

BEFORE THE FEDERAL MARITIME COMMISSION



INTERMODAL MOTOR CARRIERS CONFERENCE,
AMERICAN TRUCKING ASSOCIATIONS, INC.

Complainant,

v.

OCEAN CARRIER EQUIPMENT MANAGEMENT
ASSOCIATION, INC.; CONSOLIDATED CHASSIS
MANAGEMENT, LLC; CMA CGM S.A.; COSCO
SHIPPING LINES CO. LTD.; EVERGREEN LINE
JOINT SERVICE AGREEMENT, FMC NO. 011982;
HAPAG-LLOYD AG; HMM CO. LTD.; MAERSK
A/S; MSC MEDITERRANEAN SHIPPING
COMPANY S.A.; OCEAN NETWORK EXPRESS
PTE. LTD.; WAN HAI LINES LTD.; YANG MING
MARINE TRANSPORT CORP.; AND ZIM
INTEGRATED SHIPPING SERVICES,

Respondents.

Docket No. 20-14

**COMPLAINT FOR
VIOLATION OF THE SHIPPING ACT OF 1984, 46 U.S.C. § 41102(C)**

INTRODUCTION

1. Complainant Intermodal Motor Carriers Conference of the American Trucking Associations (“IMCC”) brings this Complaint on behalf of its intermodal motor carrier members, seeking declaratory relief and an order to cease and desist from violations of the Shipping Act of 1984 directed to Respondents Ocean Carrier Equipment Management Association Inc. (“OCEMA”), Consolidated Chassis Management, LLC (“CCM”), CMA CGM S.A. (“CMA”), COSCO SHIPPING Lines Co. Ltd. (“COSCO”), Evergreen Line Joint Service Agreement, FMC No. 011982 (“Evergreen”), Hapag-Lloyd AG (“Hapag-Lloyd”), HMM Co. Ltd. (“HMM”), Maersk A/S (“Maersk”), MSC Mediterranean Shipping Company S.A.

(“MSC”), Ocean Network Express Pte. Ltd. (“ONE”), Wan Hai Lines Ltd (“Wan Hai”), Yang Ming Marine Transport Corp. (“Yang Ming”), and Zim Integrated Shipping Services (“Zim”). As IMCC alleges below—based upon first-hand industry knowledge and expertise and upon information and belief as to all other matters—OCEMA, its members, and participating non-members have adopted and imposed unjust and unreasonable regulations and engaged in unjust and unreasonable practices by requiring the use of OCEMA member default chassis providers, and denying motor carriers their right to select the chassis provider for merchant haulage movements, all in violation of 46 U.S.C. § 41102(c).

2. In 2006, OCEMA members and others filed the Consolidated Chassis Management Pool Agreement (“CCMP Agreement”) “to provide for the formation of local, metropolitan, and/or regional Chassis Pools,” at marine and inland intermodal terminals throughout the United States. FMC Agreement No. 011962, at 2, effective June 30, 2006. These pools were to operate through OCEMA affiliates, with rules adopted by management boards of those affiliates composed of OCEMA members. As OCEMA members subsequently sold their chassis to third-party providers, OCEMA adopted pool policies ostensibly designed to permit motor carriers the *freedom of chassis choice* – i.e., the right of a motor carrier to choose a chassis from a “gray pool” owned by an independent Intermodal Equipment Provider (“IEP”) and to be billed by that IEP.

3. In reality, and notwithstanding that OCEMA members do not themselves own chassis, OCEMA members control the operation of chassis pools at ports and intermodal terminals nationwide through the rules and practices they adopt for pool operation, their contracts with equipment providers, and their own rules and practices governing how the cargo containers that they own may be interchanged. OCEMA, its affiliates, and its members and

signatories to the CCMP Agreement, have exercised this unlawful control in violation of their Shipping Act obligations by:

- a. Adopting and enforcing CCM Pool Rule 5.7, giving ocean carriers ultimate control by mandating their power of “consent” over chassis choice;
- b. Systematically denying consent to motor carriers’ chassis choice, including through posted carrier policies that expressly disallow choice when a motor carrier is billed for chassis usage;
- c. Adopting and enforcing ocean carrier “box rules” affecting containers in ports that have non-CCMP Agreement pools, such as in Los Angeles/Long Beach, that prevent chassis choice—even when IEP rules would permit motor carriers the freedom of chassis choice;
- d. Withdrawing from CCMP Agreement pools and designating single-provider chassis pools as the default provider for all container movements;
- e. Soliciting proposals for and entering into IEP contracts in which the ocean carrier designates an IEP as its default provider for haulage of containers when a motor carrier is billed for usage, while awarding the contract based on the price of haulage when the ocean carrier is billed for chassis usage; and,
- f. Exploiting these regulations and practices so as to compel IEPs to *undercharge* the ocean carrier for carrier haulage (“CH”) movements while *overcharging* for chassis usage for merchant haulage (“MH”)—without fear that the overcharge will cause the motor carrier to use the services of another IEP -- thus denying the benefits of chassis choice and price competition to motor carriers, to the benefit of the ocean carrier respondents.

4. As a consequence of these unlawful practices, ocean carrier respondents have caused motor carriers, their shipping and receiving customers, and ultimately the consuming public, to be overcharged in an amount that IMCC estimates to be as much as \$1.8 billion during the three years prior to the filing of this Complaint.

5. This misconduct by OCEMA, its affiliates, its ocean carrier members, and signatories to the CCMP Agreement constitutes precisely the type of unlawful conduct that the Commission has held should be the focus of enforcement efforts under 46 U.S.C. § 41102(c): conduct by “regulated entities who abuse the maritime shipping public by imposing unjust and unreasonable business methods, and who do so on a normal, customary, and continuous basis, and thereby negatively impact maritime transportation competition or inflict detrimental effect upon the commerce of the United States.” 83 Fed. Reg. 45367, 45372 (Sept. 7, 2018). The IMCC therefore seeks a declaratory judgment, a cease and desist order, reasonable attorneys’ fees, and such other relief as the Commission determines to be proper against the Respondents to end these ongoing violations of the Shipping Act.

THE COMPLAINANT

6. Complainant IMCC is a conference of the American Trucking Associations, Inc. (“ATA”), a District of Columbia corporation. Its business address is 950 North Glebe Road, Suite 210, Arlington, VA 22203. The IMCC mission statement directs the conference to provide a stronger, more unifying and effective policy voice for the large and growing intermodal motor carrier sector before both government and private entities on key issues including roadability, economic and operational fairness and infrastructure efficiencies. The IMCC’s membership includes ATA member companies engaged in the intermodal transportation of property, including the interchange of chassis with respect to receipt and return of the

containers of respondent ocean carriers. The filing of this Complaint was authorized by the IMCC's Board of Directors and its Executive Committee as fulfilling its mission to protect the economic, operational, and efficiency interests of its members. IMCC has associational standing to bring this Complaint on behalf of IMCC members because its members would otherwise have standing to sue these Respondents in their own right; IMCC seeks by this Complaint to protect interests germane to its organizational purpose; and, individual IMCC members do not need to participate in this action for the Commission to issue orders to Respondents to cease and desist from violating the Shipping Act.

THE RESPONDENTS

7. Respondent OCEMA is a District of Columbia non-profit corporation established pursuant to FMC Agreement No. 011284, effective July 6, 1990, and the latest version of which is No. 011284-81, effective July 6, 2020. OCEMA's business address is 1200 19th Street, N.W., 3rd Floor, Washington, D.C. 20036. According to its website:

OCEMA is an association of major U.S. and foreign flag international ocean common carriers. OCEMA provides a forum for its members to discuss, evaluate and reach agreement with respect to matters pertaining to the interchange, transportation, use and operation of carrier equipment in the U.S. Included in its scope are equipment-related operational, safety, and regulatory activities such as participation in industry forums, educational sessions, regulatory proceedings and legislative matters. OCEMA members operate worldwide and serve all major U.S. ports and inland locations, moving cargoes primarily in containers. As a regular part of intermodal transportation services provided to U.S. manufacturers, importers, retailers and others, OCEMA members interchange cargo to be carried to and from U.S. inland locations via motor carriers and railroads. An essential element of these inland operations involves the movement of containers on intermodal chassis and rail cars.

OCEMA, <http://www.ocema.org/about.html>.

OCEMA's "Senior Steering Committee is comprised of Senior representatives from each OCEMA member line and is the primary forum for high level policy discussions"; OCEMA's

Executive Committee serves as its board of directors. OCEMA reaches agreements on policies relating to the operation of Chassis Pools, and communicates these operating instructions to any entity formed to own or operate a Chassis Pool. OCEMA's website reports that its members are responsible for 80 percent of global container traffic. Respondent's email address is jlawrence@cozen.com.

