oral Argument be granted.

Respectfully submitted,



J. P. Meade

"K" Line America, Inc.  
6009 Bethlehem Road  
Preston, MD 21655  
410-673-1010

[John.Meade@us.kline.com](mailto:John.Meade@us.kline.com)

Attorney for Kawasaki Kisen Kaisha, Ltd.

July 23, 2008

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of July, 2008 a copy of the foregoing **Kawasaki Kisen Kaisha, LTD.'s Motion for Dispositive Ruling** was served on the following by email and United States mail.

  
Eliot J. Halperin

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New York, NY 10019

BEFORE THE FEDERAL MARITIME COMMISSION

RECEIVED

FEDERAL MARITIME

KAWASAKI KISEN KAISHA, LTD.,

Complainant,

v.

FASHION ACCESSORIES SHIPPERS  
ASSOCIATION, INC. AND GEMINI  
SHIPPERS ASSOCIATION, INC.

Respondents.

Docket No. 07-10

KAWASAKI KISEN KAISHA, LTD.'S  
MOTION FOR DISPOSITIVE RULING

EXHIBITS

July 23, 2008

## AFFIDAVIT OF THOMAS ALDRIDGE

This Affidavit is submitted in connection with the Motion for Dispositive Ruling of Complainant Kawasaki Kisen Kaisha, Ltd. ("K" Line) in Federal Maritime Commission Docket No. 07-10.

Affiant states as follows:

1. I am vice president of "K" Line America, Inc., ("KAM") and have held that position since June 2001. Prior to that time, I had been employed by KAM as Assistant VP and General Sales Manager, Account Representative, Area Sales Manager and Import Sales Manager.
2. My duties as vice president include assisting in negotiating service contracts for "K" Line, for whom KAM acts as general agent in North America. KAM does not act as a carrier of any type, and acts purely in an agency capacity. Actions of "K" Line referred to herein were taken by KAM personnel, but "K" Line is the service contracting party.
3. In the course of my duties, I assisted in negotiating rates with shippers who were members of Fashion Accessories Shippers Association, Inc. (FASA Corp) for contract years 2004/2005, 2005/2006 and 2006/2007, Nos. 14042, 14682 and 15115.
4. FASA Corp assessed a per container charge for each container carried under FASA Corp service contracts. Originally, FASA Corp billed the members for the charges. FASA Corp changed this procedure and insisted instead on invoicing the carriers to pay the charges to FASA Corp. If we did not agree, we were advised by Ms. Mayes at FASA Corp that they could not steer business in our direction. On information and belief, other carriers gave in to FASA Corp's change and paid FASA Corp the royalties. "K" Line resisted and maintained that FASA Corp's invoices should be sent to the members.
5. "K" Line had brought Ann Taylor to FASA Corp or some related "FASA" entity prior to 2005 and "K" Line began carrying Ann Taylor shipments under "K" Line's service contract with FASA Corp.
6. In time, Ann Taylor's logistics director informed KAM that they had brought in a consultant who told them the per container charge was not justified in light of the benefits to Ann Taylor. The logistics director advised that Ann Taylor would resign from the association and wanted to contract with "K" Line independently.
7. It was and is "K" Line/KAM corporate policy not to solicit shippers' association members for independent contracts. KAM told Ann Taylor that they would need to inform the association and then resign from the association.

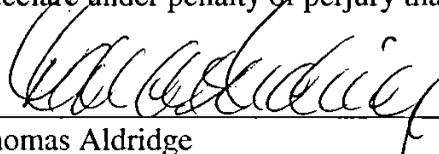
8. Assuming that Ann Taylor had cleared this with FASA Corp, KAM signed a contract for "K" Line with Ann Taylor (No. 15669). After signing, we learned that Ann Taylor had not gone to Ms. Mayes, our contact at FASA (who in our experience managed FASA Corp) but somehow Ms. Mayes had learned of "K" Line's contract with Ann Taylor. KAM had numerous discussions with Ms. Mayes, who complained about the Ann Taylor contract, and we repeatedly explained that "K" Line never solicited Ann Taylor. We explained that Ann Taylor's consulting firm recommended that Ann Taylor resign from FASA Corp membership.
9. In the Ann Taylor discussions, Ms. Mayes pointed out the FASA Corp "no back solicitation" clause in the appendix to the service contract between "K" Line and FASA Corp. At that time, I and others first became aware that the service contracts' "MFS/no back soliciting" clause was actually applied as a "no contracting" clause. I was aware of that clause in the FASA Corp service contracts, believing that it was simply a prohibition against "back solicitation" which was, in any event, against company policy. The title of the clause referred only to "back solicitation". Consequently, I did not read the complete clause which was in tiny print requiring strong magnification to read it (Attachment 1). No one else at KAM understood that it was a "no contracting" clause until the Ann Taylor situation arose.
10. Ms. Mayes told me she would waive the requirements of the "no back solicitation" clause for "K" Line's contracting with Ann Taylor, and I sent her the attached confirmation describing our understanding (Attachment 2). In addition, she requested that we give FASA another account to "make up" for the loss of Ann Taylor, which we never did.
11. Ms. Mayes persistently demanded that "K" Line go along with all the other carriers and have FASA Corp invoice "K" Line and "K" Line pay the charges directly. She promised that if "K" Line went along with paying the per container charge, "K" Line would get more volume from FASA Corp. The KAM people working on this still did not like this proposal and wanted to keep things the way they had been. Finally, we gave in, but "K" Line did not get any additional volume.
12. Bag Bazaar/Accessory Exchange was a FASA Corp member. Bag Bazaar was one of "K" Line's biggest customers in terms of container volume among the customers who were members of FASA Corp. Bag Bazaar shipper-specific commodity rates were negotiated directly by us, without involvement by FASA Corp employees; then we would take the resulting agreement to FASA Corp for signing and then file it under their FMC service contract. During contracting season, FASA Corp would negotiate with "K" Line only a few charges of general applicability, such as handling charges, and some general port-to-port rates, not for any specific customer.

13. During calendar years 2005 and 2006, Bag Bazaar repeatedly approached me and Pamela Donovan, another KAM employee responsible for that account, about contracting independently with Bag Bazaar outside the FASA Corp service contract. No one at KAM or "K" Line ever suggested to Bag Bazaar the idea that "K" Line might consider such independent contracting, since corporate policy prevented our doing so. The Bag Bazaar people explained they were not receiving a level of benefits from FASA Corp justifying the FASA Corp commission which was added to the carrier rates. They advised that they were going to withdraw from FASA Corp membership, and "K" Line should make an offer independently.
14. A Bag Bazaar official advised me he told Ms. Mayes that they considered FASA Corp did not afford benefits to members justifying the per container charge which FASA Corp took from the carriers. He also advised that he proposed a more equitable scale of commissions, but Ms. Mayes refused to consider it. Finally, he said he had requested opportunity to examine FASA Corp's books, but did not do so in writing, and Ms. Mayes simply refused that request, without asking for it in writing.
15. Since it is our corporate policy not to "back solicit" members of shippers' associations, "K" Line would not and did not solicit Bag Bazaar for an independent contract.
16. In response to Bag Bazaar's overtures, we always rejected the idea of independent contracting, until May, 2006, as the May 31 expiration of the Bag Bazaar/FASA Corp service contract approached.
17. Sometime in May, 2006, we approached Ms. Mayes and told her we were in a position such that we had to make an independent offer. Ms. Mayes pointed out Bag Bazaar could not commit as great a quantity as FASA Corp committed, therefore our offer must be above the rate in the FASA Corp contract for Bag Bazaar, which was expiring May 31. We did not agree.
18. Our first offer to Bag Bazaar was for a rate above their current FASA Corp contract rate (we showed it to Ms. Mayes), which Bag Bazaar summarily rejected. Bag Bazaar then discontinued shipping with "K" Line. In response, we made them an offer below their FASA Corp contract rate, which they accepted. Accordingly, we contracted with them effective after the date they advised they resigned as a FASA Corp "member" (Contract No. 15121).
19. No "K" Line or KAM employee or representative approached any shipper for independent contracting whom we knew to be a member of FASA Corp at any time. However, during the 2006 contracting season, Samsonite's transportation managers in Belgium issued a global request for proposals (Attachment 3) to which KAM responded on behalf of "K" Line.

