

December 7, 2016

*Via E-mail and Hand Delivery*

Rachel E. Dickon  
Assistant Secretary  
Office of the Secretary  
Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington, D.C. 20573

RE: Petition for Rulemaking

Dear Assistant Secretary Dickon:

Enclosed please find for filing with the Federal Maritime Commission an original and five (5) copies of the Petition for Rulemaking and accompanying verified statements submitted by the Coalition for Fair Port Practices. An electronic copy of the filing was also submitted via e-mail.

One additional copy of the Petition is enclosed for stamp and return. Kindly date-stamp the additional copy for return to this office by messenger.

If you have any questions, please do not hesitate to contact me at (202) 263-4108.

Sincerely,



Karyn A. Booth  
*Attorney for the Coalition for Fair Port Practices*

*Enclosures*

**BEFORE THE  
FEDERAL MARITIME COMMISSION**

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**DOCKET NO. [      ]**

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**PETITION FOR RULEMAKING  
SUBMITTED BY  
THE COALITION FOR FAIR PORT PRACTICES**

*By Its Attorneys*

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**Dated: December 7, 2016**

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**PETITION FOR RULEMAKING**

**SUBMITTED BY**

**THE COALITION FOR FAIR PORT PRACTICES**

The Coalition for Fair Port Practices (“Petitioners” or “Coalition”), a group of 26 trade associations representing importers, exporters, drayage providers, freight forwarders, customs brokers, and third-party logistics providers (“3PLs”), request that the Federal Maritime Commission (“FMC” and “Commission”) initiate a rulemaking proceeding, pursuant to 46 C.F.R. § 502.51, for the purpose of adopting a rule that will interpret the Shipping Act of 1984, as amended, and specifically 46 U.S.C. § 41102(c), to clarify what constitutes “just and reasonable rules and practices” with respect to the assessment of demurrage, detention, and per diem charges by ocean common carriers and marine terminal operators when ports are congested or otherwise inaccessible. Specifically, Petitioners are proposing a rule for adoption by the Commission and request specific guidance as to the reasonableness of such charges when port conditions prevent the timely pick up of cargo or the return of carrier equipment because of broad circumstances that are beyond the control of shippers, receivers, or drayage providers. The text of the proposed rule is set forth in Exhibit A attached to this Petition.

This Petition satisfies the requirements of Commission Rule 51, which permits an interested party to petition the Commission for issuance of an interpretive rule.<sup>1</sup> Rule 51 requires this Petition to be verified and to set forth the nature of the relief sought, the interest of the Petitioners, and any facts, views, arguments, and data deemed relevant by the Petitioners.<sup>2</sup> Exhibit A identifies the relief requested by Petitioners, specifically, an interpretive rule that clarifies and provides guidance to the shipping industry as to conduct that constitutes unjust and unreasonable demurrage and detention practices under § 41102(c) of the Shipping Act, when port delays resulting in such charges are beyond the control of the shipper, receiver, or drayage provider.

Exhibit B to this Petition identifies the Petitioners' interests in seeking the requested relief. The 26 organizations that are part of the Coalition represent companies that have been and continue to be affected by demurrage and detention charges levied by ocean common carriers and marine terminal operators. Further, this Petition is supported by 15 verified statements or supporting letters from a broad cross-section of industry stakeholders, including shippers, receivers, motor carriers, port draymen, freight forwarders, 3PLs, and customs brokers. These verified statements and letters are set forth in Exhibit C. The Coalition members strongly believe that the Commission should initiate a rulemaking to provide guidance to the shipping community as to the reasonableness of current demurrage, detention, and per diem practices and charges that are levied during periods of port congestion or disruptions that prevent the timely pickup of cargo or return of equipment.

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<sup>1</sup> 46 C.F.R. § 502.51(a).

<sup>2</sup> *Id.*

Section I of this Petition provides relevant background information.

Section II of this Petition identifies relevant facts supporting the need for the proposed Rule, including recent findings of the FMC derived from hearings and its own evaluation of port congestion issues.

Section III explains that the Commission has the authority to issue the proposed rule, which is consistent with § 41102(c) and related case precedent.

Section IV describes the proposed rule and its application to the practices of ocean common carriers and marine terminal operators.

Finally, Section V explains how the rule complements, but does not duplicate, the Commission's Supply Chain Innovation Teams, which were established to explore commercial solutions to a variety of issues facing the U.S. maritime industry, including port congestion and related issues.

## **I. INTRODUCTION**

Recent events involving port congestion, labor strife, an ocean-carrier bankruptcy, inclement weather, and other disruption events have had crippling effects on U.S. ports and the stakeholders who rely on the efficient movement of goods through the ports. But, during these periodic events, demurrage, detention, and per diem, i.e., charges by ocean common carriers and marine terminal operators that are intended to incentivize the efficient removal of cargo from or return of equipment at U.S. ports, did not abate consistently even though shippers, consignees, and drayage providers had no control over the events that caused the ports to be inaccessible and prevented them from retrieving their cargo or returning equipment. The verified statements and letters that support this Petition, which are from a broad cross-section of shippers, dray carriers, freight forwarders, and customs brokers, echo this collective experience. These statements provide many examples of situations where ocean common carriers and marine terminal

operators assessed demurrage, detention, and per diem even though cargo could not be picked up from, or equipment could not be returned to, ports for reasons completely beyond the control of the shippers,<sup>3</sup> consignees, and drayage providers. These statements mirror numerous public reports of such practices, and in fact are consistent with information that the Commission's staff itself has developed. These widespread practices raise concerns under 46 U.S.C. § 41102(c),<sup>4</sup> which requires ocean common carriers and marine terminal operators to observe just and reasonable demurrage, detention, and per diem practices. Thus, to promote the application of just and reasonable demurrage, detention, and per diem practices during future congestion and other events that impact the availability of facilities in U.S. ports and are beyond the control of shippers, receivers or draymen, the Commission should adopt the proposed rule, which will provide necessary guidance to the shipping industry and clarify the agency's enforcement intentions under § 41102(c).

Adopting the proposed rule will not only curtail unjust and unreasonable demurrage, detention, and per diem practices, but it will also provide meaningful incentives to help reduce and mitigate port congestion. The primary goal of demurrage, detention, and per diem is to further the public interest of reducing port congestion and facilitating efficient waterborne transportation. But the incentive placed upon ocean common carriers and marine terminal

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<sup>3</sup> The Coalition notes that the concerns expressed throughout this Petition on behalf of shippers who have experienced questionable demurrage and detention practices also apply to non-vessel-operating common carriers ("NVOCCs") who act as the "shipper" in their dealings with ocean carriers. Thus, Coalition members who represent NVOCCs are also supporting the relief requested in this Petition.

<sup>4</sup> Congress enacted the original version of § 41102(c) at § 17 of the Shipping Act of 1916, Pub. L. 64-260, 39 Stat. 728, 734-35 (1916). It carried § 17 of the 1916 Act forward as § 10(d) of the Shipping Act of 1984, Pub. L. 98-237, 98 Stat. 67, 80 (1984), less language within the provision authorizing prescription of unjust or unreasonable practices. Pursuant to the Ocean Shipping Reform Act of 1998, Congress recodified § 10(d) of the 1984 Act as 46 U.S.C. § 41102(c). References in this Petition to § 41102(c) are interchangeable with references to § 17 of the 1916 Act and § 10(d) of the 1984 Act.

operators to address port congestion is weakened if they can levy demurrage, detention, and per diem charges against parties who have no influence over the operations and conditions that prevent shippers, consignees, and drayage providers from promptly picking up cargo and returning equipment. Thus, the establishment of a clear policy that clarifies the FMC's interpretation of unjust and unreasonable practices under 46 U.S.C. § 41102(c) in such circumstances will: provide needed guidance to the industry; help ensure that demurrage and detention charges are properly assessed in situations where they can fulfill their purpose of incentivizing the timely removal of cargo and return of equipment; and help to focus carriers and marine terminal operators to more efficiently address the circumstances causing port delays.

## **II. THE COMMISSION SHOULD ADOPT A POLICY THAT CLARIFIES DEMURRAGE, DETENTION, AND PER DIEM PRACTICES THAT ARE UNJUST AND UNREASONABLE UNDER SECTION 41102(C).**

The recent experiences of shippers, consignees, and drayage providers demonstrate that the need for Commission guidance on reasonable demurrage and detention practices is acute. This guidance will promote the use of reasonable practices, reduce disputes concerning demurrage and detention, and ensure that demurrage and detention are not used inappropriately to generate revenues for cash-strapped ocean common carriers or for marine terminal operators that typically lack a contractual relationship with the parties paying the charges.

### **A. Background**

Ocean common carriers and marine terminal operators charge demurrage, detention, and per diem for the use of terminal space and equipment. These charges have two main functions. First, they encourage the efficient pickup of cargo<sup>5</sup> and use of equipment.<sup>6</sup> Second, they compensate for the use of equipment<sup>7</sup> and port space.<sup>8</sup>

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<sup>5</sup> *Free Time & Demurrage Charges at N.Y (NY I)*, 3 U.S.M.C. 89, 107 (1948).

**Demurrage** is the charge assessed for cargo occupying terminal space.<sup>9</sup> Ocean common carriers usually provide this space through marine terminal operators, which are either ports themselves or port tenants who lease terminal facilities.<sup>10</sup>

**Detention** is the charge to shippers and consignees for use of ocean containers and other equipment (e.g., chassis).<sup>11</sup> Similar to detention, **per diem** is the daily charge to drayage providers for use of ocean containers and equipment.<sup>12</sup> References in this Petition to detention include per diem.

These charges, however, typically do not accrue until the expiration of a “free time” period, which is an initial period allowing for the efficient removal of cargo or return of equipment during which no charges accrue. Free time is not a gratuity. Rather, it is part of the ocean common carrier’s transportation obligation.<sup>13</sup> Under that obligation, ocean common carriers must provide shippers a realistic period to assemble their cargo for loading, and must provide consignees a realistic period to retrieve their cargo at a terminal after it is unloaded from a vessel.<sup>14</sup> These periods are known as “free time,” because they are not subject to additional assessments and, instead, are included in the rates for the ocean transportation.<sup>15</sup> To comply with

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<sup>6</sup> *Am. Export-Isbrandtsen Lines, Inc. v. Fed. Mar. Comm’n*, 444 F.2d 824, 829 (D.C. Cir. 1970).

<sup>7</sup> *Id.*

<sup>8</sup> *NY I*, 3 U.S.M.C. at 107.

<sup>9</sup> Fed. Mar. Comm’n, *Report: Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving Through Selected United States Ports* 12 (2015) [hereinafter (“April 2015 Report”)].

<sup>10</sup> *Id.* at 16 n.17.

<sup>11</sup> *Id.* at 20.

<sup>12</sup> *Id.* at 9 n.4.

<sup>13</sup> *Investigation of Free Time Practices—Port of San Diego*, 9 F.M.C. 525, 539 (1966).

<sup>14</sup> *Id.*; *NY I*, 3 U.S.M.C. at 101.

<sup>15</sup> *NY I*, 3 U.S.M.C. at 91 n.5.

their free-time obligation, ocean common carriers will set forth specific free-time periods in their tariffs. They also may specify free time in their service contracts. Free time may be different at the origin and destination to account for the unique transportation and port operations involving cargo loading and tendering of cargo for delivery.

Detention charges are also usually subject to free time. Carriers often provide free time for containers and equipment via their service contracts and tariffs. The goal of this free time is to provide sufficient time for the loading and unloading of the container.

Generally, an ocean common carrier's tariff, a marine terminal operator's schedule, or a contract between an ocean common carrier and shipper, contain the rules and rates relating to demurrage, detention, and free time.<sup>16</sup> Also, the Uniform Intermodal Interchange and Facilities Access Agreement ("UIIA") and corresponding ocean common carrier addenda, which govern the interchange and use of an ocean carrier's equipment, include detention and free-time rules.<sup>17</sup> Usually, the UIIA provisions apply to drayage providers, who must participate in the UIIA to handle carrier equipment, and not to the actual shipper or receiver.

On occasion, ocean common carriers and marine terminal operators may agree voluntarily or through negotiations with their customers to either stop the accrual of demurrage/detention or extend free time, effectively delaying the accrual of demurrage/detention charges. In 2015, the FMC found that "[m]any port authority schedules or ordinances include authority for the executive director to extend free time for demurrage in certain situations."<sup>18</sup> Similarly, "[f]ree time for demurrage may also be extended by the terminal operator or by the

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<sup>16</sup> *April 2015 Report, supra* note 9, at 10.

<sup>17</sup> Uniform Intermodal Interchange and Facilities Access Agreement, <http://www.uiia.org/assets/documents/newuiia-Home.pdf> (last visited Dec. 6, 2016).

<sup>18</sup> *April 2015 Report, supra* note 9, at 17.

VOCC.”<sup>19</sup> Indeed, the Commission noted that some carriers have tariffs that allow for additional free time where the carrier is unable to tender cargo for delivery during free time.<sup>20</sup> It also found that at least one carrier had a tariff that called for the suspension of free time during a carrier disability occurring after free time expires.<sup>21</sup>

Although some marine terminal operators and ports have tariffs that allow for additional free time or lesser rates where the terminal or port is unable to tender cargo for delivery during free time, these tariffs are inconsistent. Maher Terminals LLC, which operates a terminal at Port Elizabeth, will extend free time if the consignee makes application for delivery of the cargo during the free-time period and Maher is unable for any reason within its control to make the cargo available.<sup>22</sup> If, after free time expires, the consignee is prevented from removing cargo by factors beyond its control which affect a substantial portion of the port area, or a longshoremen’s strike affecting a smaller area, Maher will charge first-period demurrage rates.<sup>23</sup> The New York Terminal Conference, Port of Los Angeles, and Port of Long Beach reserve the right to extend free time where a consignee is prevented from removing cargo by factors beyond its control.<sup>24</sup> APM Terminals Mobile, LLC, will extend free time if the consignee makes an application for delivery of cargo during the free-time period and APM Mobile willfully does not make the cargo

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<sup>19</sup> *Id.* at 17.

<sup>20</sup> *Id.* at 18 (citing CMA CGM, CMDU-100 U.S. Unified Tariff, Rule 100 – Import Demurrage Rules).

<sup>21</sup> *Id.* at 18 (citing COSCO tariff, Far East to U.S.A. Tariff No. 201, Free Time/Demurrage at Destination U.S.A., Number 023- B (effective November 22, 2014)).

<sup>22</sup> Maher Terminals LLC, Marine Terminal Schedule No. 010599, Section IV.8.A (eff. Oct. 1, 2016).

<sup>23</sup> *Id.* Section IV.8.B.