8. Respondent CCM is a limited liability company under the laws of Delaware. CCM's headquarters is located at 500 International Drive, Suite 130, Budd Lake, NJ 07828. CCM and its affiliated pools operate pursuant to the CCMP Agreement, FMC Agreement No. 011962, the latest version of which is FMC Agreement No. 011962-016, effective July 28, 2020. According to CCM's website, "CCM's mission is to operate the most efficient and effective chassis provision model for all stakeholders. It will achieve this by following a 'fully interoperable gray pool' operating philosophy..." CCM, <https://www.ccmpool.com/About/Our-Mission.aspx>. Under Article 6.1 of the CCMP Agreement, selection of the management boards of CCM and affiliate regional pools is vested in Consolidated Chassis Enterprises, LLC ("CCE"), a Delaware limited liability company that is CCM's parent. The governing boards of CCM and its affiliates are selected by CCE, and may only include OCEMA Members that are Contributors and Users. Associate Members and Non-Regulated Entities do not have the right to participate in the selection of the Governing Board. Under Article 6.1 of the CCMP Agreement, CCE and its affiliates receive and implement OCEMA instructions regarding the operation of their chassis pools. Respondent's email address is mwilson@ccmpool.com.

9. Respondent CMA, conducting business in the United States through CMA CGM (America) LLC, is a French global ocean carrier company founded in 1978 and located at 4, Quai D'Arenc, P.O. Box 2409, 13215 Marseilles Cedex 02, France. CMA, by itself and through

its common carrier subsidiaries and affiliated companies, provides container transportation to over 420 ports in 150 countries. CMA CGM (America) LLC's U.S. office is located at 5701 Lake Wright Drive, Norfolk, VA 23502. In the United States, CMA serves multiple ports and/or intermodal terminals including New York, Baltimore, Charleston, Savannah, Jacksonville, New Orleans, Houston, Chicago, Los Angeles, and Oakland. CMA is a member of OCEMA and the CCMP Agreement. Respondent's email address is usa.thaas@usa.cma-cgm.com.

10. Respondent COSCO, conducting business in the United States through COSCO Shipping (North America) Inc., is a Chinese global ocean carrier company founded in 1964 and located at No. 378 Dong Da Ming Road, Shanghai, 200080, People's Republic of China. COSCO is a subsidiary of COSCO Shipping Corporation Limited, a company established after the 2016 merger of COSCO and China Shipping. COSCO's U.S. office is located at 100 Lighting Way, Secaucus, NJ 07094. COSCO, by itself and through its common carrier subsidiaries and affiliated companies, offers container transportation in 356 ports in 105 countries. In the United States, COSCO serves multiple ports and/or intermodal terminals including New York, Norfolk, Savannah, Charleston, Miami, Chicago, Los Angeles, and Long Beach. COSCO is a member of OCEMA and the CCMP Agreement. Respondent's email address is jhoughta@cosco-usa.com.

11. Respondent Evergreen is a joint service agreement between Evergreen Marine Corp. (Taiwan) Ltd., Italia Marittima S.P.A., Evergreen Marine (Singapore) Pte Ltd, Evergreen Marine (UK) Ltd., and Evergreen Marine (Hong Kong) Ltd., FMC Agreement No. 011982 and located at No. 163, Sec. 1, Hsin-Nan Road, Luchu Hsian, Taoyuan Hsien, 338, Taiwan. Evergreen conducts business in the United States through Evergreen Shipping Agency (America) Corporation, located at One Evertrust Plaza, Jersey City, NJ 07302. Evergreen, by itself and

through its common carrier subsidiaries and affiliated companies, provides container transportation at 240 ports globally in 80 countries. In the United States, Evergreen serves multiple ports and/or intermodal terminals including New York, Norfolk, Savannah, Charleston, Tacoma, Oakland, and Los Angeles. Evergreen is a member of OCEMA and the CCMP Agreement. Respondent's email address is TomWang@evergreen-shipping.us.

12. Respondent Hapag-Lloyd, conducting business in the United States through Hapag-Lloyd (America) LLC, is a German global container carrier company founded in 1970 and located at Ballindamm 25, 20095 Hamburg, Germany. Hapag-Lloyd (America) LLC's U.S. address is 399 Hoes Lane, Piscataway, NJ 08854. Hapag-Lloyd, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation on major trade routes in 129 countries and provides connections between more than 600 ports. In the United States, Hapag-Lloyd serves multiple ports and/or intermodal terminals including Norfolk, Charleston, Savannah, Port Everglades, Houston, Chicago, Los Angeles, and Long Beach. Hapag-Lloyd is a member of OCEMA and the CCMP Agreement. Respondent's email address is thomas.barattini@hlag.com.

13. Respondent HMM is a South Korean global ocean carrier company founded in 1976 and located at 194 Yulgok-ro, Jogno-gu, Seoul, Korea. HMM's global reach includes four international headquarters, 27 subsidiaries, 76 branches, five overseas offices, and 10 liaison offices. HMM conducts business in the United States through Hyundai America Shipping Agency Inc., located at 7701 Las Colinas Ridge, Suite 400, Irving, TX 75063. HMM, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation to multiple U.S. ports and/or intermodal terminals including New York, Norfolk, Savannah, Jacksonville, El Paso, Chicago, Oakland, Long Beach, and Los Angeles. HMM is a

member of OCEMA and the CCMP Agreement. Respondent's email address is hikid@hmma.com.

14. Respondent Maersk, conducting business in the United States through Maersk Inc., is a Danish global ocean carrier company founded in 1904 and located at 50, Esplanaden, DK-1098 Copenhagen, Denmark. Maersk Inc.'s U.S. office is located at 9300 Arrowpoint Boulevard, Charlotte, NC 28273. Maersk, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation and is the world's largest container and supply vessel operator. In the United States, Maersk serves multiple ports and/or intermodal terminals including New York, Baltimore, Charleston, Jacksonville, Miami, Houston, New Orleans, Chicago, and Los Angeles. Maersk is a member of OCEMA and the CCMP Agreement. Respondent's email address is tom.weisberg@maersk.com.

15. Respondent MSC, conducting business in the United States through Mediterranean Shipping Company (USA) Inc., is a global container shipping company founded in 1970 and headquartered at S.A. Chemin Rieu 12-14, 1208 Geneva, Switzerland. Mediterranean Shipping Company (USA) Inc.'s U.S. office is located at 420 5th Avenue, 8th Floor, New York, NY 10018. MSC, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation in over 300 ports globally. In the United States, MSC serves multiple ports and/or intermodal terminals including New York, Norfolk, Charleston, Savannah, New Orleans, Houston, Chicago, Oakland, and Los Angeles. MSC is a member of OCEMA and the CCMP Agreement. Respondent's email address is robert.milazzo@msc.com.

16. Respondent ONE, conducting business in the United States through Ocean Network Express (North America) Inc., is a global ocean carrier company founded in 2017, with

global headquarters located at 7 Straights View, #16-01 Marina One East Tower, Singapore 018936. Ocean Network Express (North America) Inc.'s U.S. address is 8730 Stony Point Parkway, Suite 150, Richmond, VA 23235. ONE, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation to a network that encompasses a fleet of 250 vessels operating in over 100 countries. In the United States, ONE serves multiple ports and/or intermodal terminals including New York, Norfolk, Savannah, Houston, Chicago, and Los Angeles. ONE is jointly owned by the Japanese shipping companies Nippon Yusen Kaisha, Mitsui O.S.K. Lines Ltd., and Kawasaki Kisen Kaisha Ltd. (K Line) through Ocean Network Express Holdings Ltd, Japan. ONE is a member of OCEMA and the CCMP Agreement. Respondent's email address is dave.daly@one-line.com.

17. Respondent Wan Hai, conducting business in the United States through Wan Hai Lines (USA) Ltd., is a Taiwanese global ocean carrier company founded in 1965 and located at 10th Floor, No. 136, Sung Chiang Road, Taipei 10417, Taiwan. Wan Hai's U.S. address is 301 E. Ocean Boulevard, #1650, Long Beach, CA 90802. Wan Hai, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation, operating roughly 20 routes in 43 major international ports. In the United States, Wan Hai serves multiple ports including Seattle, Long Beach, and Los Angeles. Wan Hai is a member of OCEMA. Respondent's email address is tim_murphy@wanhai.com.

18. Respondent Yang Ming is a Taiwanese global ocean carrier company founded in 1972 and located at 271 Ming De 1st Road, Cidu District, Keelung 20646, Taiwan, Republic of China. Yang Ming, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation in Asia, Europe, America, and Australia. Yang Ming conducts business in the United States through Yang Ming (America) Corporation, whose

office is located at One Newark Center, 1085 Raymond Boulevard, 9th Floor, Newark, NJ 07202. In the United States, Yang Ming serves multiple ports and/or intermodal terminals including New York, Norfolk, Charleston, Houston, Chicago, Wilmington, Long Beach, and Los Angeles. Yang Ming is a member of the CCMP Agreement. Respondent's email address is austinchen@us.yamgming.com.