20. KAM made an offer in response, which was accepted by Samsonite (Contract No. 15118). Samsonite USA was then a member of FASA Corp.
21. I have no reason to believe that Samsonite USA would have shipped any of the containers we carried under a FASA Corp-sponsored contract if "K" Line had failed to respond to Samsonite Europe's global RFP. In the circumstances of such an RFP, I consider it to have been an impossibility.
22. Last year, a dispute arose between "K" Line and FASA Corp because FASA Corp claimed that "K" Line owed FASA Corp the \$55 per container charges on containers that "K" Line carried for Bag Bazaar (after they left FASA Corp) and for Samsonite under their RFP. FASA Corp filed an arbitration claim in New York.
23. Under the arbitration, FASA Corp is claiming that "K" Line owes \$75,000 in per-container royalties. I am unable to imagine why FASA Corp thinks the containers we carried under the independent Bag Bazaar and Samsonite contracts could possibly have moved under a FASA Corp service contract. Bag Bazaar had resigned when it started shipping with "K" Line, and due to its management's position that FASA Corp did not give value to justify the per-container charges, there is no chance Bag Bazaar would have shipped under a FASA Corp contract. I do not believe there was any feasible way that any carrier could have responded to the Samsonite RFP with an offer to enter into a FASA Corp contract with Samsonite. It was never an option for any carrier.
24. As a result of this dispute I came to realize that the FASA Corp's use of the "no back solicitation" clause as a "no contracting" clause bars a carrier from contracting with a FASA Corp "member" or "former member" as long as the carrier has a contract with FASA Corp. It apparently applies even if the carrier wants to contract with a member or former member in a trade lane not covered by the FASA Corp contract. FASA Corp used this bar against "K" Line in reprisal for "K" Line doing business independently with Bag Bazaar and Samsonite. "K" Line was willing to discuss a new contract with FASA Corp in the 2007 season, but FASA Corp conditioned negotiations on "K" Line conceding the arbitration and accepting the "no contracting" clause. "K" Line declined then, being fully aware of the anticompetitive impact of the clause (Attachment 4).
25. Under the "Royalty Clause" in its service contracts with FASA Corp (Attachment 5), "K" Line has paid FASA Corp a total of \$123,459 in royalties (stated as "dues") for contract containers carried. "K" Line resisted the "Royalty Clause" until the 2006/2007 Contract. The latest invoiced amount of \$25,042.00, under Contract No. 15115, was paid under FASA Corp's threat of collection by arbitration, which carries a penalty of attorneys' fees.
26. "K" Line received an invoice for \$25,042.00 in royalties under the "Royalty Clause," from "Gemini Shippers Group," in June/July, 2007. When KAM pointed out "K" Line had no contract with such an entity, FASA Corp changed the name

on the billhead to "Gemini Shippers Association" (Attachment 6). Subsequent to this, FASA Corp added a claim for these monies to their arbitration demands, and payment was made under protest.

I declare under penalty of perjury that the foregoing is true and correct.

  
\_\_\_\_\_  
Thomas Aldridge  
Vice President, "K" Line America, Inc.

7/22/08  
\_\_\_\_\_  
Date

**Service Commitment**

Carrier undertakes to provide regularly scheduled sailings, containers and space aboard those sailings to accommodate Shippers' participant's space and container requirements and minimum cargo commitment. During July 1, 2005 to October 31, 2005 (Peak Season), Carrier undertakes to accommodate a minimum of 60 FEUs during the peak season, per scheduled sailing when booked by Shipper (or his agents) seven days prior to vessel's schedule departure date. Carrier shall be liable for liquidated damages to the Association for failure to fulfill Carrier's service commitment according to the same formula per FEUs that applies to Association deadfreight.

Carrier reserves the right to review those rates which are inclusive of store door delivery services in the event of substantial increase in drayage expenses. Any adjustment to cover increase in drayage expense is subject to mutual agreement between Carrier and Shipper.

In the event the Carrier is acquired by, merges or consolidates with or becomes part of another carrier or entity, then as an express condition of entering into such transaction, Carrier shall require such other carrier or entity to assume all the obligations, promises and liabilities of the Carrier contained in this Service Contract and at law.

The Minimum Quantity Commitment of this Contract shall be subject to adjustment for reasons of force majeure which specifically includes any trade restrictions including, but not limited to, Section 301 actions, loss of Most Favor Nations status and quota restrictions.

**Contract Rates.** The rates contained in this Contract (including rate adjusted pursuant to this section which are also deemed "contract rates") shall not be increased during the term of this Contract and shall be reduced by Carrier without notice to Carrier or demand upon Carrier by Association, under the following conditions -

- (a) **Contract-to-Tariff Relationship:** If Carrier reduces its tariff rates applicable to any commodity, and routing covered by this Contract which reduced tariff rate when reduced by 15% is equal or below the corresponding Contract rate, then the Contract rate shall be the reduced tariff rate less 15%.
- (b) **Contract-to-contract MFS, No Back Soliciting.** During the term of this Service Contract, the Carrier shall not enter into an individual service contract or time volume arrangement with any Member of the Association or any former Member, except upon notice to the Association and subject to mutual agreement between the Carrier and the Association.

Shipper (sometimes referred to as Shipper/consignee or Association) is a shipper's association as defined in the Ocean Shipping Act of 1998 (the "Shipping Act"). All of the participants who are named in this Contract are members of the Association either directly or through its constituent shipper's association(s). I.e. the Fashion Accessories Shippers Association, Inc. Affiliated companies are participating shippers (I.e. consignees, consignees, owners or beneficial cargo owners) under the Contract. Such participants and their affiliates may move cargo under the terms of the Contract subject to its terms and conditions and subject to the continued approval of the Association. Each participant (and not the Association) shall be responsible for payment of its transportation costs for cargo moved under the terms of the Contract. Carrier waives any bonding or financial disclosure requirements.

Liquidated damages, if any, for dead freight shall be the lesser of the amount per FEU or TEU contained in the Contract or the difference between the applicable Contract rate and the tariff rate.

Any and all disputes arising out of or in connection with this Contract, including any failure by Shipper to pay or by carrier to perform as required under the Contract, shall be resolved by arbitration in New York City, N.Y. The arbitration shall be before a single arbitrator to be appointed by the American Arbitration Association, New York. There shall be no restriction on the nationality of the arbitrator. The costs and expenses of the arbitration (including reasonable attorney's fee and costs) shall be borne by the non-prevailing party or as the arbitrator shall otherwise determine. The decision of the arbitrator shall be final, binding and not subject to further review. The commercial Rules of the American Arbitration Association shall govern the conduct of the arbitration. This contract shall be subject to the U.S. Shipping Act of 1984, and shall otherwise be construed and governed by the laws of the state of New York.

The contract shall not be subject to amendment *in*.