<sup>24</sup> New York Terminal Conference, Marine Terminal Schedule No. 011408, Section IV.8. (eff. Oct. 1, 2016); Port of Long Beach, Tariff No. 4, Item 406 (eff. June 30, 2016); Port of Los Angeles, Tariff No. 4, Item 730 (eff. Oct. 20, 2016).



available.<sup>25</sup> The Port of Seattle may waive demurrage charges for a “Labor Emergency.”<sup>26</sup>

Virginia International Terminals, LLC, extends free time for cargo on free time at the commencement of a longshore strike; first-period demurrage will be charged for cargo not on free time at the commencement of the strike.<sup>27</sup> Also, the Port of Long Beach effectively extends free time for certain U.S. Customs and Border Protection inspections of containerized cargo by delaying the commencement of free time until Customs releases its hold on the affected containers.<sup>28</sup>

Some marine terminal operators will collect demurrage charges from shippers, consignees, or drayage providers as a condition to the release of a container, even though the carrier’s tariff may specify the applicable charge.<sup>29</sup> This ensures payment of the terminal operator’s demurrage charge, which is usually built into the carrier’s demurrage rate for the cargo. In contrast, some marine terminal operators may forego collection of their demurrage assessment from the cargo interest and invoice the ocean common carrier for it instead.<sup>30</sup> In this scenario, the ocean carrier collects its demurrage charges from its shipper customer or the customer’s agent and pays the marine terminal operator from this collection.

These payment arrangements reflect the fact that shippers, consignees, and drayage providers do not have a direct relationship with marine terminal operators. Ocean common

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<sup>25</sup> APM Terminals Mobile, LLC, Terminal Operator Schedule, Rule 21(6), *available at* <http://www.apmterminals-na.com>, follow APM Terminals Mobile, LLC – Mobile Terminal Tariff (last visited Dec. 6, 2016).

<sup>26</sup> Port of Seattle, Terminals Tariff No. 5, Item 5000(E) (eff. Jan. 1, 2016).

<sup>27</sup> Virginia International Terminals, LLC, Schedule of Rates No. 1, Section V (eff. Oct. 1, 2016), *available at* <http://www.portofvirginia.com/pdfs/tools/SOR%20v5.pdf>.

<sup>28</sup> Port of Long Beach, Tariff No. 4, Item 402(a) (eff. June 30, 2016).

<sup>29</sup> *April 2015 Report*, *supra* note 9, at 16.

<sup>30</sup> *Id.* at 18.

carriers contract with the marine terminal operators or ports to handle the cargo they carry. They also negotiate the service terms and rates with those entities. Shippers, consignees, and drayage providers cannot independently select a marine terminal operator or negotiate the terms of the marine terminal operator's service. Instead, they are subject to the carrier's selection of, and relationship with, the marine terminal operator.

**B. Recent Experience in the Containerized Trades Reveals Troubling Demurrage and Detention Practices.**

Recent events causing port delays and disruption have prevented the timely pickup of cargo or return of equipment and resulted in shippers, consignees, and drayage providers being assessed millions of dollars in demurrage and detention charges.<sup>31</sup> But, many of these delays arise for reasons beyond the control of shippers, consignees and drayage providers, making the collection of demurrage or detention in such circumstances a highly questionable practice. An FMC policy that clarifies when such practices may be contrary to § 41102(c) will promote the observance of just and reasonable demurrage and detention practices and help incentivize carriers and marine terminal operators to reduce future delays and congestion.

**1. Recent port congestion or disruption events have mainly arisen for reasons beyond the control of shippers, consignees, and drayage providers.**

Port congestion or disruption arise for many reasons. More recently, weather, a carrier bankruptcy, and labor issues have caused significant delays. Also, the shipping industry is

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<sup>31</sup> See Joseph Bonney, *Pressure Builds on FMC to Act on Demurrage, Detention Complaints*, J. Com. (Jun. 11, 2015), [http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/industry-groups-urge-fmc-act-demurrage-detention\\_20150611.html](http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/industry-groups-urge-fmc-act-demurrage-detention_20150611.html) (noting that cargo interests have incurred demurrage and detention fees totaling up to several million dollars). The Washington Council on International Trade estimates that the 2014-2015 West Coast port slowdown cost Washington shippers \$7 million in demurrage charges. Wash. Council on Int'l Trade, *The Economic Costs of the 2014-2015 West Coast Port Slowdown on Washington State 2* (2016), available at <http://wcit.org/wp-content/uploads/2011/08/WCIT-Port-Delays-Economic-Impacts-Report-FINAL1.pdf>.

changing. Carriers are increasingly using high-capacity vessels.<sup>32</sup> This contributes to congestion, because it requires ports to service increasingly larger volumes of cargo within the same boundaries of the port complex. Further, “[c]arriers offer the same amount of free time ‘whether the vessel holds 5,000 TEUs (20-foot equivalent units) or 18,000 TEUs, even though the vessel operators, NVOCCS and merchant haulers alike are challenged to find adequate trucking capacity to dray double and triple the volume in the same time.’”<sup>33</sup> Carriers also have been reducing free time and increasing demurrage charges in an attempt to encourage shorter dwell times at terminals and thereby reduce their operational costs and increase income.<sup>34</sup> This strains terminal capacity by requiring greater cargo-handling productivity than currently exists. Similarly, the creation of very large vessel alliances is causing volume increases that terminals are not prepared to handle.<sup>35</sup>

However, in recent events involving port congestion or disruption, a common element is a complete lack of shipper, consignee, and drayage-provider control or even the ability to affect the situation. Recent events that have led to significant port congestion include:

- *Hurricane Sandy in 2012.*<sup>36</sup>
- *Harsh Winter of 2013-2014.*<sup>37</sup>

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<sup>32</sup> U.S. Gov’t Accountability Office, GAO-17-23, *West Coast Ports* 8-9 (2016); Bureau of Trade Analysis, Fed. Mar. Comm’n, *U.S. Container Port Congestion & Related International Supply Chain Issues* 39-40 (2015) [hereinafter *July 2015 Report*].

<sup>33</sup> Joseph Bonney, *Regulators Urged to Question Carriers’ Vessel-Sharing Deals*, J. Com. (Apr. 5, 2016), [http://www.joc.com/maritime-news/container-lines/regulators-urged-question-carriers'-vessel-sharing-deals\\_20160405.html](http://www.joc.com/maritime-news/container-lines/regulators-urged-question-carriers'-vessel-sharing-deals_20160405.html) (quoting National Customs Brokers and Forwarders Association of America).

<sup>34</sup> *April 2015 Report*, *supra* note 9, at 12; *see also* Joseph Bonney, *Regulators Urged to Question Carriers’ Vessel-Sharing Deals*, J. Com. (Apr. 5, 2016), [http://www.joc.com/maritime-news/container-lines/regulators-urged-question-carriers'-vessel-sharing-deals\\_20160405.html](http://www.joc.com/maritime-news/container-lines/regulators-urged-question-carriers'-vessel-sharing-deals_20160405.html) (quoting National Customs Brokers and Forwarders Association of America).

<sup>35</sup> Ex. C-1, at 1-2 (Verified Statement of Christopher Grato, International Motor Freight, Inc.).

<sup>36</sup> *July 2015 Report*, *supra* note 31, at 75.

- *2014-2015 West Coast Labor Agreement Negotiation*. Ports across the West Coast experienced port congestion during contract negotiations between the Pacific Maritime Association and the International Longshore and Warehouse Union that lasted approximately eight months beginning in 2014.
- *Cargo Diversions from West Coast Ports to East Coast Ports from March-September 2015*. While West Coast ports were experiencing port congestion throughout 2014 and 2015, port congestion developed at East Coast ports, particularly the Port of New York and New Jersey, due to cargo being diverted away from West Coast ports to avoid the West Coast port congestion, the calling of larger ships, and increased operational complexity caused by alliances.<sup>38</sup>
- *Winter Storms of 2014-2015*. The ports of New York and New Jersey, Baltimore, and Virginia experienced port congestion after severe winter storms<sup>39</sup> throughout the 2014 and 2015 winters.
- *2016 Port Hiring Practices Protest – Port of New York and New Jersey*. A June 2016 protest, organized by the mayor of Newark, protesting port hiring practices impacted port efficiencies during the protest.<sup>40</sup>
- *Fall 2016 – Hanjin Shipping Bankruptcy*. Ports on both the West and East coasts felt effects of the recent bankruptcy filing of Hanjin Shipping Co. Ltd. The total impact of this event is yet to be determined.

Shippers, consignees, and drayage providers do not create and cannot avoid these events.

They cannot control the weather. They do not choose the terminals that carriers use. They are not parties to port labor collective bargaining agreements. Because their relationship with terminals is limited to the retrieval of cargo or return of equipment, they cannot negotiate rates or service conditions with terminals in a manner that encourages resolution of labor issues, addresses cargo handling productivity, or address the provision of adequate investment or staffing.

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<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> Winter Storm Marcus resulted in port congestion at Port of Virginia's Norfolk terminals. Winter Storm Jonas closed the Port of New York and New Jersey and Port of Baltimore from January 22, 2016 to January 26, 2016.

<sup>40</sup> Hugh R. Morley, *Protest of NY-NJ Port Hiring Practices Shuts Down Traffic Temporarily*, J. Com. (Jul. 18, 2016), [http://www.joc.com/port-news/us-ports/port-new-york-and-new-jersey/protest-ny-nj-port-hiring-practices-grabs-attention-temporarily-slowng-truckers\\_20160718.html](http://www.joc.com/port-news/us-ports/port-new-york-and-new-jersey/protest-ny-nj-port-hiring-practices-grabs-attention-temporarily-slowng-truckers_20160718.html).

**2. Despite their lack of control over recent events causing port congestion or disruption, shippers, consignees, and drayage providers have incurred significant demurrage and detention charges in connection with these events.**

Ocean common carriers and marine terminal operators have assessed shippers, consignees, and drayage providers millions of dollars of demurrage and detention charges related to recent port congestion or other events restricting the accessibility of the ports and arising from circumstances beyond the control of the shippers, consignees, and drayage providers.<sup>41</sup> These assessments have not been uniform, because carrier and marine-terminal-operator demurrage and detention policies and practices vary. Policies on free-time extensions are inconsistent among carriers and marine terminal operators, including among terminals at the same port. For example, at Port Elizabeth, Maher Terminals will extend free time if it is unable to deliver cargo, but APM Terminals Elizabeth, LLC, does not automatically extend free time in similar circumstances.<sup>42</sup> Instead, APM Elizabeth reserves the right to extend free time in its discretion.<sup>43</sup> These inconsistencies generate uncertainty among shippers, consignees, and drayage providers about how demurrage and detention will be assessed when access to ports is restricted or ports are congested.

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<sup>41</sup> See Joseph Bonney, *Pressure Builds on FMC to Act on Demurrage, Detention Complaints*, J. Com. (Jun. 11, 2015), [http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/industry-groups-urge-fmc-act-demurrage-detention\\_20150611.html](http://www.joc.com/regulation-policy/transportation-regulations/us-transportation-regulations/industry-groups-urge-fmc-act-demurrage-detention_20150611.html) (noting that cargo interests have incurred demurrage and detention fees totaling up to several million dollars). The Washington Council on International Trade estimates that the 2014-2015 West Coast port slowdown cost Washington shippers \$7 million in demurrage charges. Wash. Council on Int'l Trade, *The Economic Costs of the 2014-2015 West Coast Port Slowdown on Washington State 2* (2016), available at <http://wcit.org/wp-content/uploads/2011/08/WCIT-Port-Delays-Economic-Impacts-Report-FINAL1.pdf>.

<sup>42</sup> Maher Terminals LLC, Marine Terminal Schedule No. 010599 Section IV.8.A (eff. Oct. 1, 2016).

<sup>43</sup> New York Terminal Conference, Marine Terminal Schedule No. 011408, Section IV.8. (eff. Oct. 1, 2016).

Some shippers, consignees, and drayage providers have attempted to negotiate waivers of the assessments, but they often are only partially successful after months of negotiations and being forced to first pay large demurrage charges up front to obtain the release of their cargo. For example, MacMillan Piper, Inc. was able to obtain an 80% reduction in assessments, but only after being forced to pay the full amount—\$1.25 million—up front.<sup>44</sup> Moreover, the accommodation for the charges required over a year of negotiations, which is an inefficient and costly use of resources.<sup>45</sup> Similarly, Centric Parts obtained a 50% waiver of assessments after initially being required to pay the full amount up front.<sup>46</sup> Small shippers and drayage providers are at a particular disadvantage when negotiating waivers, because they lack the leverage necessary to negotiate and obtain the accommodations sometimes afforded to larger shippers and drayage providers.

Experiences of shippers, consignees, and drayage providers underscore the fact that carriers and marine terminal operators assess demurrage and detention for delays arising from events completely beyond the control of shippers, consignees, or drayage operators. These assessments have a significant commercial impact, because of their size and frequency during periods of port delays and congestion and because carriers and marine terminal operators often require payment up front.

During the West Coast Labor Agreement Negotiation, American Coffee Corporation incurred demurrage because of unexpected gate closures and long lines to access affected ports.<sup>47</sup> It also had difficulty making appointments at terminals for pickup of its cargo during its free time

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<sup>44</sup> Ex. C-2, at 2 (Verified Statement of Mark Miller, MacMillan-Piper).

<sup>45</sup> *Id.*

<sup>46</sup> Ex. C-3, at 2 (Verified Statement of Steve Hughes, Centric Parts).

<sup>47</sup> Ex. C-1, at 1 (Verified Statement of Donald A. Pisano, American Coffee Corp.).

period.<sup>48</sup> For example, in April 2014, its drayage provider attempted to make an appointment at APM Terminal in the Port of Los Angeles to pick up an American Coffee container during free time, but APM was not accepting additional appointments.<sup>49</sup> When the drayage provider finally secured the appointment, it was for five days after free time expired. Both the ocean common carrier and APM refused to extend free time, and American Coffee was forced to pay demurrage even though it attempted to retrieve the container during the free-time period, when no charges could be assessed.<sup>50</sup>

Chico's FAS, Inc. reports that the time needed to retrieve containers during the West Coast Labor Agreement Negotiation jumped to 7-9 days, while free time remained at 4 days.<sup>51</sup> In one instance during the event, nearly 18 of its containers were held at a port, resulting in a 30% increase in shipment costs.<sup>52</sup> Chico's FAS frequently was turned away when attempting to retrieve its cargo due to unannounced closings of port areas where containers were awaiting pickup.<sup>53</sup> All told, the dispute disrupted the flow of 8-10 million of Chico's FAS's garments and Chico's FAS incurred approximately \$80,000 in demurrage.<sup>54</sup>

During the West Coast Labor Agreement Negotiation, terminals often turned away Centric Parts after its drayage provider waited in long lines all day to pick up Centric's cargo.<sup>55</sup> Appointment systems at some terminals were not available or would only provide appointments

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<sup>48</sup> *Id.* at 2.

<sup>49</sup> *Id.*

<sup>50</sup> *Id.*

<sup>51</sup> Ex. C-4, at 1 (Verified Statement of Shana Riggs, Chico's FAS Inc.).