19. Respondent Zim, conducting business in the United States through Zim American Integrated Shipping Services Company, Inc., is an Israeli global ocean carrier company founded in 1945, and located at 9 Andrei Sakharov St., "Matam"- Scientific Industries Center, P.O.B. 1723, Haifa 31016, Israel. Zim American Integrated Shipping Services Company, Inc.'s U.S. address is 5801 Lake Wright Drive, Norfolk, VA 23502. Zim, by itself and through its common carrier subsidiaries and affiliated companies, provides container transportation to over 100 countries and networks in major strategic ports worldwide. In the United States, Zim serves multiple ports and/or intermodal terminals including New York, Norfolk, Savannah, Miami, New Orleans, Houston, Chicago, Seattle, Oakland, and Los Angeles. Zim is a member of OCEMA and the CCMP Agreement. Respondent's email address is messaging.dennis@us.zim.com.

JURISDICTION AND LEGAL AUTHORITY

20. The Commission has jurisdiction over this Complaint pursuant to 46 U.S.C. § 41301 because it alleges violations of the Shipping Act of 1984, 46 U.S.C. § 41102(c), by ocean common carriers and their agents engaged in international maritime commerce of the United States at ports and inland intermodal terminals where they engage in the interchange of cargo containers and container chassis moving in such commerce. Section 41102(c) provides:

(c) Practices in Handling Property.—

A common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.

21. The Commission has personal jurisdiction over the ocean carrier respondents because they have engaged and continue to engage in such international maritime commerce of the United States, and because they have submitted to the jurisdiction of the Commission by filing agreements with the Commission as required by 46 U.S.C. §§ 40301(a), 40302. Article 5.8 of the Ocean Carrier Equipment Management Association, FMC Agreement No. 011284, expressly acknowledges that its agreements on issues specified in that section are “Subject to the Shipping Act of 1984, as amended.” The Commission has jurisdiction over OCEMA as an entity created pursuant to FMC Agreement No. 011284 and as an agent for its ocean carrier members. The Commission has jurisdiction over Consolidated Chassis Management, LLC and its affiliates as entities created pursuant to the CCMP Agreement, FMC Agreement No. 011962, and as agents for the members of OCEMA who control their governance pursuant to the provisions of that agreement.

FACTUAL ALLEGATIONS

A. Chassis and the Development of the Business Models Used to Provide Them

22. A chassis used by motor carriers to move containers “is a frame with a suspension and axle system, wheels and tires, brakes, a lighting and electrical system, a coupling for towing behind a truck tractor, and twistlocks that provide the securement points to the corner castings on a container. Newly constructed and remanufactured chassis often have high-tech components such as asset tracking, or GPS, weight sensors and automatic tire inflation systems.” Intermodal Association of North America (“IANA”), *Intermodal Factbook*, at 14 (2018), IANA,

<https://www.intermodal.org/sites/default/files/documents/2018-08/IntermodalFactbook.pdf>.

Chassis used to move international containers are generally sized to accommodate the 20, 40, or 45-foot container lengths standardized by the International Standards Organization. *Id.*

23. Motor carriers usually bring a chassis onto a port dock where a container is loaded onto the chassis. This is referred to as a “landed” operation, since the containers are stored stacked without chassis. In contrast, at inland intermodal terminals, the railroad or ramp operator loads a container onto a chassis prior to the motor carrier’s arrival, which is referred to as a “wheeled” operation. Motor carriers then move the container and the chassis on which the container sits to a customer location, where it generally remains until the motor carrier picks up the container and chassis for its return to the port or terminal. Once the container is off-loaded from the chassis, the chassis is returned to the appropriate drop-off location, which may be on or off port, unless the chassis is used to pick up another container. Depending on circumstances, the roundtrip may take 10 or more days. For MH movements, the motor carrier is generally charged a daily usage fee from the time of pick-up to drop-off. In some instances, the motor carrier may be allowed a certain number of free days, in which case the subsequent charges may be denominated “per diem” charges.

24. There are currently in the United States between 400,000 and 500,000 chassis used in the haulage of international containers.

25. There are multiple business models by which chassis may be provided for daily use for the interchange of containers. In other countries, including Canada and Mexico, motor carriers own or lease chassis, facilitating efficient pick-up and drop off of containers using the same chassis. *Id.* at 15. In the United States, historically ocean carriers owned or directly leased chassis. Motor carriers had to pick up and return both a chassis and container from an ocean

carrier. *Id.* This led to inefficiencies, particularly if some carriers had shortages while others had chassis to spare. In those cases, a motor carrier could pick up and drop off the chassis and container from one ocean carrier, but be unable to pick up and drop off the container from another.

26. According to IANA,

In the 1990s, steamship lines began entering into alliances whereby partner ocean carriers would cooperate on trade routes by sharing services and space, pooling available container slots on their vessels. In order to optimize the allocation of their chassis and minimize terminal capacity issues, steamship lines began to share chassis assets through regional cooperatives, or co-ops, and the alliance co-op chassis pool supply model. In this model, the member contributor companies that own the equipment make joint decisions regarding the pool. . . . In the U.S. the group Consolidated Chassis Management, or CCM, is a subsidiary of the Ocean Carrier Equipment Management Association, or OCEMA. CCM independently operates regional pools around the country on behalf steamship line OCEMA members that contribute chassis.

Id. As discussed *infra*, this governance structure has remained notwithstanding OCEMA members' exit from the business of owning chassis.

27. A third U.S. model for daily use of chassis is based on pools organized by chassis leasing companies. According to IANA:

In some regions, third-party chassis leasing companies have developed chassis pools independent of steamship lines and motor carriers. In this neutral chassis pool or "gray pool" supply model, the chassis leasing company owns the equipment and operates the pool by providing responsibility for the equipment, maintenance and repair, insurance, and repositioning of assets based off the chassis' supply and demand. In this model, motor carriers, steamship lines and other customers use a chassis by "renting" the equipment at a daily rate. This allows users to operate individual or multiple chassis without the need to maintain and administer the daily operations of the fleet. Examples of "gray pools" include the Pool of Pools in Los Angeles/Long Beach....

Id. at 16. As alleged *infra*, the respondent ocean carriers have adopted and enforced regulations and procedures that prevent motor carriers from exercising the ability to choose chassis from participant pools.

28. “In the US, starting in 2009, ocean carriers began withdrawing from the chassis business. Most transferred their equipment to a few major intermodal equipment providers (IEPs) that now own, maintain and provide chassis....” Statement of Commissioner Rebecca Dye before the *Surface Transportation Board Oversight Hearing on Demurrage and Accessorial Charges* (May 22, 2019) (“Dye Statement”), <https://www.fmc.gov/statement-of-dye-stb-demurrage>. According to a March 5, 2014 presentation by CCM on behalf of OCEMA, entitled *Operational and Commercial Changes in the Chassis World*, CCM, [https://www.ccmpool.com/UploadedDocuments/Chassis%20Provision%20Outreach%20Presentation%20Feb%202014%20\(2\).pdf](https://www.ccmpool.com/UploadedDocuments/Chassis%20Provision%20Outreach%20Presentation%20Feb%202014%20(2).pdf) (“March 5, 2014 Presentation”), in 2009, the ocean carriers owned 51 percent of chassis. By 2013, that percentage had been reduced to 17 percent, with leasing companies owning the remainder. *Id.* Slide 9. Today, none of the respondent ocean carriers owns chassis in the United States.

29. At present, three major IEPs lease chassis to ocean carriers and motor carriers: TRAC Intermodal, Direct ChassisLink Inc. (“DCLI”), and Flexi-Van, as well as several smaller providers.

30. Some motor carriers own their own chassis. Several IMCC members participate in the North American Chassis Pool Cooperative.

31. Under all of the chassis business models described above, financial responsibility for the payment of daily chassis charges can be divided into two models.

- Under CH, the ocean carrier tariff or contract includes the transport of a container to or from a shipper’s or receiver’s point of delivery, and the ocean carrier is thus responsible for payment of chassis charges.

- Under MH, the motor carrier (or, in limited instances, the shipper/receiver) bears financial responsibility for daily container and chassis fees. *See, e.g.*, March 5, 2014 Presentation at Slide 12. Under MH, the motor carrier pays the ocean carrier or IEP and then bills its customer, the shipper or receiver, for the chassis usage.

B. The OCEMA and CCMP Agreements

32. The initial version of the OCEMA agreement was filed with the Commission as the Equipment Interchange Discussion Agreement. FMC Agreement No. 011284, effective July 6, 1990. Consistent with the development of ocean carrier chassis cooperatives, as described in paragraph 26, the scope of the Discussion Agreement was expanded, effective May 20, 1999, so that, “Subject to any restrictions in the Shipping Act of 1984, as amended, the parties [ocean carriers] may also discuss, negotiate, and agree upon joint contracts, joint purchase and joint lease of inland transport services, inland depot services, pools, equipment, terminals, and other facilities.” Article 5.8, FMC Agreement No. 011284-33. Effective April 18, 2000, the Discussion Agreement was renamed the Ocean Carrier Equipment Management Association. FMC Agreement No. 011284-35.