***“K” LINE AMERICA, INC.***

890 Mountain Ave.  
Murray Hill, New Jersey 07974  
(908) 790-4154

August 30, 2004

Ms. Sara Mayes  
President  
Fashion Accessories Shippers Association, Inc.  
350 Fifth Ave. Suite 2030  
New York, N Y 10118

Dear Sara:

I am writing in connection with the recently concluded service contract between K-Line America Inc. and a FASA/Gemini member. K-Line America Inc. understands that the FASA /Gemini service contract appendix Section 17(b) imposes certain preconditions to us signing a service contract with a FASA /Gemini member, which conditions were not met. I have explained the circumstances to you, which made the individual service contract unavoidable, and accordingly, we are requesting a waiver of the requirements of that section for this particular transaction. You have stated that based upon circumstances described by K-Line America, FASA /Gemini will grant K-Line a waiver and I am writing to confirm this.

Thank you very much for your cooperation.

Sincerely,

Thomas W. Aldridge  
Vice President / Northeast Region



|        |           |                   |       |            |
|--------|-----------|-------------------|-------|------------|
| 77 US  | Shanghai  | Reno, Nv Door     | 1     | AW and MLB |
| 106 US | Shanghai  | Saint Louis       | 3     |            |
| 61 US  | Shanghai  | San Juan          | 16    |            |
| 89 US  | Shanghai  | Seattle           | 2     |            |
| 88 US  | Shanghai  | Tampa             | 5     |            |
| 48 US  | Shanghai  | Tilburg, Nl Door  | 11    |            |
| 60 US  | Sri Lanka | Denver Door       | 3     |            |
| 96 US  | Thailand  | Atlanta           | -     |            |
| 95 US  | Thailand  | Baltimore         | -     |            |
| 86 US  | Thailand  | Charleston        | -     |            |
| 102 US | Thailand  | Cincinnati        | -     |            |
| 26 US  | Thailand  | Denver Door       | 96    |            |
| 101 US | Thailand  | Houston           | -     |            |
| 27 US  | Thailand  | Jacksonville Door | 67    |            |
| 25 US  | Thailand  | Los Angeles       | 164   |            |
| 66 US  | Thailand  | Ny/Nj             | -     |            |
| 52 US  | Thailand  | Phoenix           | -     |            |
| 87 US  | Thailand  | Tampa             | -     |            |
| 68 US  | Vietnam   | Charleston        | -     |            |
| 28 US  | Vietnam   | Denver Door       | 3     |            |
| 29 US  | Vietnam   | Jacksonville Door | 210   |            |
| 33 US  | Vietnam   | Los Angeles       | 69    |            |
| 80 US  | Vietnam   | Ny/Nj             | 98    |            |
| 46 US  | Vietnam   | Phoenix           | 1     |            |
| 90 US  | Vietnam   | Pittsburgh        | 1     |            |
| 116 US | Xiamen    | Baltimore         | -     |            |
| 83 US  | Xiamen    | Denver Door       | 5     |            |
| 47 US  | Xiamen    | Jacksonville Door | 43    |            |
| 67 US  | Xiamen    | Los Angeles       | 12    |            |
| 55 US  | Yantian   | Atlanta           | 4     |            |
| 65 US  | Yantian   | Baltimore         | 6     |            |
| 58 US  | Yantian   | Charleston        | 10    |            |
| 103 US | Yantian   | Chicago           | 15    |            |
| 64 US  | Yantian   | Cincinnati        | -     |            |
| 49 US  | Yantian   | Coventry, Uk      | 3     |            |
| 19 US  | Yantian   | Denver Door       | 8     |            |
| 44 US  | Yantian   | Houston           | 1,170 |            |
| 93 US  | Yantian   | Indianapolis      | 10    |            |
| 21 US  | Yantian   | Jacksonville Door | -     |            |
| 74 US  | Yantian   | Limerick, Ir      | 450   |            |
| 22 US  | Yantian   | Los Angeles       | 4     |            |
| 38 US  | Yantian   | Nashville         | 354   |            |
| 53 US  | Yantian   | Norfolk           | 38    |            |
| 40 US  | Yantian   | Ny/Nj             | 10    |            |
| 37 US  | Yantian   | Phoenix           | 32    |            |
| 78 US  | Yantian   | Pittsburgh        | 2     |            |
| 69 US  | Yantian   | Reno, Nv Door     | 3     |            |
|        |           |                   | 9     |            |



SAMSONITE BELGIUM RFP

9,615

**Eliot Halperin**

---

**From:** "Eliot Halperin" <ehalperin@mdslaw.com>  
**To:** "Eliot J. Halperin" <ehalperin@mdslaw.com>  
**Sent:** Monday, July 14, 2008 5:58 PM  
**Attach:** Legal Opinion-Gemini-05-18-07.pdf  
**Subject:** Fw: Gemini Service Contract

----- Original Message -----

**From:** Meade, John (KAM.PRESTON)  
**To:** Eliot Halperin , Deana E. Rose  
**Sent:** Monday, July 14, 2008 5:53 PM  
**Subject:** FW: Gemini Service Contract

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**From:** Meade, John (KAM.PRESTON)  
**Sent:** Tuesday, May 22, 2007 1:59 PM  
**To:** 'RSacks@kanekessler.com'  
**Subject:** FW: Gemini

Bob: Here is the opinion. There is no proposal to replace the clause. The "K" Line position is that it should not be part of a service contract. Regards

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the arbitration (including reasonable attorney's fee and costs) shall be borne by the non-prevailing party or as the arbitrator shall otherwise determine. The decision of the arbitrator shall be final, binding and not subject to further review. The commercial Rules of the American Arbitration Association shall govern the conduct of the arbitration. This contract shall be subject to the U.S. Shipping Act of 1944, and shall otherwise be construed and governed by the laws of the state of New York.

The contract shall not be subject to amendment fee.

In the event of conflicting rates in the Contract applicable to the same shipments, the lower rate shall apply and deemed the "Contract rate"

To the extent that Carrier's bill of lading contains specific terms about liability for damage to person or property (including cargo), misdelivery or provisions mandated by applicable law which terms conflict with the Contract, the bill of lading shall prevail with respect to such matters only.

Notwithstanding the above, as detailed in the Service Contract between the Parties, Gemini Shippers Association / Fashion Accessories Shippers Association, Inc. is the "Contract Party" and its members are the actual shippers under this contract and are referred to as "affiliate[s]" or "partisan[s]" or "Member Shipper[s]."

**OTHER SPECIAL NOTES:**

**GEMINI ASSOCIATION  
DUES**

Carrier agrees to collect from the Member Shipper and forward to the Contract Party Association the following GEMINI Association Dues payable on a monthly basis for cargo transported by Carrier under this Contract for which the freight and related charges have been paid in full by Member Shipper.

Association Volume Incentive: \$40/D20, \$55/D40, \$62/D40H and \$70/D45.

In order to receive the GEMINI Association Dues, the Contract Party Association must submit a Bill to Carrier which states the Bills of Lading numbers and qualified volume shipped and the incentive amount at the end of each month.

The Contract Party Association agrees to cooperate with Carrier in its effort to reconcile any discrepancies, including the submission of copies of Bills of Lading.

The Above rates are inclusive of the current Association Dues.