<sup>52</sup> *Id.*

<sup>53</sup> *Id.*

<sup>54</sup> *Id.*

<sup>55</sup> Ex. C-3, at 1 (Verified Statement of Steve Hughes, Centric Parts).

long after free time expired.<sup>56</sup> And terminals and carriers were reluctant to waive demurrage charges despite the fact that Centric was not able to obtain its cargo through no fault of its own.<sup>57</sup> Although Centric eventually received a 50% reduction in the demurrage charges billed by the carriers, it had to outlay the full amount up front to receive its cargo, tying up valuable working capital, and it still recovered only 50% of the charges.<sup>58</sup>

VLM Foods Inc. faced, and continues to face, unfair demurrage practices. Often it is assessed demurrage charges due to carrier billing errors that result in its containers being held at the port until the carrier resolves the errors.<sup>59</sup> Additionally, although many of its containers have priority for Customs exams, terminals frequently ignore this priority and place these containers at the back of Customs' examination line. This often results in these containers exceeding free time while being examined, whereas if the terminal provided them to Customs in accordance with their priority status, they would have cleared Customs before free time expired.<sup>60</sup> Also, in one instance, a carrier charged demurrage for a holiday even though the terminal provided a free day because it was closed.<sup>61</sup> These demurrage practices have had a devastating effect on VLM's bottom line, because its profit margins on entire containers are razor-thin.<sup>62</sup>

Budpak, Inc. and Tea Importers, Inc. have experienced similar demurrage practices. During the winter of 2014-2015, inclement weather caused the Port of New York and New

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<sup>56</sup> *Id.*

<sup>57</sup> *Id.* at 1-2.

<sup>58</sup> *Id.* at 2.

<sup>59</sup> Ex. C-6, at 1 (Verified Statement of Mark FeDuke, VLM Foods Inc.).

<sup>60</sup> *Id.*

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*



Jersey to close.<sup>63</sup> Through no fault of its own, Budpak could not retrieve its cargo during the closure.<sup>64</sup> Nevertheless, it was charged demurrage.<sup>65</sup> During the West Coast Labor Agreement Negotiation, Tea Importers attempted to pick up a shipment from the Port of Seattle before free time expired, but was unsuccessful.<sup>66</sup> The resulting demurrage charge was not waived.<sup>67</sup>

Motor carriers and drayage providers have also been adversely impacted by unreasonable detention practices. During the West Coast Labor Agreement Negotiation, MacMillan Piper, Inc., had difficulty returning containers to affected ports, often because terminals refused to receive them.<sup>68</sup> It incurred nearly \$1.25 million in detention charges, which the steamship lines reduced to \$250,000 after over a year's worth of disputes.<sup>69</sup> Additionally, the steamship lines forced MacMillan to pay the \$1.25 million up front by threatening to cancel MacMillan's UIIA agreement with them.<sup>70</sup> The cancellation of a motor carrier's UIIA Agreement with even a single ocean common carrier can cost the motor carrier its entire business, because at a particular port or terminal there often are few other ocean carriers with enough available traffic to dray.<sup>71</sup>

Cargo diversions to the East Coast because of the West Coast Labor Agreement Negotiation created congestion on the East Coast that impacted International Motor Freight, Inc. (IMF), an import/export trucking company in Port Newark, NJ.<sup>72</sup> Long wait times developed at

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<sup>63</sup> Ex. C-2, at 1 (Verified Statement of Gregg Singer, Budpak, Inc.)

<sup>64</sup> *Id.*

<sup>65</sup> *Id.*

<sup>66</sup> Ex. C-5 (Verified Statement of Andrew Wertheim, Tea Importers, Inc.)

<sup>67</sup> *Id.*

<sup>68</sup> Ex. C-2, at 2 (Verified Statement of Mark Miller, MacMillan-Piper).

<sup>69</sup> *Id.*

<sup>70</sup> *Id.*

<sup>71</sup> *Id.*

<sup>72</sup> Ex. C-1, at 1 (Verified Statement of Christopher Grato, International Motor Freight, Inc.).

the Port of New York and New Jersey as lines formed to return the increased volume of empty containers.<sup>73</sup> The inability of terminals to process empty containers and other inefficiencies at the port resulted in ocean common carriers invoicing IMF over \$1.2 million in detention charges.<sup>74</sup> To secure payment, these ocean carriers threatened termination of IMFs participation in the UIIA.<sup>75</sup> Ultimately, IMF rebilled their customers (shippers) for all of these charges, but ended up having to pay approximately \$50,000-\$55,000 of them.<sup>76</sup>

An ocean common carrier invoiced ContainerPort Group (CPG) \$25,610 in detention charges related to “door” moves CPG performed in Norfolk, Virginia, when the Port of Virginia was experiencing port congestion caused by two winter storms in 2015.<sup>77</sup> Similarly, CPG received an invoice of \$22,410 from an ocean common carrier relating to detention charges for 27 containers at the Ports of New York and New Jersey and Port of Baltimore that were experiencing port congestion because the ports closed from January 22, 2016 to January 26, 2016, due to winter storm Jonas.<sup>78</sup> The ocean carrier initially refused to extend free time to account for port closures.<sup>79</sup>

During the West Coast Labor Agreement Negotiation, California Multimodal, LLC, experienced appointment shortages and restrictions on equipment return, which led to demurrage and detention assessments. Terminals would not extend free time when appointments to pick up

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<sup>73</sup> *Id.* at 1-2.

<sup>74</sup> *Id.* at 1.

<sup>75</sup> *Id.* at 3.

<sup>76</sup> *Id.* at 1.

<sup>77</sup> Ex. C-9, at 2 (Verified Statement of Robert Leef, ContainerPort Group, Inc.).

<sup>78</sup> *Id.*

<sup>79</sup> *Id.* at 2-3.

cargo were not available within the free time period.<sup>80</sup> Also, terminals would regularly advise drayage providers of restrictions on equipment return, leaving the drayage providers to try to find other locations that would accept the equipment.<sup>81</sup> Often, the providers could not find another return location before free time expired.<sup>82</sup>

Some shippers appear to have been assessed demurrage charges from a marine terminal operator that cover amounts owed by an ocean common carrier. Brokers and forwarders claim that, shortly after Hanjin Shipping Co. Ltd. declared bankruptcy, Maher Terminals at the Port of New York and New Jersey attempted to charge them thousands of dollars for each affected container.<sup>83</sup> The parties stated that they were “charged between \$1,000 to \$2,500 per container by the [terminal] despite its boxes having been stored at the facilities for just a couple of days.”<sup>84</sup>

Customs brokers and freight forwarders have witnessed ocean common carriers and terminals holding cargo hostage while demanding payment for demurrage and detention charges arising from port conditions beyond the control of their consignee clients.<sup>85</sup> Serra International, Inc. observes that free time issues have increased along with shipper frustrations, noting that shippers have no incentive to let their cargo sit at terminals.<sup>86</sup> It also observes that ocean common carriers and terminals are often slow to move cargo for port shipments, as opposed to

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<sup>80</sup> Ex. C-10, at 3 (Verified Statement of Robert Loya, California Multimodal, LLC).

<sup>81</sup> *Id.* at 4.

<sup>82</sup> *Id.* at 4.

<sup>83</sup> *NY-NJ Terminal Accursed of Unreasonable Fees Tied to Hanjin Chaos*, J. Com. (Sep. 7, 2016), [http://www.joc.com/port-news/terminal-operators/ny-nj-terminal-accused-unreasonable-demurrage-fees-tied-hanjin-chaos\\_20160907.html](http://www.joc.com/port-news/terminal-operators/ny-nj-terminal-accused-unreasonable-demurrage-fees-tied-hanjin-chaos_20160907.html).

<sup>84</sup> *Id.*

<sup>85</sup> See Ex. C-11 (Verified Statement of Al Raffa, Seafrigo USA, Inc.); Ex. C-12 (Verified Statement of Jacqueline Dossantos, All In One Customs Brokers Inc.).

<sup>86</sup> Ex. C-13, at 1 (Verified Statement of Jeanette R. Gioia, Serra International, Inc.).

door shipments, likely because carriers and terminals are rewarded with demurrage and detention when free time is exceeded.<sup>87</sup>

The verified statements and letters in Exhibit C provide additional examples of unreasonable demurrage and detention practices of ocean common carriers and marine terminal operators during port congestion events. These statements confirm that carriers and marine terminal operators generally are reluctant to extend free time during port congestion events that are beyond the control of shippers, consignees, and drayage providers.

**3. The recent Commission staff report on demurrage, detention, and free time confirms the experiences of Petitioners and their members.**

The shipper, consignee, and drayage-provider experiences identified in Part II.B.1 echo complaints and statements that the Commission has received about demurrage and detention problems. During the fall of 2014, the FMC proactively conducted four forums at the Ports of Los Angeles, Baltimore, Charleston, and New Orleans, respectively, “to hear firsthand the problems that stakeholders in the U.S. intermodal system were facing.”<sup>88</sup> Throughout the forums, the Commission heard concerns relating to the assessment of demurrage and detention charges by marine terminal operators and ocean common carriers where importers and exporters (and their truckers) experienced terminal delays over which they had no control.<sup>89</sup> These comments led the Commission to release a staff report in April 2015 that specifically addressed demurrage, detention, and free-time,<sup>90</sup> in addition to a subsequent report in July 2015 providing a more thorough review of major themes during the fall 2014 port congestion forums.<sup>91</sup>

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<sup>87</sup> *Id.* at 2.

<sup>88</sup> *July 2015 Report, supra* note 32, at 6.

<sup>89</sup> *Id.* at 3.

<sup>90</sup> *April 2015 Report, supra* note 9.

<sup>91</sup> *July 2015 Report, supra* note 32.

The *April 2015 Report* describes various congestion-related issues that shippers provided to the Commission. For example, “[m]any shippers reported that they had been repeatedly told by the MTO that they could not pick up a container due to on-dock congestion and gate delays.”<sup>92</sup> Shippers also reported that once a terminal allowed cargo pick up, the ocean carrier or marine terminal operator would not release the cargo until demurrage charges were paid.<sup>93</sup> Additionally, truckers lodged a number of complaints with the Commission, including: “that certain areas at terminals have been restricted or placed off limits; this makes some containers unavailable for pick up” and that “VOCCS and MTOs have limited the days and shifts during which they will accept the returns of empty containers.”<sup>94</sup>

In its *April 2015 Report*, the Commission’s staff reported that “last-minute notice from VOCCs and MTOs to truckers, importers and exporters about vessel-loading delays, cancelled vessel calls, terminal opening hours, shifts and closed areas, have left cargo interests scrambling to pick up their cargo, load their exports and return their empties.”<sup>95</sup> These practices obviously impact the ability of shippers, receivers, and dray operators to fully benefit from free-time periods and lead to unanticipated liability for demurrage and detention. Moreover, although some ocean common carriers and terminals may agree to extend free time or waive or reduce demurrage and detention fees in certain cases, the Commission’s staff found that “there is no generally used formula to determine when the normal allowance for free time might be increased or reduced” and “staff has not observed increases in free time in VOCCs’ tariff terms or MTO

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<sup>92</sup> *April 2015 Report*, *supra* note 9 at 3.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.*

schedules.”<sup>96</sup> Indeed, importers complained “that they cannot timely return empty containers to the terminal as instructed by the carrier because there are reduced service hours at the ports for the return of empty containers and free time for detention has not been extended to reflect those reduced service hours.”<sup>97</sup>

Thus, there is tremendous inconsistency in the conduct of carriers and terminals with respect to free time, demurrage, and detention practices and a lack of clarity with respect to what constitutes reasonable practices under § 41102(c). Adoption of the proposed policy will provide needed guidance and clarity to the shipping industry on this important issue. In fact, the Commission’s staff specifically noted in the *April 2015 Report* that a rulemaking proceeding “which would include an identification of the issue the Commission seeks to address, articulating its authority to do so, and providing a burden/cost estimate of the proposal” was one option for addressing carrier and marine terminal demurrage and detention practices.<sup>98</sup>

**C. A Clear FMC Policy will Promote the Observance of Reasonable Demurrage and Detention Practices.**

The attached verified statements and the Commission’s own observations concerning current demurrage and detention practices demonstrate that a clear policy interpreting § 41102(c) is needed to provide the guidance necessary for ocean carriers and marine terminals to eliminate unjust and unreasonable demurrage and detention practices.

An interpretive rule on demurrage and detention practices will guide ocean common carriers and marine terminal operators by providing clear parameters for reasonable demurrage and detention rules and practices. Thus, ocean common carriers and marine terminal operators

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<sup>96</sup> *Id.* at 24, 27.

<sup>97</sup> *Id.* at 29.

<sup>98</sup> *Id.* at 43.

will be better equipped to avoid establishing unjust and unreasonable practices and incurring attendant liability. Also, they will be more likely to reasonably extend free-time extensions and reduce demurrage and detention where port congestion and other uncontrollable factors prevent cargo pickup and equipment return.

Clear guidance on proper demurrage and detention practices will also benefit shippers, consignees, and drayage providers. It will raise awareness of the scope of their own obligations. It would significantly reduce uncertainty and allow shippers, consignees, and drayage providers to better identify unjust and unreasonable demurrage and detention practices.

Clear guidance will also foster efficient resolution of disputes and promote collaboration. Ambiguity has a chilling effect on valid claims. By removing ambiguity concerning the reasonableness of demurrage and detention practices, the Commission will help parties identify early in a dispute whether a claim about the lawfulness of a demurrage or detention practice is valid. This should help parties avoid the inefficient and costly use of resources that often accompanies protracted disputes. Also, it should reduce disputes that prevent parties from collaborating on how to address impediments to cargo removal and equipment return.

Clear guidance will also ensure that ocean common carriers and marine terminal operators use demurrage and detention consistent with their primary purpose of efficient cargo removal and equipment returns. Because revenue contraction is plaguing ocean common carriers,<sup>99</sup> they are desperate to generate revenue. Port delays, which often entail higher costs for carriers and marine terminal operators, further intensify this desperation. Guidance on reasonable

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<sup>99</sup> Peter Buxbaum, *Not a Big Surprise: Most Ship Liens Are Losing Money*, Global Trade (Aug. 17, 2016), <http://www.globaltrademag.com/global-logistics/not-big-surprise-ship-lines-losing-money>; see e.g., Greg Knowler, *Maersk Line Falls to \$116 million Loss on Rate Tumble*, J. Com. (Nov. 2, 2016) (noting that falling revenue has become a trend in the container shipping industry).

detention and demurrage practices will ensure that ocean common carriers and marine terminal operators do not inappropriately use these charges as a major revenue source rather than as an incentive for efficient cargo removal and equipment returns.

### **III. THE COMMISSION HAS AUTHORITY TO ADOPT THE PROPOSED POLICY CONCERNING UNJUST AND UNREASONABLE DEMURRAGE AND DETENTION PRACTICES.**

The Commission has clear authority and discretion to adopt a policy that interprets the “just and reasonable” standard under 49 U.S.C. § 41102(c). Under 46 U.S.C. § 305, the Commission “may prescribe regulations to carry out its duties and powers.” Those duties and powers include the enforcement of § 41102(c),<sup>100</sup> which prohibits unjust and unreasonable terminal practices.<sup>101</sup> Section 305 provides general rulemaking authority to the Commission and “broad discretionary authority to deal with the ever-changing technological and economic conditions of the commercial shipping industry.”<sup>102</sup> Additionally, 5 U.S.C. § 553(e) provides that “[e]ach agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule.”<sup>103</sup> Additionally, the Commission has previously issued interpretive rules and statements of policy concerning other provisions of the Shipping Act of 1984, and has used the rulemaking process to do so.<sup>104</sup> As explained in this Section III, the proposed policy is similar to past policies that the Commission has adopted addressing unjust and unreasonable practices at U.S. ports.

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<sup>100</sup> See 46 U.S.C. § 41304(a) (indicating that the Commission may issue orders enforcing violations of 46 U.S.C. Chapter 411).