33. In 2005, the OCEMA Agreement’s scope was expanded to its current role of establishing and overseeing the operation of the chassis pools now managed by CCM. FMC Agreement No. 011284-58, effective October 5, 2005, further permitted OCEMA discussions and agreements in Article 5.8 to include the establishment of pools, as well their use; and to add new Article 5.13 that provides, *inter alia*, “The parties may also form, own, and operate corporations, limited liability companies, holding companies, and other entities, formed either for profit or not for profit, to establish, own, and/or operate equipment pools or pool-owning companies.”

34. In 2006, the CCMP Agreement, FMC Agreement No. 011962, effective June 30, 2006, was filed to carry out the provisions of the revised OCEMA Agreement. Its stated purpose was “to provide for the formation of local, metropolitan, and/or regional Chassis Pools” at marine and intermodal terminals throughout the United States. Parties to the Agreement include OCEMA and its members, as well as CCM and its affiliates. Under Article 6.1 of the Agreement, “Operating rules for each Chassis Pool and the rates, charges, terms and conditions under which Chassis are contributed to a Chassis Pool and/or are utilized by Users will be established by for the Chassis Pool by a board of directors, board of managers, or other governing body (the ‘Governing Board’) of the Affiliate owning the Chassis Pool.”

35. Under that original CCMP Agreement, selection of the management boards of CCM and affiliate regional pools was vested in CCM. Further, “Associate Members shall not have the right to participate in the selection of the Governing Board. Without limitation, OCEMA may discuss and agree on policies and other matters relating to the operation of Chassis Pools and may communicate same to CCM, an Affiliate, or other Entity formed to own or operate the Chassis Pool.”

36. FMC Agreement No. 011962-007, effective December 29, 2011, reorganized CCM by adding a holding company, CCM Holdings, LLC, and a Pool subsidiary, CCM Pool, LLC. It also added a limitation to Article 6.1 regarding governing board membership: “Only OCEMA Members that are Contributors and Users shall be eligible to serve on the Governing Board.” CCM Holdings, LLC was renamed to the current Consolidated Chassis Enterprises, LLC (“CCE”) by FMC Agreement No. 011962-010, effective January 29, 2014. The current authority of OCEMA and its members to instruct the various CCM affiliate governing boards reads: “Without limitation, OCEMA may discuss and agree on policies or other matters relating

to the establishment or operation of Chassis Pools and may communicate same to CCE, an Affiliate, or other Entity formed to own or operate the Chassis Pool.” CCMP Agreement Article 6.1.

37. According to OCEMA’s website, the CCM pools have over 110,000 chassis under management.¹ The South Atlantic Chassis Pool (“SACP”) operates under its own agreement, FMC Agreement No. 011980. Article 6.1 of the SACP Agreement mirrors the same article of the Consolidated Chassis Pool Agreement, and authorizes OCEMA and its members to instruct any entity “formed to own or operate the Chassis Pool as to policies and other matters relating to the establishment or operation of” the pool.

38. The standard form Master Chassis Contribution Agreement, Section 11.9, under which IEP’s contribute chassis to a CCM-managed pool, provides:

This Agreement establishes a contract between the parties and shall not be construed to create a partnership or joint venture between the parties hereto. Contributor shall not have any ownership rights or interest in the assets of the Chassis Pool or (CCM POOL NAME) other than chassis it contributes. (CCM POOL NAME) shall not be deemed to have any ownership or leasehold interest in Contributor’s Chassis in the Chassis Pool.

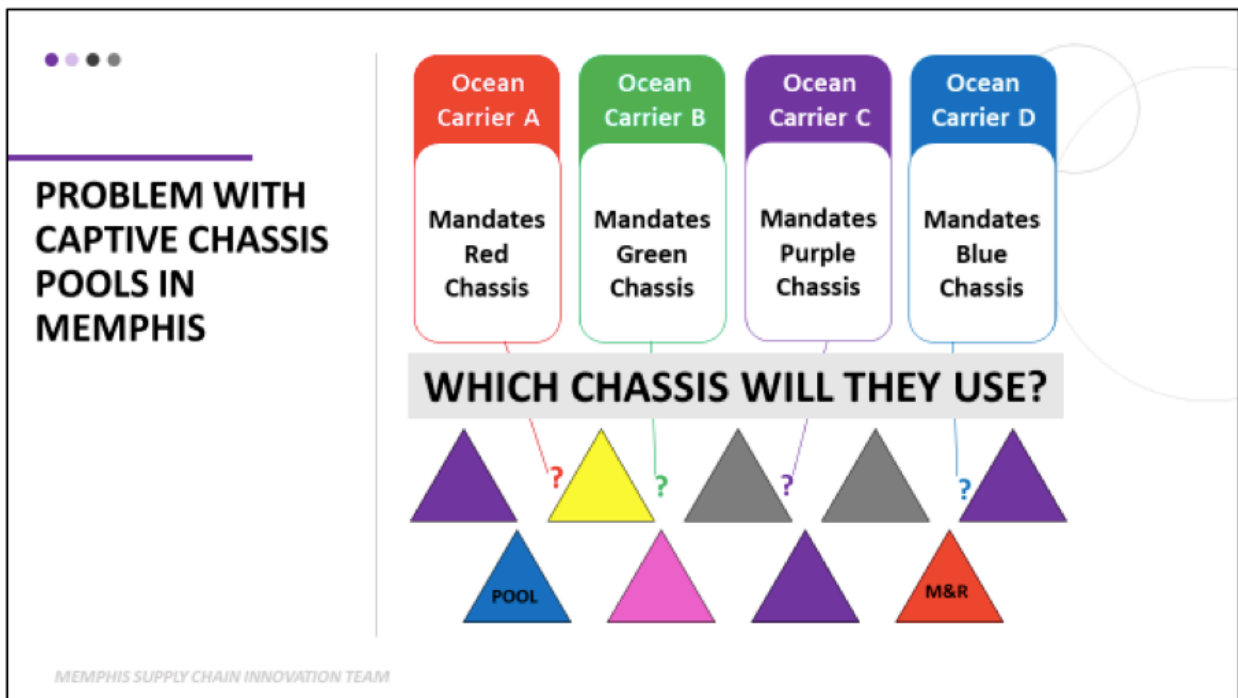
CCM, Master Chassis Contribution Agreement, [https://www.ccmpool.com/Uploaded Documents/Sample%20contribution%20agreement%20for%20Ocean%20Carriers%20and%20Leasing%20Companies%20\(B\).pdf](https://www.ccmpool.com/Uploaded Documents/Sample%20contribution%20agreement%20for%20Ocean%20Carriers%20and%20Leasing%20Companies%20(B).pdf).

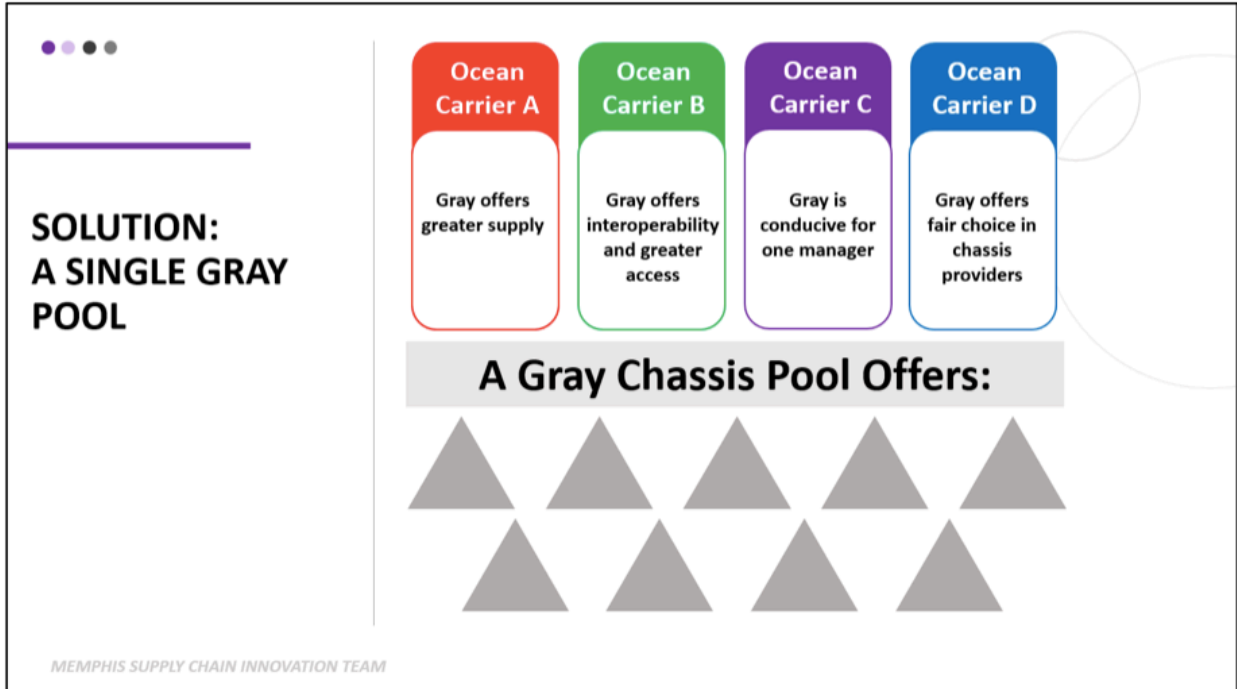
¹ The OCEMA website lists the 6 pool LLCs (of which two are being dissolved) that are subsidiaries of CCM LLC, and the port and inland terminal metropolitan areas that they serve. These CCM LLC Subsidiaries include: Chicago & Ohio Valley Consolidated Chassis Pool LLC; Denver Consolidated Chassis Pool LLC; Gulf Consolidated Chassis Pool LLC (closing August 19, 2020); Mid-South Consolidated Chassis Pool LLC (closing August 19, 2020); Mid-West Consolidated Chassis Pool LLC; and South Atlantic Chassis Pool LLC. OCEMA, <http://www.ocema.org/ccm.html>.