\*\*\*\*\*



GEMINI SHIPPERS GROUP Association

350 5th Avenue Suite 2030 New York, NY 10118 tel (212) 947-3424 fax (212) 629-0361

7/24/2007

INVOICE # 072007

KLine America Inc.  
890 Mountain Avenue  
Murray Hill, NJ 07974  
Attn: Giselle Tapia

Containers shipped per Gemini's entry date: 6/15/2007 through: 7/24/2007

Contract: 15115

| Size     | Count | Remittance | Amount      |
|----------|-------|------------|-------------|
| 20'      | 36    | \$40.00    | \$1,440.00  |
| 40'      | 86    | \$55.00    | \$4,730.00  |
| 40' High | 94    | \$62.00    | \$5,828.00  |
| 45'      | 60    | \$70.00    | \$4,200.00  |
| 15115    | 276   |            | \$16,198.00 |
|          | 276   |            | \$16,198.00 |

Import Information System

Billing Detail Report

From: 6/15/2007  
To: 7/24/2007



Date: 7/24/2007

K-Line

Contract: 15115

| Departure Port | Destination Port | BOL Number | Container Number | BOL Date   | Member                       |
|----------------|------------------|------------|------------------|------------|------------------------------|
| Hong Kong      | Ontario          | HK2726477  | KKTU7001758      | 05/16/2007 | Accessory Network Group, LLC |
| Kaohsiung      | New York         | 811074894  | KKTU7185399      | 05/08/2007 | Aiston Quality Industry      |
| Hong Kong      | Long Island City | XMIN020672 | IPXU3765077      | 05/15/2007 | Arlington Hat Company, Inc   |
| Hong Kong      | Long Island City | XMIN021150 | KKTU7424301      | 05/22/2007 | Arlington Hat Company, Inc   |
| Hong Kong      | Long Island City | XMIN021522 | FCIU2649046      | 05/29/2007 | Arlington Hat Company, Inc   |
| Hong Kong      | Long Island City | XMIN022269 | KKTU7596569      | 05/31/2007 | Arlington Hat Company, Inc   |
| Hong Kong      | New York         | HK2546418  | KKTU7328313      | 05/03/2007 | B. Meinhardt Inc.            |
| Hong Kong      | New York         | HK8712822  | KKTU7214481      | 05/20/2007 | B. Meinhardt Inc.            |
| Yantian        | Long Beach       | HK2028099  | KKTU7306968      | 05/10/2007 | Fashion Accessory Bazaar     |
| Hong Kong      | Long Beach       | HK2725423  | KKTU7037236      | 05/16/2007 | Fashion Accessory Bazaar     |
| Hong Kong      | Long Beach       | HK2726502  | KKTU7658280      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong      | New York         | XMIN021964 | KKTU7298380      | 05/26/2007 | Fashion Accessory Bazaar     |
| Hong Kong      | Edison           | XMIN020560 | KLTL1179670      | 05/01/2007 | Futal (U.S.A.) Inc.          |
| Hong Kong      | Edison           | XMIN021640 | KKTU7525328      | 05/22/2007 | Futal (U.S.A.) Inc.          |
| Hong Kong      | Edison           | XMIN022302 | GATU0711230      | 05/29/2007 | Futal (U.S.A.) Inc.          |
| Tianjinxingang | Secaucus         | TSN075684A | KKTU7508552      | 05/04/2007 | G-11 Apparel Group Ltd.      |
| Dalian         | Secaucus         | DL9918802A | CAXU013594       | 05/18/2007 | Junior Gallery, Ltd.         |
| Shanghai       | Secaucus         | SH5934187  | KKTU7041010      | 05/10/2007 | Junior Gallery, Ltd.         |
| Shanghai       | Secaucus         | SH5934196  | KKTU7665757      | 05/21/2007 | Junior Gallery, Ltd.         |
| Shanghai       | Secaucus         | SH5934213  | GESU2047819      | 05/28/2007 | Junior Gallery, Ltd.         |
| Yantian        | Long Beach       | HK2029405  | GLDU2045704      | 05/15/2007 | Kenneth Cole Productions LP  |
| Shanghai       | Long Beach       | SH9995542  | PRSU2316867      | 05/12/2007 | Kenneth Cole Productions LP  |
| Hong Kong      | Los Angeles      | HK2520439  | KKTU7011870      | 05/05/2007 | Tommy Hilfiger Handbags      |
| Hong Kong      | Los Angeles      | HK2525659  | TEXU2266360      | 05/13/2007 | Tommy Hilfiger Handbags      |
| Hong Kong      | New York         | HK8701137  | KKTU7569887      | 05/27/2007 | Tommy Hilfiger Handbags      |
| Hong Kong      | New York         | HK8701150  | KKTU7566846      | 05/31/2007 | Tommy Hilfiger Handbags      |

Value: \$40.00

Container Size: 20'

Import Information System

Billing Detail Report

From: 6/15/2007  
To: 7/24/2007



Date: 7/24/2007

K-Line

Contract: 15115

| Departure Port                         | Destination Port | Value     | BOL Number | Container Number | BOL Date   | Member                       |
|--|------------------|-----------|------------|------------------|------------|------------------------------|
| Container Size: 20' Value: \$40.00     |                  |           |            |                  |            |                              |
| Yantian                                | New York         | SZX213168 |            | GLDU3546676      | 05/19/2007 | Tommy Hilfiger Handbags      |
| Genoa                                  | Elizabeth        | GOA061640 |            | KXTU7647565      | 05/08/2007 | Westport Corporation         |
| Hong Kong                              | Long Beach       | HK2725512 |            | KXTU7876789      | 05/21/2007 | Westport Corporation         |
| Hong Kong                              | New York         | HK8712820 |            | KKTU7163255      | 05/08/2007 | Westport Corporation         |
| Hong Kong                              | New York         | HK8712750 |            | KKTU7471561      | 05/13/2007 | Westport Corporation         |
| Hong Kong                              | New York         | HK8712811 |            | KXTU7668376      | 05/20/2007 | Westport Corporation         |
| Hong Kong                              | New York         | HK8712889 |            | KXTU7707317      | 05/27/2007 | Westport Corporation         |
| Hong Kong                              | New York         | HK8712889 |            | TRLU3409068      | 05/27/2007 | Westport Corporation         |
| Shanghai                               | New York         | SH9812823 |            | CLHU3159935      | 05/03/2007 | Westport Corporation         |
| Shanghai                               | Long Beach       | SH9812923 |            | KLTU1244302      | 05/19/2007 | Westport Corporation         |
| 36 20' containers @ \$40.00 \$1,440.00 |                  |           |            |                  |            |                              |
| Hong Kong                              | Ontario          | HK2725522 |            | KKLU1754826      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong                              | Ontario          | HK2725523 |            | KLFU1345056      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong                              | Ontario          | HK2725582 |            | KKFXU1136303     | 05/28/2007 | Accessory Network Group, LLC |
| Hong Kong                              | Ontario          | HK2725583 |            | KKFXU1811084     | 05/28/2007 | Accessory Network Group, LLC |
| Hong Kong                              | Ontario          | HK2725584 |            | KKFXU1810520     | 05/28/2007 | Accessory Network Group, LLC |
| Hong Kong                              | Eatonville       | HK8712880 |            | KLFU1304864      | 05/27/2007 | Avenues In Leather, Inc.     |
| Yantian                                | Long Beach       | HK2028145 |            | KKFXU1434850     | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2028146 |            | KKFXU1354250     | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2028146 |            | KKFXU1704784     | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2028146 |            | KKFXU1240663     | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2029431 |            | KKFXU1692914     | 05/15/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2029458 |            | KKFXU1512580     | 05/15/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2029624 |            | KLFU1360209      | 05/20/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2029625 |            | KKFXU1459836     | 05/20/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2029625 |            | KKFXU1112615     | 05/20/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       | HK2029625 |            | KKFXU1700769     | 05/20/2007 | Fashion Accessory Bazaar     |

GEMINI SHIPPERS GROUP  
330 5th Avenue Suite 2300 New York, NY 10118 tel: (212) 947 3424 fax (212) 629 0361