<sup>101</sup> 46 U.S.C. § 41102(c).

<sup>102</sup> *States Marine Int’l, Inc. v. Peterson*, 518 F.2d 1070, 1080 (D.C. Cir. 1975) (discussing prior version of § 305).

<sup>103</sup> 5 U.S.C. § 553(e).

<sup>104</sup> 46 C.F.R. Part 545 (the policy statements published at § 545.1 and 545.2 were promulgated via rulemaking).



**A. Section 41102 Imposes a Just and Reasonable Standard on Demurrage and Detention Practices.**

Section 41102(c) requires demurrage and detention practices to be just and reasonable.

This provision specifically states:

**§ 41102 (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.

Thus, under the statute, ocean common carriers and marine terminal operators must adopt just and reasonable regulations and practices governing free time and demurrage and detention charges, which relate to or are connected with receiving, handling, storing, or delivering property.<sup>105</sup> The test of reasonableness as applied to terminal practices “is that the practice must be otherwise lawful, not excessive, and reasonably related, fit and appropriate to the ends in view.”<sup>106</sup> The Commission has specifically found that demurrage and detention practices are encompassed within the ambit of § 41102(c), because demurrage and detention relate to the delivery of property at terminals.<sup>107</sup>

**1. If an ocean common carrier or marine terminal operator is unable or refuses to tender cargo for delivery and/or receive equipment during free time, Section 41102(c) requires an extension of free time for a period equal to the duration of the disability.**

Under § 41102(c), the Commission and its predecessor have long held that “[w]here a carrier is for any reason unable, or refuses, to tender cargo for delivery, free time must be

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<sup>105</sup> *W. Gulf Maritime Ass’n v. Port of Houston*, 18 Shipping Reg. (P&F) 784, 790 (F.M.C. 1978), *affirmed without opinion sub nom. W. Gulf Maritime Ass’n v. FMC*, 610 F.2d 1001 (D.C. Cir. 1979), *cert. denied*, 449 U.S. 822 (1980).

<sup>106</sup> *Id.*

<sup>107</sup> *See Am. Export-Isbrandtsen Lines, Inc. v. Fed. Mar. Comm’n*, 444 F.2d 824, 829 (D.C. Cir. 1970) (interpreting § 41102(c) as applying to detention).

extended for a period equal to the duration of the carrier's disability or refusal."<sup>108</sup> The rationale for this holding is that an ocean common carrier must honor its rates; it may not obtain greater compensation for a service than the applicable rate in its service contract or tariff.<sup>109</sup> Also, the transportation service associated with a transportation rate in a service contract or tariff includes tendering cargo for delivery at the destination and affording consignees a fair opportunity to accept delivery of cargo without liability.<sup>110</sup> Thus, when an ocean common carrier tenders cargo for delivery, it must allow a consignee to pick up its cargo during the entire free-time period before it can charge demurrage.<sup>111</sup>

Similarly, if an ocean common carrier refuses or is unable to accept equipment returns, detention free time must be extended for a period equal to the duration of the carrier's disability or refusal. Under the transportation rates in their service contracts and tariffs, carriers provide free time for the use of carrier equipment, including containers. If a carrier were to refuse or be unable to accept equipment returns during free time and does not extend free time, the equipment

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<sup>108</sup> *E.g.*, *NY I*, 3 U.S.M.C. 89, 109 (1948). Today, 46 U.S.C. § 41104(2) specifies that a carrier must provide service in accordance with the rates in its tariffs or service contracts.

<sup>109</sup> *Free Time and Demurrage—New York Harbor (NY II)*, 9 Shipping Reg. (P&F) 860, 873, 874 (F.M.C. Dec. 7, 1967) (noting that tendering cargo for delivery is an obligation “for the performance of which [a carrier] may collect no greater compensation than that required by [its] contract of carriage” and carriers have an obligation to tender for delivery free of assessments); *see NY I*, 3 U.S.M.C. at 101 (stating that free time “is an obligation which the carrier is bound to discharge as part of its transportation service, and consignees must be afforded fair opportunity to accept delivery of cargo without incurring liability for penalties.”).

<sup>110</sup> *NY I*, 3 U.S.M.C. at 91 n.5. Courts and the Commission have long held that a carrier's transportation obligation includes a duty to tender cargo for delivery, absent a contrary special contract. *E.g.*, *Ex parte Easton*, 95 U.S. 68, 75 (1877); *The Eddy*, 72 U.S. 481, 495 (1867); *Am. President Lines, Ltd. v. Fed. Mar. Bd.*, 317 F.2d 887, 888 (D.C. Cir. 1962); *Boston Shipping Ass'n v. Port of Boston Marine Terminal Ass'n*, 10 F.M.C. 409, 415 (1967); *Investigation of Free Time Practices—Port of San Diego*, 9 F.M.C. 525, 539 (1966).

<sup>111</sup> A carrier tenders cargo for delivery when it unloads the cargo, makes it accessible to the consignee, and affords the consignee a reasonable opportunity to remove it. *The Eddy*, 72 U.S. 481, 495 (1867); *Am. President Lines, Ltd. v. Fed. Mar. Bd.*, 317 F.2d 887, 888 (D.C. Cir. 1962).

would have to be returned earlier to avoid detention charges, effectively shortening the permitted use under the transportation rate.

To the extent an ocean common carrier engages a marine terminal operator to tender cargo for delivery or accept equipment returns, the marine terminal operator becomes, in effect, the agent of the carrier in performing these obligations.<sup>112</sup> Thus, it is subject to the same free time obligations as the carrier.<sup>113</sup>

Indeed, the Commission long ago established, in *Boston Shipping Ass'n v. Port of Boston Marine Terminal Ass'n*,<sup>114</sup> that a marine terminal operator may charge only ocean common carriers for terminal facilities used for the tender of cargo delivery before the carrier discharges its transportation obligation. It reasoned that the person who receives services should pay for them; otherwise, the cost of providing those services would be unjustly and unreasonably shifted to users of other terminal services.<sup>115</sup> It also explained that when a marine terminal operator holds cargo at its facility before the carrier discharges its transportation obligation—i.e., before free time expires—it provides this service for the ocean common carrier.<sup>116</sup> A key aspect of the

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<sup>112</sup> *Investigation of Free Time Practices—Port of San Diego*, 9 F.M.C. 525, 539 (1966).

<sup>113</sup> *See Id.* at 539, 540 (“In undertaking the ocean carrier’s obligation to provide such facilities and in holding them out for public use, we hold that respondents [terminal operators] have assumed the ocean carrier’s responsibility of furnishing reasonable and nondiscriminatory pier services incident to the handling of truck cargoes on their piers which include an allowance of reasonable free time.”)

<sup>114</sup> *Boston Shipping Ass'n v. Port of Boston Marine Terminal Ass'n*, 10 F.M.C. 409 (1967). Although the main issue in *Boston* was whether a marine terminal operator could charge a carrier for cargo storage charges, the decision also establishes whether the operator could levy the charge against a consignee. The Commission found that it was not just and reasonable for a terminal to assess a storage charge against a vessel for cargo at its facility when the cargo was in demurrage, but it was just and reasonable to assess the charge against the vessel for cargo on free time. *Id.* at 417, 418. In making the latter finding, the Commission expressly rejected a hearing examiner’s position that the consignee should incur the charges. *Id.* at 416-17.

<sup>115</sup> *Id.* at 414-15.

<sup>116</sup> *Id.* at 416.

Commission's rationale in *Boston* is that, "[w]hen the cargo is in free time, the terminal facility . . . is being provided by the terminal to the carrier so that the carrier may discharge its full transportation obligation . . . ." <sup>117</sup> Additionally, the Commission recognized that an ocean common carrier may contract with a marine terminal operator to perform these duties; but the carrier may not divest itself of them. <sup>118</sup>

**2. If an ocean common carrier or marine terminal operator is unable or refuses to release cargo or accept equipment returns after free time expires, Section 41102(c) requires the carrier or marine terminal operator to waive demurrage or detention charges for a period equal to the duration of the disability.**

The Commission has long held that § 41102(c) requires terminal practices, like demurrage and detention, to "be fit and appropriate to the end in view." <sup>119</sup> And Commission precedent establishes that a practice is not fit and appropriate to the end in view if it cannot achieve its goals. Relying on Section 41102(c), the Commission's predecessor rejected a demurrage practice that was "useless" for achieving the goals of demurrage. <sup>120</sup>

Demurrage and detention exist to induce proper conduct and to compensate for actual costs, not to generate a profit. The goals of demurrage are: (1) to induce timely removal of cargo from a port, and (2) to compensate the carrier for involuntarily storing cargo. <sup>121</sup> The goals of detention are: (1) to induce timely return of equipment, and (2) to compensate for detaining equipment beyond the required return period. <sup>122</sup>

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<sup>117</sup> *Id.*

<sup>118</sup> *Id.* at 415.

<sup>119</sup> *Investigation of Free Time Practices—Port of San Diego*, 9 F.M.C. 525, 547 (1966).

<sup>120</sup> *NY I*, 3 U.S.M.C. 89, 107 (1948).

<sup>121</sup> *Id.*

<sup>122</sup> *Am. Export-Isbrandtsen Lines, Inc. v. Fed. Mar. Comm'n*, 444 F.2d 824, 829 (D.C. Cir. 1970).

Demurrage charges cannot achieve their goals when the ocean common carrier or marine terminal operator refuses or is unable to release cargo due to port conditions beyond the control of the consignee. When an ocean common carrier or marine terminal operator refuses to allow cargo removal, demurrage charges would contravene their purpose of incentivizing timely cargo removal. The goal of timely cargo removal arises in public policy. Specifically, the public has an interest in minimizing port congestion to ensure efficient waterborne transportation.<sup>123</sup> If a shipper or receiver seeks to retrieve its cargo at a port, but it cannot remove the cargo for reasons beyond its control, demurrage cannot induce that conduct. Moreover, allowing an ocean common carrier or marine terminal operator to charge demurrage in such circumstances would unjustly reward the carrier or terminal for keeping cargo at the port, effectively condoning the use of demurrage to generate profits from shippers, consignees, and drayage providers, rather than to facilitate the efficient removal of cargo.

The fact that an inability to remove cargo arises after the expiration of free time should make no difference. When the ocean common carrier or marine terminal operator refuses or is unable to release cargo or accept the return of equipment for reasons beyond the control of the consignee or drayage provider, a demurrage charge cannot induce the shipper's, receiver's or drayage provider's conduct whether such refusal or disability occurs before or after the expiration of free time. It would be unreasonable to require the shipper or receiver to pay the ocean common carrier when the shipper or receiver is prohibited from removing its goods because the carrier is unable or refuses to release the goods. Indeed, permitting an ocean common carrier or marine terminal operator to charge demurrage in such an instance would unjustly enrich the carrier or terminal and could even encourage delays in releasing goods.

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<sup>123</sup> *NY I*, 3 U.S.M.C. at 103. The Commission has noted that this public interest plays a significant role in determining when free time ends and demurrage begins. *Id.*

Similarly, detention charges do not achieve their goals when a shipper, consignee, or drayage provider attempts to return equipment, but an ocean common carrier or marine terminal operator refuses or is unable to accept it. When an ocean common carrier or marine terminal operator refuses to accept equipment returns as a result of port congestion or disruptions, detention charges would contravene their goal of timely equipment return and allow the ocean common carrier or marine terminal operator to use such charges improperly as a revenue source.

Additionally, under these circumstances, detention does not provide an incentive to return equipment, because the shipper, consignee, or drayage provider cannot return equipment for reasons beyond its control. Also, the shipper, consignee, or drayage provider would not be unreasonably detaining the equipment, because it would be attempting to return it. Thus, no improper detention would exist for which the ocean common carrier or marine terminal operator would be entitled to compensation.

These considerations warrant a departure from the Commission's past demurrage rule for the port of New York that permitted demurrage not exceeding compensatory levels where the ocean common carrier refused or was unable to accommodate cargo removal after free time expired.<sup>124</sup> In promulgating that rule, the Commission focused on the carrier's transportation obligation, indicating that an ocean common carrier's obligation to tender cargo for delivery free of assessments of any demurrage ends when free time ends.<sup>125</sup> But it did not rule out that some demurrage charges should not be assessed after free time expires. It indicated that, for equitable reasons, waiving demurrage "should be encouraged" for periods when a consignee attempts to pick up cargo, but the carrier is otherwise unable to tender it to the consignee.<sup>126</sup> Under those

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<sup>124</sup> *NY II*, 9 Shipping Reg. (P&F) at 881.

<sup>125</sup> *Id.* at 874.

<sup>126</sup> *Id.*

circumstances, the Commission noted that the consignee would no longer need or desire storage of its cargo.<sup>127</sup> Moreover, the Commission should have, but did not, considered the purpose of demurrage when it decided that compensatory demurrage is allowed when a carrier refuses or is unable to tender cargo after free time expires.

**3. If a shipper, receiver, or motor carrier is unable to remove cargo or return equipment due to events or circumstances beyond its control that affect a substantial portion of the port, Section 41102(c) prohibits an ocean common carrier or marine terminal operator from charging more than compensatory demurrage or detention for the disability period.**

Charging demurrage or detention at penal levels when a shipper, consignee, or motor carrier cannot remove cargo or return equipment for reasons beyond the control of the shipper, consignee, or motor carrier is an unreasonable practice. To carry out their purpose of inducing cargo removal and equipment return, demurrage and detention charges are designed to penalize shippers, consignees, and motor carriers. Specifically, these penal demurrage and detention charges are set at levels that exceed the ocean common carrier's or marine terminal operator's cost of storing cargo or owning equipment.<sup>128</sup> In contrast, compensatory demurrage and detention, which is designed to compensate for use of port space and equipment, do not exceed the costs of the space or equipment.

For over 40 years, the Commission had a rule prohibiting ocean common carriers from charging penal demurrage when a consignee is unable to remove cargo for reasons beyond its control affecting a port-wide area.<sup>129</sup> The rationale for this rule was that, when a consignee is

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<sup>127</sup> *Id.*

<sup>128</sup> *NY I*, 3 U.S.M.C. at 107.

<sup>129</sup> The latest iteration of the rule was: "Where a consignee is prevented from removing its cargo by factors beyond its control (such as, but not limited to, longshoremen's strikes, trucking strikes or weather conditions) which affect an entire port area or a substantial portion thereof, and when a consignee is prevented from removing its cargo by a longshoremen's strike which affects only

unable to remove cargo for reasons beyond its control, penal demurrage charges cannot achieve their goal of timely cargo removal.<sup>130</sup> Thus, penal charges would be “a useless, and consequently unjust burden upon consignees, and a source of unearned revenue to carriers.”<sup>131</sup> And “[t]he levying of such penal charges, therefore, constitutes an unjust and unreasonable practice . . . and should be forbidden.”<sup>132</sup>

Penal detention should likewise be prohibited when a shipper, consignee, or motor carrier cannot return equipment for reasons beyond its control. In this situation, penal detention, i.e. detention charges exceeding that which is needed to compensate for use of equipment outside free time, cannot achieve its goal of accelerating return of equipment. Thus, charging detention at penal levels for the period of such disability of the shipper, consignor, or motor carrier is an unjust and unreasonable practice that § 41102(c) prohibits.