C. The Benefits of “Gray” Pools Over Single-Provider Pools

39. Both the Commission and OCEMA/CCM have recognized the benefits of chassis pools that are interoperable (from the standpoint of usage with the containers of multiple ocean carriers) and that are managed by a neutral party with no interest in favoring particular ocean carriers or IEPs, e.g., with respect to the use of a particular chassis by a motor carrier. The 2019 report of the Memphis Supply Chain Innovation Team, convened as part of Commission Fact Finding No. 28, articulated the benefits of such a “gray” pool in contrast with single-provider “captive” chassis pools dedicated to serving the containers of one or a few ocean carriers when used for pick-ups and returns to a terminal:

The Memphis Supply Chain Innovation team believes the answer to reducing gridlock and improving supply chain velocity in the Mid-South is a single gray chassis pool in Memphis offering greater supply, quality, fair access, and accountability. A gray pool allows interoperability of all chassis, which is the exchange of any color chassis for usage.





FMC, *White Paper Submitted by The Memphis Supply Chain Innovation Team, A Single Gray Chassis Pool Fosters Fluid Commerce and Improves Supply Chain Velocity* Team assembled as part of FMC Fact Finding Detention and Demurrage Investigation 28, at 4, <https://www.fmc.gov/wp-content/uploads/2019/05/MemphisSupplyChainWhitepaper.pdf>.

40. As noted by the Commission’s Fact Finding Officer, Commissioner Rebecca Dye:

In our inland rail locations where most containers are mounted on chassis, there is no customer relationship between truckers and chassis providers or involvement in chassis provisioning decisions made by others. Moreover, since over 50% of the freight movement in the mid-south is merchant haulage, meaning that the shipper or designated trucker bears responsibility for the freight delivery, this lack of ability to resolve problems is systemic. For this reason, I support greater chassis “choice” for motor carriers and shippers on merchant haulage moves. ...

The Memphis Team concluded that the essential qualities of a high performing gray chassis pool are: 1. Adequate supply of interoperable chassis; 2. Safe and good quality chassis; 3. Reasonable access to chassis: “choice on merchant haulage;” and 4. Most critical, a pool manager, with authority and accountability for chassis supply. I am pleased to say that there is wide support for a gray chassis pool in Memphis. ... OCEMA ... members and executive leadership were present at the meeting and also supported the gray chassis pool initiative. The two major chassis providers were also represented at the December meeting.

Dye Statement, <https://www.fmc.gov/statement-of-dye-stb-demurrage>.

41. OCEMA has expressly recognized the operational inefficiencies that result from the use of dedicated or single-provider chassis pools. Further, OCEMA has articulated the attributes and benefits of a neutrally-managed interoperable and competitive gray pool, including the benefits to motor carriers.

42. For example, in the CCM presentation *Interoperability Matters! The Interoperable Gray Pool Model, Enhancing Supply Chain Efficiencies*, OCEMA made the following points, among others, (slides 5, 9):

POSITIVE IMPACT OF A NEUTRAL MANAGER

- Single point of contact** for supply chain stakeholders allows for “ease of doing business” and consistent service.

- Impartial and transparent control** across all equipment providing quality road ready chassis

- Being **Non-asset based** facilitates an “**open competition**” environment through low barriers to entry.

FOR MOTOR CARRIERS

In a CCM Interoperable Pool the Motor Carrier enjoys the **freedom to use the chassis of his choice on multiple container moves without having to unhook from the chassis**. This saves time and money; is safer, and allows the motor carrier to be more efficient thus adding much needed truck capacity to the supply chain.

In a CCM Pool, given a broader range of chassis suppliers, Motor Carriers can **negotiate better terms and lower rates**. This can differ by region depending on the area they are operating in and volumes required.

CCM, <https://www.slideshare.net/ConsolidatedChassisManagement/interoperability-matters-the-interoperable-gray-chassis-pool>.

This OCEMA statement of gray pool attributes and benefits sets out clear criteria against which the justness and reasonableness of oceans carriers’ regulations and practices regarding chassis pools may be fairly assessed under § 41102(c). Importantly, these criteria include *both* interoperability and chassis choice.

RESPONDENTS' UNJUST AND UNREASONABLE CONDUCT

A. Respondents' Conduct Restricts Chassis Competition and Creates Inefficiencies in CCM-Managed Pools.

43. Notwithstanding OCEMA's policy statements favoring chassis choice and gray pools, OCEMA members acting through the governing boards of CCM and its affiliates have adopted and maintained rules that expressly authorize ocean carriers participating in a chassis pool to reject or frustrate interoperability and chassis choice. Ocean carrier members of CCM-managed pools have engaged, and continue to engage, in patterns and practices of conduct to exploit such rules to prevent or frustrate chassis choice that IMCC members wish to exercise.

44. In particular, the CCMP Operations Manual gives ocean carriers veto power over motor carrier chassis choice and prevents motor carriers from exercising "the freedom to use the chassis of [their] choice." Section 5.7 of the CCMP Operations Manual, Version 4.2 (July 20, 2020), https://www.ccm_pool.com/UploadedDocuments/Membership/Resources/LEGAL-45198472v1-CCMP-Ops-Manual-v42.pdf states: "under the Choice Program, Usage Days may be directed to another User [e.g., a contributor whose chassis is being used for a particular movement] when the Container Line Operator and the User for whom the Container Line Operator is a Customer *authorize a deviation from the default assignment.*" (emphasis added). OCEMA members and affiliated entities have engaged, and continue to be engaged in, a pattern and practice of refusing motor carrier requests for "deviations" as a matter of course. IMCC members have received innumerable denials—often with identical boilerplate language—rejecting motor carrier requests to designate a chassis provider other than the default chassis provider.

45. An example of such communications from a CCM staff member to an IMCC member that had requested such a deviation to the chassis provider of its choice states:

As discussed we cannot update these at this time. As you know, it is critical for the pool to be able to identify the User and properly assign usage. Accordingly, SACP must follow the operating rules as set out in the User Agreements and Operations Manual. Since the inception of the Choice Program the process has been that usage is assigned to the container by default. ***Choice is available only when the container owner indicates that they permit exceptions to the default assignment.*** These are the rules that all pool participants have been operating under. We suggest that you contact your principal on these merchant haulage moves (the shipper) or the relevant ocean carrier.

(emphasis added)

46. CCM publishes a table on its website listing each port and intermodal terminal served by a CCM-managed pool and each ocean carrier serving them. The table then notes the ocean carrier's "published chassis policy." CMM, <https://www.ccmpool.com/Membership/Chassis-Providers/Index.aspx>. Numerous Respondents list specific IEPs that must be used to move their containers. Others require an exception request and prior approval, which are regularly denied. All of this conduct violates the Shipping Act.

B. Respondents Use the IEP Contracting Process to Prevent Chassis Choice and Overcharge Motor Carriers for Chassis on Merchant Haulage.

47. In addition to rules-based regulations and practices that prevent chassis choice, the respondent ocean carriers mandate that IEPs enter into contracts that compel IEPs to overcharge motor carriers for chassis for MH movements. As Commissioner Dye has noted: "[A]lthough carriers have transferred ownership of chassis to IEPs, they still exert significant control over chassis provision—and thus availability—through their contracts with IEPs. That control not only applies to *carrier haulage* moves, but also can limit provider choice under *merchant haulage* – even though shippers are billed for chassis use." Dye Statement, <https://www.fmc.gov/statement-of-dye-stb-demurrage/> (emphasis added).

48. Through these contracts, respondent ocean carriers eliminate competition for MH chassis nationwide by awarding such chassis contracts to IEPs on the basis of CH *alone* even

though the winning contractor is designated as the default provider for *both* CH and MH chassis. This practice not only restrains competition for MH chassis but also forces chassis providers to overcharge for MH movements and undercharge for CH to obtain the contract award. These MH overcharges are paid by motor carriers, which are the direct purchasers of chassis leasing services. Motor carriers have no option other than to pay the default IEP whatever price is necessary in order for the IEP to offset the undercharge on CH movements.