Import Information System

Billing Detail Report

From 6/15/2007  
To 7/24/2007



K-Line

Contract: 15115

Date: 7/24/2007

| Departure Port                    | Destination Port | BOL Number | Container Number | BOL Date   | Member                   |
|-----------------------------------|------------------|------------|------------------|------------|--------------------------|
| Container Size 40' Value: \$55.00 |                  |            |                  |            |                          |
| Yantian                           | Long Beach       | HK2029626  | KKFU1568945      | 05/20/2007 | Fashion Accessory Bazaar |
| Hong Kong                         | Long Beach       | HK2503323  | KLFU1374558      | 05/03/2007 | Fashion Accessory Bazaar |
| Hong Kong                         | Long Beach       | HK2725616  | KKFU1431340      | 05/21/2007 | Fashion Accessory Bazaar |
| Hong Kong                         | Long Beach       | HK2725833  | KKFU1190705      | 05/28/2007 | Fashion Accessory Bazaar |
| Hong Kong                         | Long Beach       | HK2725834  | KKFU1359058      | 05/28/2007 | Fashion Accessory Bazaar |
| Hong Kong                         | Long Beach       | HK2725834  | KKFU1253260      | 05/28/2007 | Fashion Accessory Bazaar |
| Shanghai                          | Long Beach       | SH9997669  | KKFU1427676      | 05/28/2007 | Fashion Accessory Bazaar |
| Hong Kong                         | Edison           | XMN021153  | KLFU1211226      | 05/15/2007 | Fatal (U.S.A.) Inc.      |
| Hong Kong                         | Edison           | XMN022301  | KKFU1601046      | 05/29/2007 | Fatal (U.S.A.) Inc.      |
| Dalian                            | Secaucus         | DL9818947  | KKFU1888315      | 05/16/2007 | G-III Apparel Group Ltd. |
| Dalian                            | Los Angeles      | DL9917117  | KKFU1811700      | 05/30/2007 | G-III Apparel Group Ltd. |
| Dalian                            | Los Angeles      | DL9917117  | KKFU1470136      | 05/30/2007 | G-III Apparel Group Ltd. |
| Dalian                            | Los Angeles      | DL9917117  | KLFU1214288      | 05/30/2007 | G-III Apparel Group Ltd. |
| Shanghai                          | Secaucus         | SH8617995  | KLFU1381421      | 05/28/2007 | G-III Apparel Group Ltd. |
| Shanghai                          | Secaucus         | SH8618349  | KLFU1289841      | 05/28/2007 | G-III Apparel Group Ltd. |
| Shanghai                          | South Brunswick  | SH8618745  | KKFU1170936      | 05/31/2007 | G-III Apparel Group Ltd. |
| Shanghai                          | South Brunswick  | SH8618746  | KKFU1766616      | 05/31/2007 | G-III Apparel Group Ltd. |
| Shanghai                          | South Brunswick  | SH8618746  | KKFU1550530      | 05/31/2007 | G-III Apparel Group Ltd. |
| Qingdao                           | Secaucus         | TAO080559  | KKFU1070146      | 05/28/2007 | G-III Apparel Group Ltd. |
| Qingdao                           | Secaucus         | TAO080559  | KKFU1487078      | 05/28/2007 | G-III Apparel Group Ltd. |
| Qingdao                           | Secaucus         | TAO080865  | KKFU1122742      | 05/28/2007 | G-III Apparel Group Ltd. |
| Qingdao                           | Secaucus         | TAO081399A | KKFU1480936      | 05/31/2007 | G-III Apparel Group Ltd. |
| TianjinXingang                    | Secaucus         | TSN07372A  | KKFU1247884      | 05/22/2007 | G-III Apparel Group Ltd. |
| TianjinXingang                    | Secaucus         | TSN07372A  | KKFU1674575      | 05/22/2007 | G-III Apparel Group Ltd. |
| TianjinXingang                    | Secaucus         | TSN078054  | KKFU1104651      | 05/31/2007 | G-III Apparel Group Ltd. |
| TianjinXingang                    | Secaucus         | TSN078054  | KKFU1486174      | 05/31/2007 | G-III Apparel Group Ltd. |
| TianjinXingang                    | Secaucus         | TSN078056  | KKFU1648486      | 05/31/2007 | G-III Apparel Group Ltd. |
| TianjinXingang                    | Secaucus         | TSN078056  | KKFU1331315      | 05/31/2007 | G-III Apparel Group Ltd. |

GEMINI SHIPPERS GROUP

350 5th Avenue Suite 2030 New York, NY 10118 tel: (212) 917 3424 fax: (212) 629-0361

Import Information System

Billing Detail Report



From: 6/15/2007  
To: 7/24/2007

Date: 7/24/2007

K-Line  
Contract: 16115

| Departure Port | Destination Port | BOL Number | Container Number | BOL Date   | Member                      |
|----------------|------------------|------------|------------------|------------|-----------------------------|
|                | Value: \$55,00   |            |                  |            |                             |
| Hong Kong      | Long Beach       | HK2726162  | KLFUJ345919      | 05/31/2007 | Harry J. Rashtl' Co., Inc.  |
| Shanghai       | Secaucus         | SH5934194  | KKFU1061059      | 05/10/2007 | Junior Gallery, Ltd.        |
| Shanghai       | Secaucus         | SH5934197  | KKFU1746097      | 05/21/2007 | Junior Gallery, Ltd.        |
| Yanlian        | Long Beach       | HK2029406  | KKFU1459060      | 05/15/2007 | Kenneth Cole Productions LP |
| Yanlian        | Long Beach       | HK2029432  | KKFU1650478      | 05/20/2007 | Kenneth Cole Productions LP |
| Yanlian        | Long Beach       | HK2029433  | KKFU1768075      | 05/20/2007 | Kenneth Cole Productions LP |
| Yanlian        | Long Beach       | HK2029669  | KKFU1612195      | 05/20/2007 | Kenneth Cole Productions LP |
| Hong Kong      | Long Beach       | HK2725304  | KLFU1315730      | 05/09/2007 | Kenneth Cole Productions LP |
| Hong Kong      | Long Beach       | HK2725796  | KKFU1414235      | 05/28/2007 | Kenneth Cole Productions LP |
| Hong Kong      | Long Beach       | HK2725797  | KKFU1642620      | 05/28/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9995541  | KKFU1059880      | 05/12/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9995542  | KLFU1357102      | 05/12/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9995656  | KKFU1241850      | 06/19/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9995657  | KKFU1073391      | 05/19/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9995657  | KKFU1301828      | 05/19/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9995657  | KKFU1364427      | 05/19/2007 | Kenneth Cole Productions LP |
| Shanghai       | Long Beach       | SH9998639  | KKFU1138902      | 05/31/2007 | Kenneth Cole Productions LP |
| Hong Kong      | Los Angeles      | HK2520438  | KKFU1410796      | 06/06/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | New York         | HK2540781  | TEXU4255621      | 05/31/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | Long Beach       | HK2726610  | KLFU1276058      | 05/31/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | Long Beach       | HK2726610  | TTNU4402618      | 05/31/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | Long Beach       | HK2726610  | TTNU6826921      | 05/31/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | New York         | HK8712753  | KKFU1079918      | 06/13/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | New York         | HK8712928  | KKFU1816661      | 05/27/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | New York         | SZX213165  | KLFU1251487      | 06/19/2007 | Tommy Hilfinger Handbags    |
| Hong Kong      | Long Beach       | HK2726565  | KKFU1320265      | 05/28/2007 | Westport Corporation        |
| Hong Kong      | Long Beach       | HK2726565  | TGHU4210722      | 05/28/2007 | Westport Corporation        |
| Hong Kong      | New York         | HK8712820  | KKFU1026269      | 05/06/2007 | Westport Corporation        |