**B. The Commission has Issued Rules Prohibiting Unjust and Unreasonable Demurrage Practices Based on Analogous Industry Circumstances.**

The interpretive rule proposed by Petitioners would essentially revive rules that the Commission had in place for the port of New York for over 40 years. Additionally, the port congestion events that gave rise to the Commission’s New York demurrage rules are similar to the disruptive events that gave rise to recent delays that have plagued ports throughout the country. Thus, adopting a demurrage policy in response to current port conditions would be consistent with Commission precedent.

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one pier or less than a substantial portion of the port area, carriers shall (after expiration of free time) assess demurrage against imports at the [compensatory demurrage rate], for such time as the inability to remove the cargo may continue.” 46 C.F.R. § 525.1(d) (1992).

<sup>130</sup> *NY I*, 3 U.S.M.C. at 107.

<sup>131</sup> *Id.*

<sup>132</sup> *Id.*



Underlying both the New York demurrage rules and the congestion experienced at West Coast ports in 2014-2015 were protracted disagreements between port/terminal management and labor. In 1948, the Commission's predecessor issued New York demurrage rules to address the problems caused by the strikes of seafarers and truck drivers that gave rise to congestion at the Port of New York.<sup>133</sup> The rules specified the amount of free time for import cargo at the port; required an extension of free time where an ocean common carrier failed to tender cargo for delivery during free time; and, prohibited ocean common carriers from collecting more than a compensatory demurrage rate for any period where the consignee was prevented from removing cargo by factors beyond its control affecting at least a substantial area of the port.<sup>134</sup>

In 1968, the Commission revised its New York rules in response to free time and demurrage problems on inbound cargo at the port that a 1965 longshoremen's strike caused.<sup>135</sup> The strike shut down nearly all East and Gulf Coast ports.<sup>136</sup> Because there was insufficient advance warning of the strike, consignees left a substantial amount of cargo on the piers when the strike began.<sup>137</sup> When it ended, "an abnormally large number of ships discharged their cargoes quickly, and this, added to the inbound cargoes left on the piers prior to the strike, caused greater than normal congestion on the shore side of the piers in the Port of New York."<sup>138</sup> As a result, according to the record before the Commission, truckers faced difficulty picking up the cargo.<sup>139</sup> The revised rules permitted ocean common carriers to collect demurrage at not

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<sup>133</sup> *NY II*, 9 Shipping Reg. (P&F) 860, 878 (F.M.C. Dec. 7, 1967).

<sup>134</sup> *NY I*, 3 U.S.M.C. at 109-10.

<sup>135</sup> *NY II*, 9 Shipping Reg. (P&F) at 863.

<sup>136</sup> *Id.* at 864.

<sup>137</sup> *Id.* at 865

<sup>138</sup> *Id.* at 863.

<sup>139</sup> *Id.* at 871.

more than compensatory levels on cargo which an ocean common carrier refused or was unable to tender for delivery *after* free time expired; removed the requirement that a consignee disability arising from a longshoremen strike be port-wide before demurrage is limited to compensatory levels; and required extensions of free time and compensatory demurrage following a longshoremen strike of at least five days.<sup>140</sup>

Key similarities exist between the 1965 longshoremen strike and 2014-2015 West Coast labor/management disputes. Both involved longshoremen. Both effectively shut down the ports along an entire coast. And both resulted in vessel bunching that deepened congestion.

Although the more recent West Coast port congestion involved an alleged labor slow-down and alleged retaliatory actions by employers rather than an actual strike or lockout, this distinction should not restrict the Commission from acting today, since the motivation for Commission action would remain the same—to address the apparent unfairness in allowing demurrage and detention assessments when the inability to pick up cargo or return equipment at a congested seaport is beyond the control of the shipper, trucker, or consignee. Even though the 2014-2015 labor/management issues at the West Coast may not have been the sole cause of the port congestion affecting U.S. ports at the time, other potential causes (e.g., offloading of cargo from larger vessels, inefficient chassis operations, and restricted terminal space and shifts available to store containers or return equipment) are still beyond the control of the shipper and consignee.

Additionally, although some ocean common carriers waived demurrage in whole or in part during the recent West Coast port congestion, this conduct was hardly a consistent practice and should not prevent the Commission from acting. For example, despite the congestion at the

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<sup>140</sup> *Id.* at 881-82.

New York piers following the 1965 strike, the record before the Commission contained no evidence that cargo was actually assessed penalty demurrage in situations in which a bona fide attempt was made to pick up the cargo.<sup>141</sup> It also noted that, generally, ocean common carriers waive demurrage in all strike situations.<sup>142</sup> Thus, the potential existence of a commercial solution did not prevent the Commission from acting in the past.

Further, the Commission's repeal of the New York rules in 1993<sup>143</sup> does not mean that it lacks jurisdiction to issue similar rules to address current port conditions. It repealed the rules because they became unnecessary following operational and technological changes in the shipping industry.<sup>144</sup> The Commission's predecessor adopted the rules to address demurrage issues involving breakbulk cargo.<sup>145</sup> But, by 1993, containerized cargo comprised the majority of cargo movements into the port.<sup>146</sup> Also, the absence of any comments on the Commission's proposal to repeal the rules confirmed that the demurrage problems that the rules addressed no longer existed.<sup>147</sup>

Finally, the limited applicability of the New York rules to only breakbulk cargo does not suggest that the Commission cannot apply similar rules to containerized cargo. The Commission did not apply the New York rules to containerized cargo because the container trade was not experiencing the same demurrage issues as the breakbulk trade. Indeed, the Commission

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<sup>141</sup> *Id.* at 871.

<sup>142</sup> *Id.* at 875.

<sup>143</sup> *Free Time and Demurrage at New York*, 58 Fed. Reg. 10,983, 10,984 (Feb. 23, 1993).

<sup>144</sup> *Id.*

<sup>145</sup> *NY II*, 9 Shipping Reg. (P&F) 860, 880 (F.M.C. Dec. 7, 1967) (confirming that the rules apply to only breakbulk cargo).

<sup>146</sup> *Id.*

<sup>147</sup> *Free Time*, 58 Fed. Reg. at 10,984.

considered extending the New York rules to containerized cargo on multiple occasions, but each time declined because containerized cargo was not experiencing the issues that the rules addressed. In 1968, when the Commission amended its New York demurrage rules to address longshoremen's strikes, it refused to extend the rules to containerized cargo noting that "[t]he record in this proceeding does not indicate that problems have arisen with respect to cargo shipped in containers."<sup>148</sup> In 1978, the Commission again refused to extend the rules, finding "an absence of present practices which require remedial action or a showing that there exists a potential for future violations of the Shipping Act sufficient to warrant corrective action at this time."<sup>149</sup> But it did not foreclose the possibility of extending the rules to containerized cargo in the future, stating "we intend to remain responsive to conditions that may arise in the future which warrant Commission action."<sup>150</sup> Petitioners contend that there is a need for the Commission to take action to address current unjust and unreasonable demurrage and detention practices that have arisen in the containerized trades.

#### **IV. PETITIONERS PROPOSE A POLICY THAT WOULD CLARIFY WHEN DEMURRAGE AND DETENTION PRACTICES ARE UNJUST AND UNREASONABLE UNDER SECTION 41102(C).**

The proposed rule would establish a policy statement that provides guidance to the shipping industry regarding the FMC's interpretation of § 41102(c) in order to prevent the occurrence of unjust and unreasonable demurrage and detention practices by ocean common carriers and marine terminal operators. Specifically, the proposed policy addresses three scenarios in which unjust and unreasonable demurrage and detention practices are occurring at

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<sup>148</sup> *NY II*, 9 Shipping Reg. (P&F) at 880.

<sup>149</sup> *Free Time on Containerized Cargo at New York*, 18 Shipping Reg. (P&F) 465, 468 (FMC 1978).

<sup>150</sup> *Id.* at 469.

U.S. ports. As noted previously, the proposed policy is set forth in Exhibit A. This Section IV describes the components of the proposed policy.

The proposed policy includes four separate paragraphs (a)-(d). Paragraph (a) of the proposed policy simply sets forth the relevant text of Section 10(d) of the Shipping Act, 46 U.S.C. § 41102(c), which is interpreted in the remaining paragraphs. Paragraph (b) of the proposed policy addresses the unreasonable practice where an ocean common carrier or marine terminal operator fails to tender cargo for delivery or accept equipment returns **during the free time period** due to circumstances beyond the control of the shipper, receiver, or drayage provider, and the ocean common carrier or marine terminal operator refuses to extend free time. Paragraph (c) addresses the unreasonable practice occurring under the same scenario as paragraph (b), except the ocean common carrier or marine terminal operator fails to accommodate an attempt to retrieve cargo or return equipment **after free time has expired**. In this case, it would only be reasonable for demurrage or detention to be assessed during the period between the expiration of free time and the commencement of the disability preventing the carrier or terminal from releasing the cargo or accepting the return of equipment. Paragraph (d) addresses demurrage and detention assessments at levels above and beyond the ocean common carriers' or marine terminal operators' storage cost when the carrier or terminal can fulfill their obligations to tender cargo for delivery or accept equipment but the shipper, consignee, or drayage provider cannot retrieve cargo or return equipment for reasons beyond the control of the shipper, consignee, or drayage provider after free time has expired.

**A. Paragraph (b): Free Time should be Extended if an Ocean Common Carrier or Marine Terminal Operator Fails to Tender Cargo for Delivery or Accept Equipment Returns for Reasons Beyond the Control of the Shipper, Receiver, or Motor Carrier.**

Paragraph (b) of the proposed policy interprets § 41102(c) as requiring free time to be extended if the ocean common carrier or marine terminal operator fails to tender cargo for delivery or accept equipment returns before free time expires as a result of port conditions that are beyond the control of the shipper, receiver, or drayage provider. It also requires the extension to be equal to the duration of the event causing the ocean common carrier's or marine terminal operator's failure.

**1. The failure must commence before free time expires.**

Paragraph (b) extends free time only for carrier or terminal failures that commence before free time expires. The purpose of paragraph (b) is to ensure that shippers, consignees, and drayage providers receive the benefit of their free-time period which is encompassed within the ocean common carrier's transportation service. The policy would permit the extension of free time for the period of the ocean-common-carrier or marine-terminal-operator disability regardless of whether the disability terminates within or subsequent to the free time period, since in either case the shipper, consignee, or drayage provider would be deprived of the benefit of all or at least part of the free-time period.

**2. A failure would qualify only if caused by an event or circumstance beyond the shipper's, consignee's, or drayage provider's control.**

Any ocean-common-carrier or marine-terminal-operator failure to tender cargo for delivery or accept equipment returns during free time, for **any reason** beyond the shipper's, consignee's, or drayage provider's control, would qualify as a failure under Paragraph (b). An ocean common carrier's transportation obligation includes tendering cargo for delivery and receiving equipment for the **entire** free-time period. But, enforcing this obligation where the

shipper, consignee, or drayage provider interfered with the ocean common carrier's or marine terminal operator's performance would be inequitable. Thus, failures to tender cargo for delivery or receive equipment commencing during free time, caused by any event or circumstance beyond the shipper's, receiver's, or drayage provider's control, would warrant a free-time extension under the proposed rule.

Paragraph (b) provides a non-exhaustive list of common events beyond a shipper's, consignee's, or drayage operator's control that may cause an ocean common carrier or marine terminal operator to fail to tender cargo for delivery or accept equipment returns during free time. These events include port congestion, weather, port disruptions (such as those arising from labor disputes), and delays arising from governmental inspections. Delays arising from governmental inspections of cargo before free time expires are beyond a shipper's, consignee's, or drayage provider's control and may arise from the ocean common carrier's, or its marine terminal operator's, failure to tender cargo to U.S. Customs and Border Protection in accordance with its priority status. Tendering goods in this manner deprives a shipper or consignee of the benefit of its free-time period. Imports or exports selected for inspection and/or examination by Customs should not be subject to demurrage and detention costs while being inspected or examined. The shipper or consignee has no control over the decision of the government to inspect a particular shipment or the timing as to when an inspection may occur. When the government inspection exceeds the free time period resulting in the assessment of demurrage and detention, these costs are unfairly borne by the shipper or consignee who are powerless to limit their exposure to such liability. Indeed, in some cases, these costs may be in the thousands of dollars. Further, assessing demurrage and detention in this circumstance cannot fulfill the underlying purpose of such charges since the consignee or its agent is simply not able to remove

the cargo from the port area or return a container through no fault of its own. However, under the proposed policy, delays as a result of governmental actions or requirements that could have been prevented by the shipper or consignee would not qualify for extension of the free time period.

**3. Free time should be extended for the duration of the failure.**

Extensions of free time under Paragraph (b) must be at least equivalent to the duration of the underlying failure. A failure to tender cargo for delivery or receive equipment that commences during free time deprives the shipper, consignee, or drayage provider of the benefit of the free-time period until the failure ends. Thus, to account for the period of the failure, an equivalent period must be added to free time.

For example, assume an ocean common carrier tenders cargo for delivery on a Monday and the free time is five days—it expires at the end of the day on Friday. If on Tuesday, a snowstorm closes the port for one day and the carrier cannot tender for delivery, Paragraph (b) calls for a one-day extension of free time to Saturday to make up for the failure on Tuesday. If on Friday, a snowstorm causes the port to close for three days—Friday, Saturday, and Sunday—and the carrier cannot tender delivery during this period, Paragraph (b) calls for a three-day extension of free time to Monday.

**B. Paragraph (c): No Demurrage or Detention May Accrue for the Period an Ocean Common Carrier or Marine Terminal Operator Fails to Accommodate an Attempt to Retrieve Cargo or Return Equipment After Free Time Has Expired.**

Paragraph (c) of the proposed policy addresses the situation where an ocean common carrier or marine terminal operator fails to accommodate an attempt to retrieve cargo or return equipment **after** free time has expired. It interprets § 41102(c) as requiring in these circumstances a period of non-demurrage or non-detention equivalent to the duration of the event causing the carrier's or terminals' failure.



Paragraph (c) only applies to ocean-common-carrier or marine-terminal-operator failures that occur after free time expires. Its purpose is to protect shippers, consignees, and drayage providers from incurring demurrage and detention where they attempt to pick up cargo or return equipment, but the ocean common carrier or marine terminal operator fails to accommodate the attempt. In such circumstances, charging demurrage or detention would be inequitable, because the shipper, consignee, or drayage provider is attempting to do the very things that demurrage and detention incentivize—pick up the cargo and return equipment – but is frustrated in its attempt to do so. Thus, allowing for the assessment of such charges in this circumstance would be directly at odds with the purposes of demurrage and detention.

Like Paragraph (b), Paragraph (c) would apply to any failure of the ocean common carrier or marine terminal operator to accommodate an attempt to pick up cargo or return equipment if caused by any event or circumstance beyond the shipper's, consignee's, or drayage provider's control. This ensures that shippers, consignees, and drayage providers are not the cause of the carrier or terminal failure. But it also reflects that an ocean common carrier failure to accommodate an attempt to pick up cargo or return equipment for any reason beyond the control of the shipper, consignee, or drayage provider would unnecessarily force additional storage or equipment charges on the shipper, consignee, or drayage provider.