49. Indeed, respondent ocean carriers cite their designation of an IEP as the default chassis provider as the reason for denying chassis choice. For example, one respondent ocean carrier denied an IMCC member chassis choice, explaining:

I'm am [sic] truly sorry, but unfortunately HMM **cannot** give consent to CCM to allow open choice. As I have stated before, we have a contract that requires HMM to utilize DCLI exclusively for both CH and HM [sic] haulage and giving consent to allow open choice would put HMM in violation of the contract.

[postscript to copied CCM staff member:] **Please note that HMM does not consent with this request and cannot grant open choice!**

(emphasis added)

C. Respondents Restrict Competition at Non-CCM Ports and Terminals and Are Expanding the Geographic Scope of Their Restrictive Conduct by Abandoning CCM Pools.

50. Respondent ocean carriers further restrict chassis choice at non-CCM ports and terminals through box rules that assign chassis “usage” and thus reimbursement to their designated IEP rather than to competing chassis providers. The Commission has recognized that ocean carriers “exert control over chassis via ‘box rules.’” *See Interpretive Rule on Demurrage and Detention Under the Shipping Act*, 85 Fed. Reg. 29,638, 29,653 (May 18, 2020) (footnotes omitted). These box rules apply to MH movements as well, and are used by respondent ocean carriers at key ports and terminals, including the Ports of Los Angeles and Long Beach.

51. Moreover, over the past two years, respondent ocean carriers have withdrawn from key CCM pools, particularly the Gulf Consolidated Chassis Pool (“GCCP”) and the Chicago & Ohio Valley Consolidated Chassis Pool (“COCP”). CCM has formally notified stakeholders that GCCP and COCP will close on August 19, 2020 and that the pools’ contracts with chassis contributors and users will be terminated as of that date.

52. At the ports and intermodal terminals served by GCCP, such as Houston and New Orleans, each respondent ocean carrier has contracted with an IEP to operate a single-provider chassis pool as the default chassis provider. At intermodal terminals in the COCP region, each respondent ocean carrier requires railroads and ramp operators to use chassis from a single-provider pool operated by their default IEP.

53. Respondents’ abandonment of pro-competitive interoperable pools in favor of single-provider pools harms motor carriers in two ways. First, it imposes rules and practices that eliminate motor carriers’ ability to exercise chassis choice. Second, it forces motor carriers to pay improper overcharges for use of designated single-provider pool chassis. As a result, these practices result in motor carriers incurring burdensome costs and inefficiencies.

54. Motor carriers cannot constrain the harm from respondent ocean carriers’ single-provider pools and unlawful practices by providing their own chassis. Motor carrier-provided chassis are only feasible in a limited number of circumstances involving daily truck drayage of international containers. Obstacles to motor carriers using their own chassis include: the additional costs and inefficiencies associated draying chassis to and from single-provider pool locations, arranging container “flips” between motor carrier-provider chassis and pool-provided chassis, and forgoing opportunities for one-way moves or street turns of equipment. These obstacles not only undermine the viability of motor carrier-provided chassis, but they also

highlight the economic and operational benefits provided by interoperable pools like the now-abandoned GCCP and COCP, such as coordinated asset tracking and chassis assignment.

Accordingly, motor carrier-provided chassis are insufficient to constrain the designated single-provider pool operator from overcharging for MH moves and undercharging for CH moves.

55. Under the Pool-of-Pools (“POP”) collaboration established by the major IEPs at the ports of Los Angeles and Long Beach, chassis owned by three chassis providers can be used on an interoperable basis. The POP touts this “gray” chassis pool as promoting efficiency and chassis availability:

Prior to the POP, the operation of multiple independent chassis pools in Los Angeles and Long Beach created situations where chassis in different pools were segregated at facilities for use only by certain user bases, and returnable only to a fraction of the facilities otherwise available to receive chassis. These inefficiencies often resulted in lost time and revenue to a motor carrier, duplicative repositioning, and confusion on terminals and rail ramps. The “gray fleet” that is the POP has smoothed the impacts to chassis operations that would have otherwise occurred in the ever-changing landscape of ocean carrier alliances and terminal operations, increases overall efficiency and availability, and significantly reduces chassis splits.

Pool of Pools, <http://www.pop-lalb.com/#tf-about>.

56. Nevertheless, due to the box rule regulations and practices of the ocean carrier respondents, while interoperability is achieved, chassis choice is prohibited, to the harm of motor carriers, shippers/receivers, and the international maritime commerce of the United States.




TRAC Intermodal’s description of the operation of the Pool-of-Pools makes clear that the effective lack of choice (as to which IEP bills for a chassis) is driven by ocean carrier restrictions, not by the IEPs:

Chassis billing for merchant haulage moves in the Pool of Pools is currently driven off of Ocean Carrier designations of chassis providers for their chassis moves originating within the Pool of Pools. If a Motor Carrier is unsure if an Ocean Carrier has designated a Pool of Pools chassis provider, the Motor Carrier should reach out to the Ocean Carrier for clarification.

In the event a Motor Carrier utilizes a Pool of Pools chassis for an Ocean Carrier that has not designated a chassis provider, that usage would be billed by the provider of the specific chassis used (e.g., if a TRAC-contributed chassis is used by a Motor Carrier for an Ocean Carrier who has made no designation of provider within the Pool of Pools, TRAC would bill the Motor Carrier for its chassis usage).

TRAC Intermodal, <https://www.tracintermodal.com/wp-content/uploads/2015/04/PoP-FAQ-revsied-April-1-MTCD.pdf>, at Q. 16.

Thus, under these box rules, where an ocean carrier designates an IEP, motor carriers must pay the rental rates of each ocean carrier’s default chassis provider for MH movements, regardless of the owner of the physical chassis used, precluding price competition among chassis providers for such movements. The matrix below, published by the POP’s IEP owners, shows the mandatory IEP assignments of each of the respondent ocean carriers.

Chassis Provider/Ocean Liner company Matrix		
		
DCLPChassis@DCLI.com	TPSP@TracIntermodal.com	FLBP_General@Flexi-Van.com
www.DCLI.com	www.TracIntermodal.com	www.Flexi-Van.com
Ocean Liner companies	Ocean Liner companies	Ocean Liner companies
CSAV	APL	Polynesian
Hapag-Lloyd	Evergreen	PIL
Hyundai Merchant Marine (HMM)	Yang Ming	Ocean Network Express (ONE)
Maersk	ZIM	
Mediterranean Shipping Company (MSC)	CMA-CGM	
Pasha Hawaii	Wan Hai	
Hamburg Sud	SM Lines	
Cosco	Orient Overseas Container	

See, Pool of Pools, http://www.pop-lalb.com/reports/POP_FAQ10-1-19.pdf, at Q. 27.

**EACH OCEAN CARRIER RESPONDENT'S
UNJUST AND UNREASONABLE REGULATIONS AND PRACTICES**

57. Each of the respondent ocean carriers who are OCEMA members have participated in the adoption and/or continuation of CCMP Operations Manual Section 5.7 –either directly through membership on the governing boards of CCM and its affiliates, or indirectly by instructing those governing boards through their membership in OCEMA. Each OCEMA member continues to participate in the adoption of the regulations and practice of CCM and its affiliates either directly or by instructing the governing boards of CCM and its affiliates, including with respect to closing CCM pools.

58. CMA engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, CMA prevented and continues to prevent chassis choice by designating the use of TRAC Intermodal in ports and intermodal terminals served by the closing GCCP, such as the ports of Houston and New Orleans, and the closing COCP, such as intermodal terminals at Chicago. Similarly, CMA restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider TRAC Intermodal. CMA further engages in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

59. COSCO engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at the closing CCM ports and/or intermodal terminals. For example, COSCO prevented and continues to prevent chassis choice by designating the use of a single provider, DCLI, as the

default provider in ports and intermodal terminals served by the closing GCCP, such as at the ports of Houston and New Orleans, and the closing COCP, such as intermodal terminals at Chicago. Similarly, COSCO restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles and Port of Long Beach, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider DCLI. COSCO further engages in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

60. **Evergreen** engaged in and continues to engage in the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example, notwithstanding SACP's rules enabling chassis choice, Evergreen's published policy at the ports and intermodal terminals of that Pool, including at Atlanta, Charleston, and Jacksonville, restricted and continues to restrict chassis usage to only DCLI. Evergreen also engages in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, Evergreen prevented and continues to prevent chassis choice by designating the use of a single provider, DCLI, as the default provider in ports and intermodal terminals served by the closing GCCP, such as at the port of Houston, and the closing COCP, such as intermodal terminals at Chicago. Similarly, Evergreen restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles and Port of Long Beach, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider TRAC Intermodal. Additionally, Evergreen charges motor carriers a chassis "per diem" for CH movements, which is not the motor carrier's responsibility. As a result, Evergreen

improperly denies the motor carrier chassis choice, and then subjects motor carriers to a “per diem” overcharge for both MH and CH movements.