GEMINI SHIPPERS GROUP

300 5th Avenue Suite 2030 New York, NY 10116 tel: (212) 947 3424 fax: (212) 629-0561

Import Information System

Billing Detail Report

From 6/15/2007  
To 7/24/2007



Date: 7/24/2007

K-Line  
Contract 15115

| Departure Port                         | Destination Port | Value | BOL Number | Container Number | BOL Date   | Member                       |
|--|------------------|-------|------------|------------------|------------|------------------------------|
| Container Size: 40' Value: \$55.00     |                  |       |            |                  |            |                              |
| Hong Kong                              | New York         |       | HK8712760  | KKFU1811680      | 05/13/2007 | Westport Corporation         |
| Hong Kong                              | New York         |       | HK8712811  | KKFU1675389      | 05/20/2007 | Westport Corporation         |
| Hong Kong                              | New York         |       | HK8712811  | KKFU1668332      | 05/20/2007 | Westport Corporation         |
| Hong Kong                              | New York         |       | HK8712811  | KKFU1621720      | 05/20/2007 | Westport Corporation         |
| Shanghai                               | New York         |       | SH9812823  | KKFU1409521      | 05/03/2007 | Westport Corporation         |
| Shanghai                               | New York         |       | SH9812823  | KKFU1489194      | 05/03/2007 | Westport Corporation         |
| Shanghai                               | New York         |       | SH9812826  | KKFU1490127      | 05/21/2007 | Westport Corporation         |
| Shanghai                               | Long Beach       |       | SH9814030  | KKFU1126373      | 05/31/2007 | Westport Corporation         |
| Hong Kong                              | Riverside        |       | HK2702655  | KLFU1272788      | 05/21/2007 | Worldwide Dreams LLC         |
| Hong Kong                              | Riverside        |       | HK2702655  | KKFU1338277      | 05/21/2007 | Worldwide Dreams LLC         |
| Hong Kong                              | Riverside        |       | HK2702655  | KKFU1535896      | 05/21/2007 | Worldwide Dreams LLC         |
| Hong Kong                              | Riverside        |       | HK2702655  | KKFU1369075      | 05/21/2007 | Worldwide Dreams LLC         |
| Hong Kong                              | Riverside        |       | HK2702656  | KKFU1278653      | 05/21/2007 | Worldwide Dreams LLC         |
| Shanghai                               | Riverside        |       | SH9845447  | KKFU1415709      | 05/06/2007 | Worldwide Dreams LLC         |
| 85 40' containers @ \$55.00 \$4,730.00 |                  |       |            |                  |            |                              |
| Hong Kong                              | Ontario          |       | HK2726521  | KLFU1972436      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong                              | Ontario          |       | HK2726581  | KKFU7359011      | 05/28/2007 | Accessory Network Group, LLC |
| Yantian                                | Long Beach       |       | HK2028097  | KKFU7398850      | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       |       | HK2028097  | KKFU7328895      | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       |       | HK2028100  | KKFU7162148      | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       |       | HK2028100  | KLFU1837380      | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian                                | Long Beach       |       | HK2028624  | KKFU7063210      | 05/20/2007 | Fashion Accessory Bazaar     |
| Hong Kong                              | Long Beach       |       | HK2503323  | KKFU7148451      | 05/03/2007 | Fashion Accessory Bazaar     |
| Hong Kong                              | Long Beach       |       | HK2725616  | KKFU7353414      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong                              | Long Beach       |       | HK2725831  | KLFU1823371      | 05/28/2007 | Fashion Accessory Bazaar     |
| Hong Kong                              | Long Beach       |       | HK2725831  | KKFU7404553      | 05/28/2007 | Fashion Accessory Bazaar     |
| Hong Kong                              | Long Beach       |       | HK2725832  | KLFU1988677      | 05/28/2007 | Fashion Accessory Bazaar     |



Import Information System

Billing Detail Report

From: 6/15/2007  
To: 7/24/2007

Date: 7/24/2007

K-Line  
Contract 15115

| Departure Port           | Destination Port | Value     | BOL Number   | Container Number | ROL Date                 | Member |
|--------------------------|------------------|-----------|--------------|------------------|--------------------------|--------|
|                          |                  | \$62.00   |              |                  |                          |        |
| Container Size: 40' High |                  |           |              |                  |                          |        |
| Hong Kong                | Long Beach       | HK2725832 | KKFU7291523  | 05/28/2007       | Fashion Accessory Bazaar |        |
| Hong Kong                | Long Beach       | HK2725832 | KKFU7365550  | 05/28/2007       | Fashion Accessory Bazaar |        |
| Hong Kong                | Long Beach       | HK2725835 | KL FU1841230 | 05/28/2007       | Fashion Accessory Bazaar |        |
| Hong Kong                | Long Beach       | HK2725835 | KKFU7178153  | 05/28/2007       | Fashion Accessory Bazaar |        |
| Hong Kong                | Long Beach       | HK2725835 | KKFU7038665  | 05/28/2007       | Fashion Accessory Bazaar |        |
| Shanghai                 | Long Beach       | SH9997589 | KL FU1841780 | 05/26/2007       | Fashion Accessory Bazaar |        |
| Shanghai                 | Long Beach       | SH9998845 | KKFU7482920  | 05/31/2007       | Fashion Accessory Bazaar |        |
| Dalian                   | Secaucus         | DL9917054 | KKFU7388529  | 05/18/2007       | G-III Apparel Group Ltd. |        |
| Dalian                   | Secaucus         | DL9917054 | KL FU1825250 | 05/18/2007       | G-III Apparel Group Ltd. |        |
| Dalian                   | Secaucus         | DL9917054 | KKFU7175713  | 05/18/2007       | G-III Apparel Group Ltd. |        |
| Dalian                   | Secaucus         | DL9917054 | TEXUS423154  | 05/18/2007       | G-III Apparel Group Ltd. |        |
| Dalian                   | Secaucus         | DL9917054 | KKFU7268143  | 05/18/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8617991 | KKFU7378855  | 05/28/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8617991 | KKFU7315775  | 05/28/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8617991 | KKFU7217995  | 05/28/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8617594 | KKFU7010312  | 05/28/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8617997 | KKFU7290363  | 05/28/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8616745 | KL FU1824017 | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | South Brunswick  | SH8616771 | KKFU7340037  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8616772 | KKFU7314892  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8616772 | KKFU7444520  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8616772 | KKFU7231334  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8619310 | KKFU7368461  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8619310 | CRXU9712724  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8619316 | KKFU7478260  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8619315 | KKFU7133127  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Shanghai                 | Secaucus         | SH8619321 | KKFU7088579  | 05/28/2007       | G-III Apparel Group Ltd. |        |
| Qingdao                  | Secaucus         | TAO080865 | KKFU7242998  | 05/31/2007       | G-III Apparel Group Ltd. |        |
| Qingdao                  | Secaucus         | TAO081398 |              |                  |                          |        |

GF MINI SHIPPERS GROUP

35) 5th Avenue Suite 2030 New York NY 10118 tel: (212) 917 3424 fax: (212) 625-0361