Periods of non-demurrage or non-detention should be equivalent to the period of the disability or event giving rise to the ocean-common-carrier or marine-terminal-operator failure under Paragraph (c). This ensures that demurrage and detention charges are not levied for the days that the shipper, consignee, or motor carrier attempted cargo pickup or equipment return. But it also permits the ocean common carrier or marine terminal operator to charge demurrage both before and after the failure period, except to the extent free time applies.

For example, assume that free time for an import container expired on a Sunday. If the consignee attempts pick up on the following Tuesday, but the marine terminal operator refuses to release the container due to port congestion, demurrage may not be charged for Tuesday, but may be charged for Monday and any day after Tuesday that the container remains on the port, provided that the marine terminal operator is able to release the container.

**C. Paragraph (d): When an Ocean Common Carrier or Marine Terminal Operator is Able to Tender Cargo for Delivery or Accept Equipment but a Shipper, Consignee, or Drayage Provider Cannot Retrieve Cargo or Return Equipment Due to an Event Beyond their Control that Affects a Substantial Area of the Port, then the Carrier or Marine Terminal May Not Charge More than Compensatory Demurrage or Detention for the Period After Free Time Expires.**

Paragraph (d) of the proposed policy addresses how § 41102(c) applies to situations where the shipper, consignee, or drayage provider are unable to pick up cargo or return equipment after free time because of events beyond their control affecting a substantial portion of the port area, even though the ocean common carrier or marine terminal operator would otherwise be able to tender for delivery or accept equipment. These situations are most likely to arise when a snowstorm or other weather event blocks access to a port or a trucker strike occurs, even if the ocean common carrier or marine terminal operator may be able to release the goods or receive the equipment. This provision is not meant to address flat tires, broken equipment, or other events affecting only a single shipper, consignee, or drayage provider.

This paragraph applies only to shipper, consignee, or drayage provider disabilities that occur after free time expires. Its purpose is to prevent shippers, consignees, and drayage providers from paying **penalty** demurrage and detention rates when they are unable to pick up cargo or return equipment for reasons beyond their control. Before free time expires, the shipper, consignee, or drayage provider is not subject to any detention or demurrage charges, regardless

of whether it can retrieve cargo or return equipment. Thus, this paragraph is only relevant to disabilities existing after free time expires.

Only compensatory demurrage or detention is available for the duration of the disability. This ensures that the shipper, consignee, or drayage provider is not penalized for the disability. Outside the disability period, normal demurrage or detention may be charged, subject to free time.

For example, assume free time on an import container commences on October 1 and extends five days until October 5. If a snowstorm blocks truck access to the port for three days beginning October 4, but the ocean common carrier and marine terminal operator have cleared all roads at the port and the port is operating normally during this period, the ocean common carrier and marine terminal operator may not charge more than compensatory demurrage from October 6-7 and may charge normal demurrage after October 7. If a snowstorm blocks access to the port from October 8-10, the ocean common carrier or marine terminal operator may charge normal demurrage for October 6-7, compensatory demurrage for October 8-10, and normal demurrage thereafter until the cargo is removed. If a snowstorm occurs from October 4-7, a state of emergency is declared preventing trucks from accessing the port during this period, and the port is closed during this period, Paragraph (b) applies and free time must extend from October 6-9, after which normal demurrage may be charged.

Under the proposed policy, the compensatory rate that may be charged is limited to the amount needed to cover the costs of the port space or equipment. In this situation, demurrage and detention can achieve only their compensatory purpose; they cannot induce cargo pick up or equipment return. Thus, the demurrage and detention charges should not exceed the cost of port space or equipment.

For the purpose of determining compensatory detention, equipment costs include opportunity cost associated with the lack of use of equipment. A mechanism for assessing the ocean common carriers' opportunity cost of equipment should be developed in the context of the requested rulemaking.

**V. THE COMMISSION'S ORDER TO FORM SUPPLY CHAIN INNOVATION TEAMS DOES NOT JUSTIFY DENIAL OR DELAY OF THE PROPOSED POLICY.**

On February 1, 2016, the Commission issued an order directing Commissioner Dye to form Supply Chain Innovation Teams ("SCITs") in response to past congestion at major U.S. ports and to develop solutions to port congestion and related supply chain challenges.<sup>151</sup> In response, Commissioner Dye formed three teams of industry leaders from 35 major companies and representing nine key supply chain industries.<sup>152</sup> These teams meet regularly to identify and develop actionable supply-chain process innovations and improvements that would enhance national supply-chain reliability and effectiveness.<sup>153</sup>

The formation of SCITs has the potential to develop commercial solutions to supply-chain challenges and related port congestion. These SCITs hopefully will develop strategies and actions to reduce the frequency and severity of port-congestion issues. Thus, Petitioners strongly support the Commission's action.

However, SCITs are unlikely to completely eliminate the possibility of port congestion. And the Commission cannot simply wish away the consequences of port congestion in the form

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<sup>151</sup> Int'l Ocean Transportation Supply Chain Engagement, 81 Fed. Reg. 6263, 6264 (Fed. Mar. Comm'n Feb. 5, 2016).

<sup>152</sup> Statement of Commissioner Dye on Supply Chain Innovation Teams to Chairman Cordero (July 20, 2016), *available at* [http://www.fmc.gov/statement\\_of\\_commissioner\\_rebecca\\_dye\\_on\\_supply\\_chain\\_innovation\\_teams/](http://www.fmc.gov/statement_of_commissioner_rebecca_dye_on_supply_chain_innovation_teams/).

<sup>153</sup> *Id.*

of detention and demurrage charges on shippers, consignees, and drayage providers when it does occur. A backstop is necessary to protect shippers, consignees, and drayage providers when commercial strategies and actions fail to prevent congestion. Thus, the Petitioners' request for an interpretive rule/policy statement is complementary with, and not contradictory to, the agency's formation of SCITs.

In fact, the issuance of a policy statement as requested by the Petitioners is likely to increase the likelihood for ocean common carriers and marine terminal operators to take action, via SCITs or otherwise, to reduce port congestion. The policy statement more fairly allocates the costs of congestion to those parties who can best avoid or mitigate congestion. Since ocean common carriers and marine terminal operators have more power over port activities, staffing, and other factors leading to congestion than shippers, consignees, or drayage providers, the policy will place on those parties a greater incentive to address the problem.

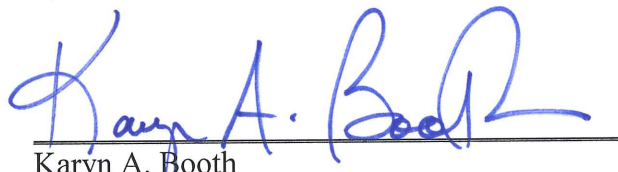
## VI. CONCLUSION

Shippers, consignees, and drayage providers are experiencing demurrage and detention charges and practices that penalize them when they cannot retrieve cargo or return equipment for reasons beyond their control. These unfair practices allow carriers and terminal operators to generate revenue and profits that reduce their incentive to mitigate or avoid port congestion and disruption. Given these conditions and the primary purpose of demurrage and detention, which is to serve the public interest by securing an efficient port system,<sup>154</sup> Commission action is necessary under § 41102(c). For the foregoing reasons, the Petitioners request that the Commission issue a notice of proposed rulemaking and, after receiving comments, adopt the proposed policy.

Respectfully submitted,

THE COALITION FOR FAIR PORT  
PRACTICES

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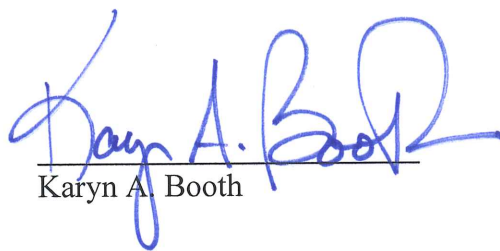
Dated: December 7, 2016

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<sup>154</sup> See *Am. Export-Isbrandtsen Lines, Inc. v. Fed. Mar. Comm'n*, 444 F.2d 824, 829 (D.C. Cir. 1970) (recognizing that ports are charged with the public interest in efficient terminal operations, which is “unquestioned”).

### VERIFICATION

I verify under penalty of perjury that, upon information and belief, the foregoing is true and correct.

  
Karyn A. Booth

# EXHIBIT A



## **EXHIBIT A**

### **PROPOSED FMC STATEMENT OF POLICY ON OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR DEMURRAGE, DETENTION, AND PER DIEM CHARGES**

(a) Section 10(d) of the Shipping Act of 1984 (46 U.S.C. § 41102(c)) states that a common carrier or marine terminal operator 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.

(b) The Federal Maritime Commission interprets this provision to mean that when an ocean common carrier or marine terminal operator is unable to tender cargo for delivery and/or to receive equipment (“disability”), and such disability is caused by any event or circumstance that is beyond the control of the shipper, receiver, or motor carrier, including but not limited to:

- (1) port congestion;
- (2) port disruption;
- (3) weather-related events;
- (4) delays as a result of governmental action or requirements, unless such delays could have been prevented by the shipper or receiver;

then, if the disability commences before the expiration of free time, it would be unreasonable for the common carrier or marine terminal operator to fail to extend free time for a period equal to the duration of such disability; and/or to assess demurrage, detention or per diem charges against any shipper, receiver, motor carrier or other person for such extended free time period.

(c) If an ocean common carrier’s or marine terminal operator’s disability under paragraph (b) arises after free time expires and such disability is caused by any event or circumstance that is beyond the control of the shipper, receiver, or motor carrier, it would be unreasonable for an ocean common carrier or marine terminal operator to charge demurrage, detention, or per diem for the period of the ocean common carrier’s or marine terminal operator’s disability but demurrage, detention or per diem may be assessed for the period between the expiration of free time and the commencement of the ocean common carrier’s or marine terminal operator’s disability.

(d) If an ocean common carrier or marine terminal operator is able to tender cargo for delivery and receive equipment, but shippers, receivers, or motor carriers are prevented from removing cargo and/or returning equipment after free time expires because of events or circumstances beyond their control affecting a substantial portion of the port area, it would be unreasonable for ocean common carriers or marine terminal operators to assess demurrage, detention or per diem charges against such shippers, receivers, or motor carriers at a rate exceeding a compensatory rate for the duration of the disability. A compensatory rate is a rate that does not exceed the ocean common carrier’s or marine terminal operator’s storage costs for the cargo or costs for equipment.

# EXHIBIT B

## **EXHIBIT B**

### **PETITIONERS' STATEMENTS OF INTEREST**

#### **American Apparel & Footwear Association**

Representing more than 1,000 world famous name brands, the American Apparel & Footwear Association (“AAFA”) is the trusted public policy and political voice of the apparel and footwear industry, its management and shareholders, its four million U.S. workers, and its contribution of \$361 billion in annual U.S. retail sales. AAFA stands at the forefront as a leader of positive change for the apparel and footwear industry. With integrity and purpose, AAFA delivers a unified voice on key legislative and regulatory issues. AAFA enables a collaborative forum to promote best practices and innovation. AAFA's comprehensive work ensures the continued success and growth of the apparel and footwear industry, its suppliers, and its customers.

#### **American Chemistry Council**

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$797 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for fifteen percent of all U.S. exports.

#### **American Import Shippers Association**

The American Import Shippers Association (“AISA”), founded in 1987, negotiates for its members discounted ocean service contract rates as well as accessorial charges and other favorable shipping terms, covering imports from the Far East including China, the Indian Sub-Continent, the Middle East, as well as Central and south America. Its member companies are U.S. importers and retailers of apparel, footwear, and other consumer products. In addition to collective rate negotiations, AISA actively supports efforts aimed at shaping regulatory efforts aimed at meeting the challenges facing importers in an evolving ocean carrier industry.

#### **Association of Bi-State Motor Carriers**

The Association of Bi-State Motor Carriers was incorporated in 2002. It currently represents a majority share of port and container traffic at Port Newark, with more than 160 members from trucking and trucking-industry related companies doing business there. Our mission is to provide a forum in which truck operators, owners and businesses in trucking-related industries can share ideas, solve problems, and foster a continually improving intermodal transportation business environment.

The Association is dedicated to serving the interests of its members in Intermodal Transportation, especially at the Port of New York and New Jersey. This port handles over 80% of the world trade for a 10 state, 260-mile radius area, which represents 34% of the U.S. volume of trade. Our members are located throughout the U.S. and Canada.

#### **Association of Food Industries**

Created in 1906, the Association of Food Industries is the trade association for the U.S. food import industry. AFI, with more than 1,000 member companies worldwide, is committed to

encouraging free and fair trade and fostering compliance with U.S. laws and regulations.

### **Auto Care Association**

Based in Bethesda, Md., the Auto Care Association has nearly 3,000 member companies that represent some 150,000 independent automotive businesses that manufacture, distribute and sell motor vehicle parts, accessories, tools, equipment, materials and supplies, and perform vehicle service and repair. Visit [www.autocare.org](http://www.autocare.org)

### **Foreign Trade Association**

Foreign Trade Association (“FTA”) is the oldest organization promoting the growth of international trade in Southern California. It acts as an informative resource and networking center for its members, and monitors and advocates legislative issues on a state and federal level. The membership is represented by a cross-section of major exporters, importers, manufacturers, customs brokers, freight forwarders, international bankers, attorneys and other prominent service industries.

### **Green Coffee Association, Inc.**

The Green Coffee Association, Inc. established in 1923 is the leading trade association dealing exclusively with green coffee in the United States.

### **Harbor Association of Industry & Commerce**

Harbor Association of Industry & Commerce (“HAIC”) was established in 1975 to be a collective voice and advocate for the harbor business community. HAIC is a non-profit industrial and commercial trade association which serves as a united voice on trade, transportation, energy, environmental and land-use issues affecting the South Bay and harbor business communities.

### **Harbor Trucking Association**

Harbor Trucking Association (“HTA”) is a coalition of Los Angeles, Long Beach and Oakland intermodal carriers whose purpose is to advocate, educate and promote strategies with other goods movement stakeholders and policy makers that will sustain emission reductions, provide a dialog for intermodal truck efficiency, and to return cargo and jobs to California ports.

### **Intermodal Motor Carriers Conference**

The Intermodal Motor Carriers Conference (“IMCC”) is an affiliated organization of the American Trucking Associations (“ATA”) representing motor carrier member companies and companies and organizations supporting intermodal freight transportation who operate in port, rail, distribution and customer logistic related facilities around the country. ATA is the largest national trade association for the trucking industry and through a federation of trucking groups, industry related conferences and its 50 affiliated state trucking associations represents more than 37,000 members covering every type of motor carrier transport in the United States.

### **International Association of Movers**

The International Association of Movers (“IAM”) is the moving and forwarding industry's largest global trade association. With more than 2,000 members, it comprises companies that provide moving, forwarding, shipping, logistics, and related services in more than 170 countries. Since 1962, IAM has been promoting the growth and success of its members by offering

programs, resources, membership protections, and unparalleled networking opportunities to enhance their businesses and their brands.

### **Juice Products Association**

The Juice Products Association (“JPA”) is the national trade association representing the juice products industry. Our membership represents a diverse spectrum of the industry and includes processors, packers, extractors, brokers and marketers of fruit or vegetable juices, drinks, and bases, as well as industry suppliers and food testing laboratories. Our manufacturers represent over 80% of the US volume of juice and fruit beverage production.

JPA’s mission is to connect members by strengthening the juice products industry, providing a unified voice, serving as the expert resource, enhancing industry best practices, and promoting consumer benefits of juice products.