61. **Hapag-Lloyd** engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, Hapag-Lloyd prevented and continues to prevent chassis choice by designating the use of a single provider, TRAC Intermodal, as the default provider in ports and intermodal terminals served by the closing GCCP, such as at the port of Houston, and the closing COCP, such as intermodal terminals at Chicago. Similarly, Hapag-Lloyd restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles and Port of Long Beach, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider DCLI. Hapag-Lloyd further engages in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

62. **HMM** engaged in and continues to engage in the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example, notwithstanding SACP’s rules enabling chassis choice, HMM’s published policy at the ports and intermodal terminals of that Pool, including at Atlanta, Charleston, and Jacksonville, restricted and continues to restrict chassis usage to only DCLI. HMM also engages in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, HMM prevented and continues to prevent chassis choice by designating the use of a single provider, DCLI, as the default provider in ports and intermodal terminals served by the closing GCCP, such as at the intermodal terminal in El Paso, and the closing COCP, such as intermodal

terminals at Chicago. Similarly, HMM restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles and Port of Long Beach, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider DCLI. HMM further engaged in and continues to engage in the contracting practices alleged in paragraphs 48-49 at said ports and intermodal terminals resulting in overcharges to IMCC members.

63. **Maersk** engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example, notwithstanding SACP's rules enabling chassis choice, Maersk's published policy at the ports and intermodal terminals of that Pool, including at Atlanta, Charleston, and Jacksonville restricted and continues to restrict chassis usage to only DCLI. Maersk also engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50, 52-56, in at least one non-CCM port and/or intermodal terminal. For example, Maersk prevented and continues to prevent chassis choice by designating the use of a single provider, DCLI, as the default provider in ports and intermodal terminals, such as at the ports of Houston, New Orleans, and the intermodal terminal at Chicago. Similarly, Maersk restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider DCLI. Maersk further engaged in and continues to engage in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

64. **MSC** engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example,

notwithstanding SACP's rules enabling chassis choice, MSC's published policy at the ports and intermodal terminals of that Pool, including Atlanta, Charleston, and Jacksonville restricts chassis usage to only DCLI. MSC also engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, MSC prevented and continues to prevent chassis choice by designating the use of a single provider, DCLI, as the default provider in ports and intermodal terminals served by the closing GCCP, such as at the ports of Houston and New Orleans, and the closing COCP, such as intermodal terminals at Chicago. Similarly, MSC restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider DCLI. MSC further engaged in and continues to engage in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

65. **ONE** engaged in and continues to engage in in each form of the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example, as a member of the SACP, notwithstanding the goal of the Pool to provide chassis choice, ONE's published policy at the ports and intermodal terminals of that Pool, including at Atlanta, Charleston, and Jacksonville is to default chassis usage to TRAC Intermodal unless an exception is requested and approved. However, ONE routinely denied and continues to deny exception requests. ONE also engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, ONE prevented and continues to prevent chassis choice by designating the use of a single provider, TRAC Intermodal, as the

default provider in ports and intermodal terminals served by the closing GCCP, such as at the ports of Houston and New Orleans. ONE also prevented and continues to prevent chassis choice by designating the use of a single provider, Flexi-Van, at the closing COCP, such as intermodal terminals at Chicago. Similarly, ONE restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider Flexi-Van. ONE further engaged in and engages in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

66. **Wan Hai** engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 50 and 55-56, in at least one non-CCM port and/or intermodal terminal. For example, Wan Hai restricts chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles and Port of Long Beach, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider TRAC Intermodal. Wan Hai further engaged in and continues to engage in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

67. **Yang Ming** engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example, as a member of the SACP, notwithstanding the goal of the Pool to provide chassis choice, Yang Ming's published policy at the ports and intermodal terminals of that Pool, including at Atlanta, Charleston, and Jacksonville, is to default chassis usage to TRAC Intermodal unless an exception is requested and approved. However, Yang Ming routinely denied and continues to deny exception requests. Yang Ming also engaged in and continues to

engage in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, Yang Ming prevented and continues to prevent chassis choice by designating the use of a single provider, TRAC Intermodal, as the default provider in ports and intermodal terminals served by the closing GCCP, such as at the ports of Houston, and the closing COCP, such as intermodal terminals at Chicago. Similarly, Yang Ming restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles and Port of Long Beach, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider TRAC Intermodal. Yang Ming further engaged and continues to engage in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

68. **Zim** engaged in and continues to engage in each form of the unlawful conduct alleged in paragraphs 43-44, in at least one CCM port and/or intermodal terminal. For example, as a member of the SACP, notwithstanding the goal of the Pool to provide chassis choice, Zim's published policy at the ports and intermodal terminals of that Pool, including at Atlanta, Charleston, and Jacksonville, is to default chassis usage to TRAC Intermodal unless an exception is requested and approved. However, Zim routinely denied and continues to deny exception requests. Zim also engages in each form of the unlawful conduct alleged in paragraphs 50-56, in at least one non-CCM port and/or intermodal terminal as well as at closing CCM ports and/or intermodal terminals. For example, Zim prevented and continues to prevent chassis choice by designating the use of a single provider, TRAC Intermodal, as the default provider in ports and intermodal terminals served by the closing GCCP, such as at the ports of Houston and New Orleans, and the closing COCP, such as intermodal terminals at Chicago. Similarly, Zim

restricted and continues to restrict chassis choice by enforcing the box rule regulations and practices at the Port of Los Angeles, thereby denying motor carriers freedom of choice by requiring chassis usage to be billed by its default provider TRAC Intermodal. Zim further engaged in and continues to engage in the contracting practices alleged in paragraph 48 at said ports and intermodal terminals resulting in overcharges to IMCC members.

69. In each instance in which a respondent ocean carrier designates a default or mandatory IEP, IMCC members must pay a price for chassis usage for MH movements that is above a cost-based price for such usage, including a rate-of-return, while such respondent ocean carrier pays a price for CH usage that is below that cost-based price. Such CH undercharge is financially supported by revenues from the IEP's MH overcharges, and such Respondent's designation of a default or mandatory IEP for MH is undertaken with the effect of providing the designated IEP with the ability to generate revenue to support such CH undercharges.

CAUSE OF ACTION

RESPONDENTS' UNJUST AND UNREASONABLE REGULATIONS AND PRACTICES VIOLATE 46 U.S.C. § 41102(C)

70. The IMCC incorporates by reference the facts and allegations stated in paragraphs 1-69 as if fully set forth herein.

71. The interchange and assignment of motor carrier chassis relates to the "receiving, handling, storing, or delivery of property" under § 41102(c). *See Petition of the Association of Bi-State Motor Carriers*, 30 S.R.R. 104 (2004) (finding that truck detention rules fall within the scope of § 41102(c) because they "are integral to the loading and unloading of cargo from common carriers, the interchange of containers and chassis, and the ultimate delivery of property for shippers.").

72. *Distribution Services, Ltd. v. Transpacific Freight Conference of Japan*, 24 S.R.R. 714 (1988) is the seminal case setting out the principles for determining violations of 46 U.S.C. § 41102(c). See *Interpretive Rule on Demurrage and Detention Under the Shipping Act*, 85 Fed. Reg. at 29,651 (citing *Distribution Services* for “the well-established principle that to pass muster under section 41102(c), a regulation or practice must be tailored to meet its intended purpose, that is, ‘fit and appropriate for the end in view.’”). In *Distribution Services*, the Commission found in violation of that section a rule of a conference operating under an effective FMC agreement that precluded reimbursement for container transloading unless that transloading was undertaken by a third party. In so doing, the FMC held:

Section 10(d)(1) derives from the second paragraph of section 17 of the 1916 Act. In *Port of San Diego* ... the Commission stated with respect to section 17:

Section 17 requires that the practices of terminals be just and reasonable. “Reasonable” may mean or imply “just, proper,” “ordinary or usual,” “not immoderate or excessive,” “equitable,” or “fit and appropriate to the ends in view.” Black’s Law Dictionary, Fourth Edition. It is by application to the particular situation or subject matter that words such as “reasonable” take on concrete and specific meaning. As used in section 17 and as applied to terminal practices, we think that “just and reasonable practice” most appropriately means a practice otherwise lawful but not excessive and which is fit and appropriate to the end in view.

The justness or reasonableness of a practice is not necessarily dependent upon the existence of actual preference, prejudice or discrimination. It may cause none of these but still be unreasonable.

24 S.R.R. at 721. The Commission also noted: “[a] regulation or practice may have a valid purpose and yet be unreasonable because it goes beyond what is necessary to achieve that purpose.” *Id.* at 722.