Import Information System

Billing Detail Report

From: 6/15/2007  
To: 7/24/2007

Date: 7/24/2007

Contract: 15115

| Departure Port                          | Destination Port | BOL Number | Container Number | BOL Date   | Member                    |
|---|------------------|------------|------------------|------------|---------------------------|
| Container Size: 40' High Value: \$62,00 |                  |            |                  |            |                           |
| Hong Kong                               | Long Beach       | HK2725330  | KKFU7324524      | 05/21/2007 | Harry J. Rashti Co., Inc. |
| Hong Kong                               | Long Beach       | HK2726162  | KKFU7248756      | 05/31/2007 | Harry J. Rashti Co., Inc. |
| Shanghai                                | Long Beach       | SH8931781  | TGHU9073535      | 05/26/2007 | Harry J. Rashti Co., Inc. |
| Shanghai                                | Secaucus         | SH5934182  | KKFU7144348      | 05/03/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934182  | KKFU7229255      | 05/03/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934182  | KKFU7340347      | 05/03/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934182  | KKFU7366160      | 05/03/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934183  | TGHU7674814      | 05/03/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KKFU7020990      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KKFU7074786      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KKFU7223880      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KKFU7406356      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KKFU7492662      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KLFU1822816      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934187  | KLFU1960950      | 05/10/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934195  | KKFU7148071      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934195  | KKFU7181589      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934195  | KKFU7222350      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934195  | KKFU7402693      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934198  | KKFU7266618      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934199  | KKFU7225223      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934199  | KKFU7348803      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934199  | KKFU7389277      | 05/21/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934201  | KKFU7059003      | 05/28/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934201  | KKFU7147326      | 05/28/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934201  | KKFU7249307      | 05/28/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934201  | KKFU7403069      | 05/28/2007 | Junior Gallery, Ltd.      |
| Shanghai                                | Secaucus         | SH5934201  | KLFU1834098      | 05/28/2007 | Junior Gallery, Ltd.      |

GENIEX SHIPPERS GROUP  
350 5th Avenue Suite 2030 New York, NY 10118 Tel: (212) 647-3434 Fax (212) 628-0351

Import Information System

Billing Detail Report

From: 6/15/2007  
To: 7/24/2007



K-Line  
Contract: 15115  
Date: 7/24/2007

| Departure Port                          | Destination Port | BOL Number | Container Number | BOL Date   | Member                      |
|---|------------------|------------|------------------|------------|-----------------------------|
| Container Size: 40' High Value: \$62.00 |                  |            |                  |            |                             |
| Shanghai                                | Secaucus         | SH5934201  | TGHU7587441      | 05/28/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934207  | KKFU7002132      | 06/28/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934207  | KKFU7137884      | 06/28/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934207  | KKFU7327133      | 06/28/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934207  | KKFU7381786      | 05/28/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934207  | KKFU7439312      | 05/28/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934214  | KKFU7019802      | 05/31/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934214  | KKFU7111107      | 05/31/2007 | Junior Gallery, Ltd.        |
| Shanghai                                | Secaucus         | SH5934215  | KKFU7268490      | 05/31/2007 | Junior Gallery, Ltd.        |
| Yantai                                  | Long Beach       | HK2029531  | TGHU7294646      | 05/20/2007 | Kenneth Cole Productions LP |
| Hong Kong                               | Long Beach       | HK2725432  | GATU8071289      | 05/16/2007 | Kenneth Cole Productions LP |
| Shanghai                                | Long Beach       | SH9997389  | TGHU9111281      | 05/26/2007 | Kenneth Cole Productions LP |
| Hong Kong                               | New York         | HK8701136  | KLFU1093017      | 05/27/2007 | Tommy Hilfiger Handbags     |
| Hong Kong                               | New York         | HK0701140  | KKFU7356563      | 05/27/2007 | Tommy Hilfiger Handbags     |
| Hong Kong                               | Long Beach       | HK2726665  | TRLU5291415      | 05/28/2007 | Westport Corporation        |
| Hong Kong                               | New York         | HK8712620  | KKFU7506697      | 05/06/2007 | Westport Corporation        |
| Hong Kong                               | New York         | HK8712611  | KKFU7420836      | 05/20/2007 | Westport Corporation        |
| Shanghai                                | New York         | SH8812823  | KKFU7357554      | 05/03/2007 | Westport Corporation        |
| Shanghai                                | New York         | SH8812823  | AKLU6508538      | 05/03/2007 | Westport Corporation        |
| Shanghai                                | New York         | SH8812906  | KKFU7031130      | 05/10/2007 | Westport Corporation        |
| Shanghai                                | New York         | SH8812906  | KKFU7283446      | 05/10/2007 | Westport Corporation        |
| Shanghai                                | New York         | SH8812997  | TGHU9113551      | 05/10/2007 | Westport Corporation        |
| Hong Kong                               | Riverside        | HK2702598  | KLFU5604026      | 05/28/2007 | Worldwide Dreams LLC        |
| Hong Kong                               | Riverside        | HK2702598  | AKLU06901571     | 05/16/2007 | Worldwide Dreams LLC        |
| Hong Kong                               | Riverside        | HK2702657  | KLFU5974648      | 05/16/2007 | Worldwide Dreams LLC        |
| Hong Kong                               | Riverside        | HK2702657  | KKFU6574112      | 05/21/2007 | Worldwide Dreams LLC        |
| 94 40' High containers @ \$62.0         |                  |            |                  |            | \$5,828.00                  |



From: 8/15/2007  
To: 7/24/2007

Date: 7/24/2007

Billing Detail Report

Import Information System

K-Line

Contract: 15115

| Departure Port      | Destination Port | Value:  | BOL Number | Container Number | BOL Date   | Member                       |
|---------------------|------------------|---------|------------|------------------|------------|------------------------------|
| Container Size: 45' |                  |         |            |                  |            |                              |
| Hong Kong           | Ontario          | \$70.00 | HK2726528  | KKFU9006878      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong           | Ontario          |         | HK2726416  | KKFU9105818      | 05/09/2007 | Accessory Network Group, LLC |
| Hong Kong           | Ontario          |         | HK2726417  | KKFU9034503      | 05/09/2007 | Accessory Network Group, LLC |
| Hong Kong           | Ontario          |         | HK2726503  | KKFU9095495      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong           | Ontario          |         | HK2726618  | KKFU9035330      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong           | Ontario          |         | HK2725519  | KKFU9120200      | 05/21/2007 | Accessory Network Group, LLC |
| Hong Kong           | Ontario          |         | HK2726586  | KKFU9009310      | 05/28/2007 | Accessory Network Group, LLC |
| Yantian             | Long Beach       |         | HK2028170  | KKFU9080140      | 05/10/2007 | Fashion Accessory Bazaar     |
| Yantian             | Long Beach       |         | HK2028825  | KKFU9004345      | 05/20/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2503322  | KKFU9092599      | 05/03/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2503323  | KKFU9134987      | 05/03/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2726423  | KKFU9058597      | 05/16/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Chicago          |         | HK2725545  | KLFU9059737      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Chicago          |         | HK2725545  | KKFU9033889      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725616  | KKFU9004474      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725616  | KKFU9126024      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725632  | KKFU9136721      | 05/21/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725632  | KKFU9037375      | 05/28/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725634  | KKFU9097780      | 05/28/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725636  | KKFU9118857      | 05/28/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Long Beach       |         | HK2725636  | KKFU9052402      | 05/28/2007 | Fashion Accessory Bazaar     |
| Hong Kong           | Ontario          |         | HK2726520  | KKFU9122435      | 05/21/2007 | Fashion Accessory Bazaar     |
| Shanghai            | Long Beach       |         | SH9998845  | KKFU9022760      | 05/31/2007 | Fashion Accessory Bazaar     |
| Xiamen              | Los Angeles      |         | XIMN022475 | KKFU9036722      | 05/31/2007 | Fashion Accessory Bazaar     |
| Dalian              | Los Angeles      |         | DL9915904  | KKFU9102320      | 05/31/2007 | Fashion Accessory Bazaar     |
| Tianjin/Xingang     | Secaucus         |         | TSN078216  | KKFU9086045      | 05/31/2007 | Fashion Accessory Bazaar     |
| Shanghai            | Secaucus         |         | SH5934201  | KKFU9051989      | 05/31/2007 | Fashion Accessory Bazaar     |
| Shanghai            | Secaucus         |         | SH5934207  | KKFU9015416      | 05/28/2007 | Fashion Accessory Bazaar     |
|                     |                  |         |            |                  |            | G-III Apparel Group Ltd.     |
|                     |                  |         |            |                  |            | G-III Apparel Group Ltd.     |
|                     |                  |         |            |                  |            | Junior Gallery, Ltd.         |
|                     |                  |         |            |                  |            | Junior Gallery, Ltd.         |