### **Juvenile Products Manufacturers Association**

The Juvenile Products Manufacturers Association (“JPMA”) is a non-profit association representing leading manufacturers who make prenatal to preschool products for the North American market. The JPMA serves as an advocate for the industry and is committed to ensuring the safe use and selection of juvenile products. Each September, the JPMA celebrates its Baby Safety Month initiative, heavily promoting the campaign’s messages through its consumer brand, the Baby Safety Zone. To find out more information about the JPMA, its programs and its members, visit [www.jpma.org](http://www.jpma.org). Follow JPMA on Twitter @JPMA, connect with JPMA on Facebook or on YouTube. Parents, caregivers and consumers should visit [www.BabySafetyZone.org](http://www.BabySafetyZone.org).

### **Meat Import Council of America**

The Meat Import Council of America (“MICA”) is an incorporated trade association, which represents the U.S. industry that imports fresh, chilled and frozen beef and sheep meat and pork into the United States. MICA’s members include importers, who account for most of the non-NAFTA imports of these products, as well as end users. MICA’s membership also includes organizations such as port authorities, refrigerated warehouses, customhouse brokers, etc. who provide services in connection with this imported product.

### **Motor & Equipment Manufacturers Association**

The Motor & Equipment Manufacturers Association (“MEMA”) and its four specialized divisions comprise the leading international trade association in the fast-changing mobility industry. Representing vehicle suppliers that manufacture and remanufacture components, technologies, and systems for use in passenger cars and heavy trucks, MEMA works to ensure that the marketplace and legislative and regulatory environment support the development and implementation of new technical capabilities transforming the automotive industry, including autonomous vehicles and vehicle connectivity. By directly employing more than 734,000 Americans and generating a total employment impact of 3.6 million jobs, MEMA’s member companies are the largest sector of manufacturing jobs in the U.S. MEMA’s members are represented through four divisions: Automotive Aftermarket Suppliers Association (AASA), Heavy Duty Manufacturers Association (HDMA), Motor & Equipment Remanufacturers Association (MERA) and Original Equipment Suppliers Association (OESA). For more

information on how MEMA is leading transformation in the mobility industry, visit [www.mema.org](http://www.mema.org).

### **National Customs Brokers & Forwarders Association of America, Inc.**

The National Customs Brokers & Forwarders Association of America, Inc. (“NCBFAA”) is the national trade association representing the interests of freight forwarders, non-vessel operating common carriers (“NVOCCs”) and customs brokers in the ocean shipping industry. The NCBFAA’s 1,000 members and the members of the Association’s 28 affiliated regional associations are involved in handling the majority of international import and export cargo that moves in the ocean commerce of the United States. In particular, these members arrange for the movement and delivery of ocean cargo on behalf of their importer and exporter customers, are often the parties that directly contract with the shipping lines and are ordinarily the parties that are invoiced by the vessel operators and marine terminal operators for demurrage and detention charges.

### **National Pork Producers Council**

The National Pork Producers Council is an association of 43 state pork producer organizations that serves as the global voice in Washington, D.C., for the nation’s pork producers. The U.S. pork industry represents a significant value-added activity in the agricultural economy and the overall U.S. economy. Nationwide, more than 68,000 pork producers marketed more than 110 million hogs in 2015, and those animals provided total gross receipts of more than \$21 billion. Overall, an estimated \$22 billion of personal income and \$35 billion of gross national product are supported by the U.S. hog industry. Iowa State University economists Daniel Otto, Lee Schulz and Mark Imerman estimate that the U.S. pork industry is directly responsible for the creation of nearly 35,000 full-time equivalent pork producing jobs and generates about 128,000 jobs in the rest of agriculture. It is responsible for approximately 111,000 jobs in the manufacturing sector, mostly in the packing industry, and 65,000 jobs in professional services such as veterinarians, real estate agents and bankers. All told, the U.S. pork industry is responsible for more than 550,000 mostly rural jobs in the United States.

### **National Retail Federation**

NRF is the world’s largest retail trade association, representing discount and department stores, home goods and specialty stores, Main Street merchants, grocers, wholesalers, chain restaurants and Internet retailers from the United States and more than 45 countries. Retail is the nation’s largest private sector employer, supporting one in four U.S. jobs — 42 million working Americans. Contributing \$2.6 trillion to annual GDP, retail is a daily barometer for the nation’s economy. [NRF.com](http://NRF.com)

### **New York/New Jersey Foreign Freight Forwarders and Brokers Association**

The New York/New Jersey Foreign Freight Forwarders and Brokers Association (“NYNJFFFBA”) is a trade association representing the interests of freight forwarders, non-vessel operating common carriers (“NVOCCs”) and customs brokers in the ocean shipping industry located in the Port of New York and New Jersey. The NYNJFFFBA has over 100 members that are involved in handling containerized and break/bulk cargo that moves through the Port of New York and New Jersey, which is the largest port on the East Coast. The members of the NYNJFFFBA arrange for the movement and delivery of ocean cargo on behalf of their importer and exporter customers, and as such, are often the parties that have direct contact with

the shipping lines and marine terminals. They are also ordinarily the parties that are invoiced by the vessel operators and marine terminal operators for demurrage and detention charges.

### **North American Meat Institute**

The North American Meat Institute (“NAMI”) is a national trade association that represents companies that process 95 percent of red meat and 70 percent of turkey products in the US and their suppliers throughout America. Headquartered in metropolitan Washington, DC, NAMI keeps its fingers on the pulse of legislation, regulation and media activity that impacts the meat and poultry industry and provides rapid updates and analyses to its members to help them stay informed. In addition, NAMI conducts scientific research through its Foundation designed to help meat and poultry companies improve their plants and their products. The Institute's many meetings and educational seminars also provide excellent networking and information-sharing opportunities for members of the industry.

### **Retail Industry Leaders Association**

RILA is the trade association of the world’s largest and most innovative retail companies. RILA members include more than 200 retailers, product manufacturers, and service suppliers, which together account for more than \$1.5 trillion in annual sales, millions of American jobs and more than 100,000 stores, manufacturing facilities and distribution centers domestically and abroad.

### **Tea Association of the USA, Inc.**

Founded in 1899, the Tea Association of the USA, Inc., was formed to promote and protect the interests of the tea trade in the United States and is the recognized independent authority on Tea.

### **The National Industrial Transportation League**

The League was founded in 1907 and represents companies engaged in the transportation of goods in both domestic and international commerce. The majority of the League’s members include shippers and receivers of goods; however, third party intermediaries, logistics companies, and other entities engaged in the transportation of goods are also members of the League. Competitive ocean transportation is vitally important to League members and their customers, and many League members depend highly upon efficient and effective ocean transportation services for both importing and exporting their goods.

### **Transportation Intermediaries Association**

The Transportation Intermediaries Association (“TIA”) is the professional organization of the \$160.2 billion third-party logistics industry in North America. Transportation intermediaries, or third party logistics companies (“3PL”), act as the facilitators to arrange the efficient and economical movement of goods between cargo ships, airplanes, trucks, rail, warehouses, and store shelves. TIA member companies serve tens of thousands of shippers and play a key role in domestic and international commerce. TIA represents over 1,600 member companies. Over 70 percent of these member companies are small, family-owned businesses. TIA is the only organization representing transportation intermediaries in all modes to shippers, carriers, government officials and international organizations and is the U.S. member of the International Federation of Freight Forwarders Associations (“FIATA”).

**U.S. Hide, Skin and Leather Association**

The U.S. Hide, Skin and Leather Association (“USHSLA”) is a full service industry organization devoted to the U.S. hides, skins and wet blue leather products industry. Founded in 1979, the association provides its members with government, public relations, and international trade assistance and support. The USHSLA is a cooperator under the U.S. Department of Agriculture’s foreign market development programs, assisting U.S. firms develop new markets for U.S. agricultural exports. USHSLA is at the forefront of the industry’s needs, providing members with service, information, and opportunities to compete in today’s global marketplace.



# EXHIBIT C

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VERIFIED STATEMENTS**

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1	International Motor Freight, Inc.	Christopher Grato VP Administration
2	MacMillan-Piper, Inc.	Mark Miller President & CEO
3	Centric Parts	Steve Hughes VP Governmental Affairs, Supplier Development, Logistics
4	American Coffee Corporation	Donald Pisano President
5	Chico's FAS Inc.	Shana Riggs VP, Logistics & Customs Compliance
6	VLM Foods Inc.	Mark FeDuke
7	Budpak, Inc.	Gregg Singer Owner
8	Tea Importers, Inc.	Andrew Wertheim President
9	ContainerPort Group, Inc.	Robert Leef Senior Vice President, East Region
10	California Multimodal, LLC	Robert Loya Director of Operations
11	Seafrigo USA, Inc.	Al Raffa VP of Operations
12	All In One Customs Brokers Inc.	Jacqueline Dossantos Broker
13	Serra International, Inc.	Jeanette R. Gioia President
14	Mecca & Son Trucking Co., Inc.	Peggy Mecca Treasurer
15	Thunderbolt Global Logistics, LLC	Jim Shapiro Director

# **EXHIBIT C-1**



## INTERNATIONAL MOTOR FREIGHT, INC.

318 Port Street • Port Newark, N.J. 07114 • TEL: 973-589-4001 • FAX:

My name is Christopher Grato and I work for International Motor Freight (IMF), an import/export trucking company located in Port Newark, New Jersey. I am the V.P. Administration with various responsibilities pertaining to insurance, finance, sales, having direct interaction with the Operations/Dispatch/Customer Service areas of IMF.

International Motor Freight is a family owned, asset based company that has been in business over forty years. We have a fleet of 100 company trucks/drivers who are completely dedicated to our organization. IMF provides drayage services for a large number of companies that ship via the Port of NY/NJ and the Port of Philadelphia (Parker Terminal), moving on an annual basis between 45,000 and 50,000 containers. The service that we perform is the final transportation leg as international cargo. Our customer base includes furniture retailers, home improvement companies, household appliances, and the liquor industry, to name a few.

From the Fall/Winter of 2014 through all of 2015, we experienced severe detention and queue times at the ocean terminals due to terminal congestion which was caused by labor issues, inclement weather and equipment shortages. We incurred delays in the pick-up and delivery of freight, and the return of empty equipment to the piers. Throughout this time we realized exorbitant demurrage, per diem charges, and labor costs.

The West Coast labor situation accounted for cargo diversions to the East Coast from March 2015 to the end of September 2015 that resulted in higher than normal import volumes, both of which were contributing factors to the port congestion challenges that we faced on a daily basis. Some of the terminals opened on weekends to help relieve the situation, however, truck driver hours of service are federally regulated, and the extra day(s) did not necessarily help. During this time, IMF was directly invoiced by steamship lines over \$1,200,000 in per diem charges. IMF rebilled their customers for the charges, most of which were paid. However, IMF ended up having to pay approximately \$50,000-55,000 of the total per diem charges. This does not include those charges steamship lines billed the shipper directly. A secondary factor to the port congestion was the creation of the 2M Alliance. The terminals servicing these vessels were not prepared for the increase in volume that was created by the vessel sharing alliance.

Depending on the customer and steamship line per diem charges are invoiced differently. Many of our clients have extended free time because they are volume shippers. Free time in beneficial cargo owner (BCO) service contracts ranges from 10 calendar days up to 20 working days. Most of our customers share their contract terms with us and when we receive per diem invoices from the steamship lines we verify that the charges have been billed correctly. For customers without a service contract, IMF was billed the standard free time listed in the Uniform Intermodal and Interchange and Facilities Access Agreement (UIIA) along with the steamship lines' posted tariff rates. The standard free time is from 3 working days up to 7 calendar days. The daily per diem rates for standard dry containers start at \$85/day and go up from there.

In most cases the trucking company that interchanged the container from the terminal is the bill to party for all per diem. There can be instances where a BCO or a broker can get billed directly for per diem, and may even get the charges waived, but we would not necessarily be privy to that information. Our standard operating procedure for per diem billed to IMF is a simple process. We receive the bill and verify that all dates and amounts are correct and the per diem has been invoiced correctly. If any discrepancies are found then we dispute the bill with the steamship line directly. If the invoice is valid we bill our customers and pay the steamship line the charges. IMF experienced an increase in labor cost due to the administrative burden associated with providing its customers this service. As a result, IMF started charging its customers a \$15.00 administrative fee per invoice (which usually relates to 10-20 containers) to process per diem charges on their behalf.

International Motor Freight experienced a number of specific challenges during the freight surge of 2015, some of which were long standing issues while others were unique to the time period. Terminal hours of operation in the Port of NY/NJ have been a long standing problem because each terminal sets its own hours. Most terminals open at 6am and are open until at least 4pm with varying restrictions for double or single moves, and some terminals open at 8am and close at 4pm because they do not have the volume to support their labor costs. During the spring surge we were unable to return empty containers and complete double moves. As the volume of imports surged during this time, so too did the volume of empty returns. As a result, another major problem at two terminals in particular was long and excessive queues to return empty containers. Trucks would be lined up in a grid on terminal for up to 3-4 hours before getting serviced. In addition, there were queues several miles long outside of the terminals waiting to get inside to be serviced. One terminal's problems were caused by the increased volume of the 2M alliance, while another terminal's challenges were a result of technology upgrades and high volumes at the same time.

Approximately fifty percent of the \$1,200,000 in per diem charged to IMF was related to the steamship lines and terminals involved in the 2M Alliance. The terminal's inability to remove empties forced IMF and other trucking companies to stop doing double moves, which is the norm in our industry. That is, return an empty container and use the same chassis to pick up another load. Another negative factor was the steamship lines direction to return empty



containers to other terminal locations, again, not allowing the drayage community to do double moves. We were forced to spend hours on two different lines in order to pick up one container load.

Due to long turn times and lower productivity, many containers went into demurrage at the marine terminals. IMF's policy was not to advance any demurrage charges for our customers, and as a result, we had very little exposure in this area. Either our customers paid the charges directly to the terminal operators or they sent us a check which we submitted to the pier while picking up the container.

In order to alleviate congestion, some of the terminals opted to open on weekends. Depending on the circumstances there were Saturday or Sunday gates available. In many instances we participated in the weekend gates out of necessity. We were faced with DOT regulations relating to drivers Hours of Service, as well as the additional operating expense of overtime costs. Our primary concern is safety, and we would have to shut drivers down on Thursday or Friday, whether or not it was productive sitting in lines, in order to have enough hours to work on the weekend. The weekend truck turn times were at times 15-35% shorter than they were during the week. While weekend truck turn times were shorter, they were an additional expense that IMF would not usually incur if able to provide double moves during the week days.

The aftermath of the port congestion was the per diem bills. As previously stated, they amounted to around \$1,200,000 in charges. A significant amount of money was paid on behalf of our customers. The steamship lines allow a 30 day grace period to pay their invoices; however, in some instances we had to wait 30, 60, 90 days, or more to be paid by our customers. We were not able to negotiate per diem at our level; if the invoice was valid in the steamship lines eyes it had to be paid. We were unaware if our customers did any behind the scenes negotiating. If we were delinquent in paying the invoices to the lines we were threatened with shutout notices from individual lines as outlined in the UIIA agreement.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Christopher Grato

# **EXHIBIT C-2**

**MacMILLAN-PIPER, INC.**

P.O. Box 3514  
Seattle, WA 98124-3514  
206-624-5135

May 13, 2016

**Verified Statement to be attached to Petition for Rulemaking to the Federal Maritime Commission**

I, Mark Miller, am the President and CEO of MacMillan-Piper, Inc., a freight transloader and motor carrier operating in the Seattle/Tacoma port area.