73. CCMP Operations Manual Section 5.7 is unlawful because it is unreasonable, going beyond what is necessary to achieve the requirements of gray pool management. Not only does Section 5.7 undercut OCEMA’s stated policy of chassis choice, but it is the opposite of

choice. “A regulation or practice may have a valid purpose and yet be unreasonable because it goes beyond what is necessary to achieve that purpose.” *Id.* (finding unlawful a rule of a conference operating under an in-effect Commission agreement).

74. The systematic denials, by ocean carrier respondents and OCEMA-affiliated entities, of motor carrier requests for non-default chassis usage, and the use of box rules to prevent chassis choice in non-CCM pools, are unlawful. These unreasonable and unjust practices are excessive and not appropriate to the management of gray pools, and undercut the stated OCEMA policy of chassis choice. *See id.* at 721 (“[A]s applied to terminal practices, we think that ‘just and reasonable practice’ most appropriately means a practice otherwise lawful but not excessive and which is fit and appropriate to the end in view.”).

75. Respondent ocean carriers’ practice of negotiating CH pricing but designating the winning chassis lessor as the default provider for both CH and MH chassis is unlawful because it eliminates motor carriers’ ability to negotiate MH chassis rates and service terms among competing chassis providers, overcharges motor carriers on MH movements, and undermines the stability of gray pools, contrary to OCEMA policy in favor of gray pools. Such contract provisions are not reasonably necessary to ensure the availability of sufficient chassis for MH. Respondent OCEMA members, acting directly and by means of their participation in the governing boards of CCM LLC and its affiliates, have adopted and maintained Section 5.7 of the CCMP Operations Manual prohibiting chassis choice except with the consent of the affected ocean carrier. Such continuing misconduct constitutes failure “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property” in violation of 46 U.S.C. § 41102(c).

76. Respondent ocean carriers have adopted policies and practices, including failure to consent to choice under CCMP Operations Manual section 5.7, and adoption and implementation of box rules or similar regulations and practices having the effect of precluding choice of chassis provider for MH movements. Such continuing misconduct constitutes failure “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property” in violation of 46 U.S.C. § 41102(c).

77. Respondent ocean carriers have adopted and implemented regulations and practices by which they solicit and enter into contracts for the supply of chassis in connection with the movement of a Respondent’s cargo containers, and award the contract conditioned on a grant of the exclusive right to provide chassis for MH movements. As a result of this misconduct, IMCC members are overcharged for chassis on MH movements for which they are the direct purchasers of such chassis rental services, while respondent ocean carriers receive the benefit of undercharges for chassis for CH movements. Such continuing misconduct constitutes failure “to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property” in violation of 46 U.S.C. § 41102(c).

78. The Respondents who are members of the CCM Pool Agreement have engaged in an unjust and unreasonable practice by withdrawing from the GCCP and the COCP and/or designating default single provider pools. Respondents thereby maintained their default IEP’s unchecked ability to undercharge the Respondent for CH moves and compensate by overcharging motor carrier for chassis used for MH moves. Ocean carriers’ contracts with a designated default IEP are based on a presumed percentage mix of CH and MH moves assigned

to the default IEP. The higher the proportion of MH moves that are made using the default IEP's chassis, the greater the aggregate of overcharges that support CH pricing undercharges.

However, participation in a pool that allows chassis choice may reduce the percentage of MH moves assigned to the default IEP and the funds available to support CH undercharges. Thus, the ocean carrier has an incentive to withdraw from gray pools and instead to use inefficient single-provider pools without chassis choice. To preserve these MH overcharges and CH undercharges, the Respondents have withdrawn from the GCCP and the COCP and/or have designated single-provider pools for CH and MH movements at the respective ports and inland terminals within the regions of those closing pools in violation of 46 U.S.C. § 41102(c).

79. Respondents' misconduct constitutes precisely the type of abuses of the maritime shipping public cited in the Commission's recently-adopted Policy Statement, 46 C.F.R. §545.4 clarifying the appropriate scope of § 41102(c) complaints:

The Commission believes that the interpretation and application of § 41102(c) should be properly aligned with the broader common carriage foundation and purposes of the Act. The interpretive rule is consistent with the purposes of the Shipping Act and focuses Commission activities on regulated entities who abuse the maritime shipping public by imposing unjust and unreasonable business methods, and who do so on a normal, customary, and continuous basis, and thereby negatively impact maritime transportation competition or inflict detrimental effect upon the commerce of the United States.

Commission Interpretative Statement, 83 Fed. Reg. 45367, 45372 (Sept. 7, 2018).

INJURY

80. Members of the IMCC have suffered, and will continue to suffer, injury from the Respondents' continuing violations of 46 U.S.C. § 41102(c). These injuries include the inefficiencies and costs associated with IMCC members' inability to contract with the chassis provider of their choice on MH movements and to participate in interoperable chassis pools, as a result of Respondents' restrictive regulations and practices. IMCC members have further

suffered financial injury through their direct payment of overcharges for chassis used for MH movements.

81. By compelling IEPs to inflate MH chassis prices, respondent ocean carriers have caused significant harm to IMCC members as direct purchasers of chassis for MH movements. One measure of such harm in this ocean carrier-controlled and manipulated pricing environment could be calculated on the charge each motor carrier pays for a chassis for an MH movement in excess of the cost of providing such a chassis, including an appropriate rate of return on investment.

82. Respondents' violations and overcharges have caused damages to motor carriers represented by the IMCC to be as much as \$1.8 billion during the three years prior to the filing of this Complaint.

REQUEST FOR RELIEF

WHEREFORE, the IMCC respectfully prays for relief as follows:

1. Respondents be required to answer the charges herein;
2. That after due investigation and hearing, Respondents be found to have violated 46 U.S.C. § 41102(c), as alleged herein;
3. That the Commission order the Respondents, including their respective subsidiaries and affiliated companies, to:
 - a. Remove the requirement for ocean carrier and chassis provider consent for motor carrier designation of a chassis provider on merchant haulage container movements from CCMP Operations Manual Section 5.7;

- b. Cease and desist enforcement of CCMP Operations Manual Section 5.7 regarding ocean carrier and chassis provider consent for motor carrier designation of a chassis provider on merchant haulage container movements;
- c. Cease and desist from adopting, maintaining, and/or enforcing any regulation or practice that limits the ability of a motor carrier to select the chassis provider it designates for merchant haulage movements or other movements for which a motor carrier is billed for usage or per diems, or otherwise promotes, advantages, or requires the use of default chassis providers for merchant haulage moves or other movements for which a motor carrier is billed for usage or per diems;
- d. Cease and desist from adopting, maintaining and/or enforcing default provider designations for merchant haulage container movements or other movements for which a motor carrier is billed for usage or per diems, and cease and desist from adopting, maintaining and/or enforcing any regulation or practice that restricts the ability of motor carriers independently to negotiate chassis prices for merchant haulage movements or other movements for which a motor carrier is billed for usage or per diems with the chassis provider of their choice; and
- e. Cease and desist from utilizing single-provider chassis pools that are not interoperable with pools operated by other IEPs at all ports and intermodal terminals serving more than one Respondent under rules that do not permit effective chassis choice for motor carriers for merchant haulage container movements or other movements for which a motor carrier is billed for usage or per diems;

4. The IMCC be awarded its reasonable attorneys' fees under 46 U.S.C. § 41305(e); and
5. The IMCC be awarded such other relief as the Commission determines to be proper.

REQUEST FOR ORAL HEARING

The IMCC requests an evidentiary hearing to be held in Washington, D.C.

Date: August 17, 2020

Respectfully submitted,

CONSTANTINE CANNON LLP

By: /s/ W. Stephen Cannon
W. Stephen Cannon, D.C. Bar No. 303727
David D. Golden, D.C. Bar No. 985047
Richard O. Levine, D.C. Bar No. 203877
Seth D. Greenstein, D.C. Bar No. 416733
Osob M. Samantar, D.C. Bar No. 999593
1001 Pennsylvania Avenue, NW
Suite 1300N
Washington, D.C. 20004
(202) 204-3500
scannon@constantinecannon.com
dgolden@constantinecannon.com
rlevine@constantinecannon.com
sgreenstein@constantinecannon.com
osamantar@constantinecannon.com

OF COUNSEL:

Richard Pianka, D.C. Bar No. 501533
American Trucking Associations, Inc.
950 N. Glebe Road, Suite 210
Arlington, Virginia 22203
(703) 838-1889
rpianka@trucking.org

*Attorneys for Complainant
Intermodal Motor Carriers Conference of the
American Trucking Associations*

VERIFICATION

Tyler M. Rushforth states that he is Executive Director of Complainant Intermodal Motor Carriers Conference, that he has read the foregoing Complaint, and that, upon penalty of perjury, he believes the facts stated therein to be true and correct based upon personal knowledge, information received from members of the IMCC, and information and belief based on publicly available sources.

/s/ Tyler M. Rushforth

Tyler M. Rushforth

Dated: August 17, 2020