GEMINI SHIPPERS GROUP

350 5th Avenue St. 2000 New York NY 10118 Tel: (212) 947-3424 fax: (212) 629-3361

Import Information System

Billing Detail Report

From: 6/15/2007  
To: 7/24/2007



Date: 7/24/2007

K-Line

Contract: 15115

| Departure Port                     | Destination Port | BOL Number | Container Number | BOL Date   | Member                      |
|------------------------------------|------------------|------------|------------------|------------|-----------------------------|
| Container Size: 45' Value: \$70.00 |                  |            |                  |            |                             |
| Shanghai                           | Secaucus         | SH5934207  | KKFU9064616      | 05/28/2007 | Junlor Gallery, Ltd.        |
| Shanghai                           | Secaucus         | SH5934208  | KLFU9055006      | 05/28/2007 | Junlor Gallery, Ltd.        |
| Shanghai                           | Secaucus         | SH5934208  | KKFU9088578      | 05/28/2007 | Junlor Gallery, Ltd.        |
| Shanghai                           | Secaucus         | SH5934215  | KKFU9122440      | 05/31/2007 | Junlor Gallery, Ltd.        |
| Shanghai                           | Secaucus         | SH5934215  | KKFU9132285      | 05/31/2007 | Junlor Gallery, Ltd.        |
| Shanghai                           | Secaucus         | SH5934215  | KLFU9059980      | 05/31/2007 | Junlor Gallery, Ltd.        |
| Yantian                            | Long Beach       | HK2028530  | KKFU9032753      | 05/23/2007 | Kenneth Cole Productions LP |
| Yantian                            | Long Beach       | HK2028670  | KKFU9065342      | 06/23/2007 | Kenneth Cole Productions LP |
| Hong Kong                          | Long Beach       | HK2725807  | KKFU9073027      | 05/28/2007 | Kenneth Cole Productions LP |
| Hong Kong                          | Los Angeles      | HK2525556  | KKFU9090515      | 05/13/2007 | Tommy Hilfiger Handbags     |
| Hong Kong                          | New York         | HK8701140  | KKFU9016829      | 05/27/2007 | Tommy Hilfiger Handbags     |
| Hong Kong                          | New York         | HK8701140  | KKFU9136505      | 05/27/2007 | Tommy Hilfiger Handbags     |
| Hong Kong                          | New York         | HK2701140  | KKFU9135283      | 05/27/2007 | Tommy Hilfiger Handbags     |
| Hong Kong                          | Long Beach       | HK2726445  | KKFU9133085      | 05/16/2007 | Westport Corporation        |
| Hong Kong                          | Long Beach       | HK2726512  | KLFU9061903      | 05/21/2007 | Westport Corporation        |
| Hong Kong                          | Long Beach       | HK8712811  | KKFU9122712      | 05/20/2007 | Westport Corporation        |
| Hong Kong                          | New York         | HK8712889  | KKFU9155258      | 05/27/2007 | Westport Corporation        |
| Hong Kong                          | New York         | SH9812891  | KKFU9118473      | 05/12/2007 | Westport Corporation        |
| Shanghai                           | Long Beach       | SH9812923  | KKFU9032136      | 05/19/2007 | Westport Corporation        |
| Shanghai                           | Long Beach       | SH9812926  | KKFU9136228      | 05/21/2007 | Westport Corporation        |
| Shanghai                           | New York         | SH9812926  | KKFU9017506      | 05/21/2007 | Westport Corporation        |
| Shanghai                           | New York         | SH9812997  | KKFU9006712      | 05/26/2007 | Westport Corporation        |
| Shanghai                           | New York         | SH9812997  | KKFU9055648      | 05/26/2007 | Westport Corporation        |
| Shanghai                           | New York         | SH9812997  | KKFU9120598      | 05/26/2007 | Westport Corporation        |
| Shanghai                           | Riverside        | HK2702695  | KKFU9024803      | 05/31/2007 | Worldwide Dreams LLC        |
| Hong Kong                          | Riverside        | HK2702695  | KKFU9108709      | 05/31/2007 | Worldwide Dreams LLC        |
| Hong Kong                          | Riverside        | HK2702695  | KKFU9029003      | 05/31/2007 | Worldwide Dreams LLC        |
| Hong Kong                          | Riverside        | HK2702695  | KKFU9030386      | 05/31/2007 | Worldwide Dreams LLC        |
| Hong Kong                          | Riverside        | HK2702695  | KKFU9030386      | 05/31/2007 | Worldwide Dreams LLC        |

Page: 50

GEMINI SHIPPERS GROUP  
350 5th Avenue Suite 2030 New York, NY 10118 tel: (212) 547-3424 fax: (212) 529-0361



From: 6/15/2007  
To: 7/24/2007

Billing Detail Report

Date: 7/24/2007

Import Information System

K-Line

Contract: 15115

| Departure Port              | Destination Port | Value       | BOL Number | Container Number | BOL Date   | Member               |
|-----------------------------|------------------|-------------|------------|------------------|------------|----------------------|
| Container Size: 45'         |                  |             |            |                  |            |                      |
| Hong Kong                   | Riverside        | \$70.00     | HK2702695  | KLFU9055348      | 05/31/2007 | Worldwide Dreams LLC |
| Hong Kong                   | Riverside        |             | HK2702695  | KKFU9021070      | 05/31/2007 | Worldwide Dreams LLC |
| Hong Kong                   | Riverside        |             | HK2702695  | KKFU9075821      | 05/31/2007 | Worldwide Dreams LLC |
| Hong Kong                   | Riverside        |             | HK2702695  | KKFU9068735      | 05/31/2007 | Worldwide Dreams LLC |
| 60 45' containers @ \$70.00 |                  | \$4,200.00  |            |                  |            |                      |
| 276 15115 Total             |                  | \$16,198.00 |            |                  |            |                      |
| 276 K-Line                  |                  | \$16,198.00 |            |                  |            |                      |



GEMINI SHIPPERS GROUP Association

350 5th Avenue Suite 2030 New York, NY 10118 tel: (212) 547-3424 fax: (212) 679-0361

6/14/2007

INVOICE # 062007

KLine America Inc.  
890 Mountain Avenue  
Murray Hill, NJ 07974  
Attn: Giselle Tapia

Containers shipped per Gemini's entry date: 5/16/2007 through: 6/14/2007

Contract: 15115

| Size     | Count | Remittance | Amount     |
|----------|-------|------------|------------|
| 20'      | 25    | \$40.00    | \$1,000.00 |
| 40'      | 40    | \$55.00    | \$2,200.00 |
| 40' High | 47    | \$62.00    | \$2,914.00 |
| 45'      | 39    | \$70.00    | \$2,730.00 |
| 15115    | 151   |            | \$8,844.00 |
|          | 151   |            | \$8,844.00 |