Established in 1969, MacMillan-Piper is the largest transloader in the Pacific Northwest. We transload a variety of import and export commodities (dry bulk and bagged agricultural products and fertilizers, lumber, clay, frozen meat/poultry, paper, pulp, rubber track, engines, metal sows/ingots/billets, hay, talc, etc.) to/from railcars, trailers, and steamship line containers. We also dray the containers we load and unload between our facilities and the local port terminals and rail ramps. We operate a dedicated fleet of approximately 55 trucks, split between Seattle and Tacoma to service our warehouses. During 2014 and 2015, we operated three facilities in Seattle and two in Tacoma.

As President and CEO, I oversee all financial, transloading, trucking, and labor functions for MacMillan-Piper.

In 2014, the contract negotiations between the ILWU and PMA resulted in labor unrest and work slowdowns at the port terminals in Seattle and Tacoma, beginning around Memorial Day and significantly worsening from October 2014 through May 2015. The limited gate hours (usually 0700 to 1600 with closures for lunch and breaks), slow longshore work pace, long truck lines into and within the terminals, and steamship lines rolling and cancelling bookings greatly impacted our operations. Some truck turn times to deliver one container and pick up another exceeded eight hours. This immensely reduced the efficiency of our fleet and made it impossible for us to transload freight in a timely manner, resulting in additional exorbitant costs for trucker standby, railcar demurrage, container detention, and warehouse overtime.

With the volume of freight we transload, we are dependent on fast turn times at the terminals. About 90 percent of the steamship line containers we load and unload are picked up and returned to the port terminals. The attached spreadsheets show that, from July 2014 through August 2015, we transloaded product from railcars (via BNSF and TMBL) into more than 20,300 steamship line containers. That equates to more than 40,600 truck moves (empty out, load in) through the port terminals in Seattle and Tacoma in a 14-month period – just for freight moving in railcars. In addition, we also transloaded freight moving in trailers and on flatbeds to/from steamship line containers, which increased our total port drays for that time period to approximately 70,000.

Due to the labor and congestion issues at the terminals, we paid exorbitant amounts of truck standby during 2014 and 2015. The attached spreadsheet shows the standby hours paid in Tacoma, broken



down by the four terminals called. The first hour in the terminal or in line is free, so those hours are not included in the totals. In a little over a year, we accrued more than 11,000 hours of standby time in Tacoma alone at a cost of more than \$550,000 (paid at \$50/hour).

The bottleneck at the Pacific Northwest ports caused severe network congestion for BNSF Railway and Union Pacific Railroad, the two Class 1 railroads in the area. BNSF held trains on spot as far east as Montana. Because we were not able to unload railcars fast enough during the port slowdowns, both BNSF and UP embargoed us from November 2014 until March 2015, at which time they again allowed unrestricted traffic. The attached spreadsheets show the railcar demurrage that we paid due to our inability to get containers in and out of the ports. In a little over a year, we accrued more than \$1.55 million in railcar demurrage, which was mitigated to \$1.12 million. BNSF reduced its rates from \$75/railcar/day plus penalty charges to \$40/railcar/day during the embargo months due to force majeure conditions at the ports.

To support our normal volume of business, trucks leased to us need to each move an average of eight containers a day through the ports. This was not possible during much of 2014 and 2015, during which trucks often had no more than two moves per day. We had great difficulties returning containers to the ports, not only due to slow turn times, but because the terminals refused to receive containers, citing congestion, rolled/cancelled bookings, and delayed vessel loading. As a result, we incurred detention charges from 17 different steamship lines in Seattle and Tacoma. From May 2014 through August 2015, for 953 containers, we were billed nearly \$1.25 million in detention charges by steamship lines as outlined on the attached spreadsheet. That amount was eventually reduced to approximately \$250,000. However, it has taken nearly a year's worth of disputes to get those charges waived. Many of the invoices were paid initially to keep the lines from cancelling our equipment interchange agreements and were reimbursed to us later. We spent a lot of time disputing invoices that should never have been issued in the first place due to conditions beyond our control.

The attached spreadsheet itemizes the steamship lines involved at the Ports of Seattle and Tacoma, the free time each line allowed, the applicable detention rates, the amounts charged, the amounts waived, and the number of containers charged per month. All of the charges were billed to us directly by the steamship lines.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Sincerely,



Mark Miller  
President & CEO  
MacMillan-Piper, Inc.  
[mmiller@macpiper.com](mailto:mmiller@macpiper.com)  
Ph: 206-624-5135  
Fax: 206-624-2449  
[www.macpiper.com](http://www.macpiper.com)

## MacMILLAN-PIPER, INC.

### Steamship Line detention charges

Port	Steamship line	Date	Free Time (days) dry & reefer	Rate	# of cntrs	Amt. invoiced	Amt. paid	Amt. waived
SEATTLE	ANL - USL	Feb 2015	5 dry	\$165/day dry	8	\$10,560.00	\$0.00	\$10,560.00
		Mar 2015			1	\$165.00	\$0.00	\$165.00
	APL	May 2014	6 dry	\$94/day	19	\$722,500.00	\$85.00	\$722,415.00
		June 2014			13	\$10,370.00	\$4,420.00	\$5,950.00
		Dec 2014			5	\$1,996.00	\$1,056.00	\$940.00
	China Shpg	June 2014	4 dry	\$85/day 1-5	1	\$3,285.00	\$3,285.00	\$0.00
		Feb 2015		\$100/day 6+	14	\$7,010.00	\$0.00	\$7,010.00
		Mar 2015			1	\$425.00	\$425.00	\$0.00
	CMA-CGM	June 2014	4 dry/rf	\$90/day dry	2	\$420.00	\$420.00	\$0.00
		Oct 2014		\$200/day rf	9	\$1,620.00	\$1,620.00	\$0.00
		Jan 2015			28	\$6,390.00	\$180.00	\$6,210.00
		Feb 2015			135	\$124,640.00	\$0.00	\$124,640.00
		Mar 2015			21	\$4,850.00	\$500.00	\$4,350.00
		Apr 2015			43	\$11,320.00	\$10,060.00	\$1,260.00
	Cosco	Nov 2014	4 dry	\$85/day	9	\$2,040.00	\$2,040.00	\$0.00
		Dec 2014			6	\$6,205.00	\$6,205.00	\$0.00
		Jan 2015			1	\$1,190.00	\$0.00	\$1,190.00
		Feb 2015			13	\$32,130.00	\$680.00	\$31,450.00
	Hanjin	Dec 2014	4 dry	\$100/day 1-5	10	\$1,300.00	\$1,300.00	\$0.00
		Feb 2015		\$140/day 6+	1	\$640.00	\$0.00	\$640.00
	Hyundai	Sept 2014	5 dry	\$90/day dry	6	\$665.00	\$665.00	\$0.00
		Oct 2014	4 rf	\$175/day rf	1	\$540.00	\$540.00	\$0.00
		Dec 2014			6	\$4,950.00	\$0.00	\$4,950.00

Port	Steamship line	Date	Free Time (days) dry & reefer	Rate	# of cntrs	Amt. invoiced	Amt. paid	Amt. waived
	Maersk	May 2014	4 dry/rf	\$95/day dry 1-4	1	\$95.00	\$95.00	\$0.00
		June 2014		\$140/day dry 5-8	1	\$285.00	\$285.00	\$0.00
		Aug 2014		\$175/day dry 9+	20	\$7,410.00	\$7,410.00	\$0.00
		Sept 2014			16	\$5,320.00	\$5,320.00	\$0.00
		Oct 2014		\$289/day rf 1-3	11	\$1,330.00	\$1,330.00	\$0.00
		Nov 2014		\$400/day rf 4+	41	\$12,990.00	\$12,990.00	\$0.00
		Dec 2014			5	\$1,655.00	\$1,655.00	\$0.00
		Jan 2015			41	\$12,330.00	\$2,395.00	\$9,935.00
		Feb 2015			13	\$9,085.00	\$2,425.00	\$6,660.00
		Mar 2015			13	\$14,070.00	\$1,415.00	\$12,655.00
		Apr 2015			8	\$3,250.00	\$1,400.00	\$1,850.00
		May 2015			4	\$1,185.00	\$1,185.00	\$0.00
		June 2015			6	\$855.00	\$855.00	\$0.00
	MOL	May 2014	5 dry	\$85/day	1	\$680.00	\$680.00	\$0.00
		June 2014			1	\$680.00	\$680.00	\$0.00
	MSC	May 2014	4 dry/rf	\$90/day dry 1-4	3	\$1,200.00	\$1,200.00	\$0.00
		June 2014		\$140/day dry 5+	1	\$60.00	\$60.00	\$0.00
		Jul 2014			15	\$2,780.00	\$2,780.00	\$0.00
		Aug 2014		\$300/day rf 1-4	35	\$12,260.00	\$12,260.00	\$0.00
		Sept 2014		\$400/day rf 5+	31	\$3,460.00	\$3,460.00	\$0.00
		Oct 2014			5	\$1,080.00	\$1,080.00	\$0.00
		Nov 2014			38	\$21,710.00	\$13,210.00	\$8,500.00
		Dec 2014			38	\$22,990.00	\$22,990.00	\$0.00
		Jan 2015			40	\$36,620.00	\$36,620.00	\$0.00
		Mar 2015			30	\$22,890.00	\$22,260.00	\$630.00
		Apr 2015			3	\$560.00	\$560.00	\$0.00
		May 2015			12	\$4,340.00	\$0.00	\$4,340.00
		June 2015			7	\$9,950.00	\$9,950.00	\$0.00
		Jul 2015			2	\$180.00	\$180.00	\$0.00
		Aug 2015			4	\$1,770.00	\$1,770.00	\$0.00

Port	Steamship line	Date	Free Time (days) dry & reefer	Rate	# of cntrs	Amt. invoiced	Amt. paid	Amt. waived
	NYK	Feb 2015	5 dry	\$100/day	8	\$1,800.00	\$300.00	\$1,500.00
		Mar 2015	3 rf	\$150/day	1	\$100.00	\$100.00	\$0.00
		May 2015			1	\$700.00	\$700.00	\$0.00
	PIL	July 2014	5 dry	\$85/day	1	\$255.00	\$255.00	\$0.00
		Feb 2015			1	\$85.00	\$85.00	\$0.00
	Safmarine	Apr 2015	SEE MAERSK FREETIME		1	\$1,990.00	\$1,990.00	\$0.00
	Yang Ming	Apr 2015	5 dry	\$85/day	1	\$170.00	\$170.00	\$0.00
				<b>TOTALS</b>	<b>813</b>	<b>\$1,173,381.00</b>	<b>\$205,581.00</b>	<b>\$967,800.00</b>
Port	Steamship line	Date	Free Time (days)	Rate	# of cntrs	Amt. invoiced	Amt. paid	Amt. waived
<b>TACOMA</b>	APL	Dec 2014	6 dry	\$94/day	1	\$940.00	\$0.00	\$940.00
		Apr 2015			4	\$3,854.00	\$0.00	\$3,854.00
	CMA-CGM	Jan 2015	4 dry/rf	\$90/day dry	5	\$1,170.00	\$0.00	\$1,170.00
				\$200/day rf				
	Evergreen	Nov 2014	5 dry	\$95/day dry 1-5	1	\$1,660.00	\$1,660.00	\$0.00
		Dec 2014		\$135/day dry 6+	15	\$7,395.00	\$0.00	\$7,395.00
		Jan 2015			8	\$6,795.00	\$4,705.00	\$2,090.00
		Feb 2015	4 rf	\$185/day rf 1-5	24	\$12,700.00	\$11,920.00	\$780.00
		Apr 2015		\$215/day rf 6+	3	\$2,135.00	\$390.00	\$1,745.00
		May 2015			6	\$2,020.00	\$1,830.00	\$190.00
		June2015			2	\$1,520.00	\$1,460.00	\$60.00
	Hamburg Sud	Feb 2015	7 dry	\$110/day	1	\$880.00	\$880.00	\$0.00

Port	Steamship line	Date	Free Time (days) dry & reefer	Rate	# of cntrs	Amt. invoiced	Amt. paid	Amt. waived
	Hanjin	Mar 2015	4	\$100/day 1-5	1	\$2,460.00	\$2,460.00	\$0.00
		Apr 2015		\$140/day 6+	1	\$300.00	\$300.00	\$0.00
		May 2015			2	\$200.00	\$200.00	\$0.00
		June 2015			2	\$1,000.00	\$1,000.00	\$0.00
	Hapag-Lloyd	Jan 2015	5	\$105/day	5	\$5,670.00	\$0.00	\$5,670.00
	Hyundai	Nov 2014	5 dry	\$90/day dry	4	\$750.00	\$750.00	\$0.00
		Dec 2014	4 rf	\$175/day rf	7	\$1,170.00	\$1,170.00	\$0.00
		Feb 2015			16	\$4,115.00	\$4,115.00	\$0.00
		Mar 2015			3	\$2,350.00	\$2,350.00	\$0.00
	MOL	Dec 2014	5	\$85/day	1	\$850.00	\$0.00	\$850.00
	NYK	Sept 2014	5 dry	\$100/day	1	\$150.00	\$150.00	\$0.00
		Nov 2014	3 rf	\$150/day	1	\$300.00	\$300.00	\$0.00
		Dec 2014			1	\$300.00	\$300.00	\$0.00
		Jan 2015			3	\$1,050.00	\$1,050.00	\$0.00
		Feb 2015			6	\$3,750.00	\$1,500.00	\$2,250.00
		Mar 2015			1	\$1,800.00	\$0.00	\$1,800.00
		Aug 2015			2	\$1,050.00	\$1,050.00	\$0.00
	Yang Ming	Dec 2014	5 dry	\$85/day dry	3	\$1,530.00	\$1,530.00	\$0.00
		Feb 2015			8	\$4,165.00	\$4,165.00	\$0.00
		Mar 2015			1	\$110.00	\$110.00	\$0.00
		Apr 2015			1	\$85.00	\$85.00	\$0.00
				<b>TOTALS</b>	<b>140</b>	<b>\$74,224.00</b>	<b>\$45,430.00</b>	<b>\$26,019.00</b>

# **EXHIBIT C-3**

**Centric Parts**  
21046 S. Figueroa Street  
Carson, CA 90745  
Phone: (310) 218-1082  
Fax: (310) 218-1093



November 18, 2016

To Whom It May Concern:

My name is Steven Hughes, Vice President in charge of Governmental Affairs – Logistics – Supplier Development for Centric Parts. Centric is a leading manufacturer and supplier of replacement brake components for import and domestic motor vehicles. It imports approximately 6,000 TEUs per year. I oversee ocean cargo transportation logistics for Centric and was directly and constantly involved with representatives from Evergreen, COSCO, Hanjin and CMA-CGM, along with the marine terminal operators (MTOs) and our drayage company during the entire period of the port labor disruption on the West Coast, beginning in early 2014, all the way through 2015.

The port labor disruption had a significant impact on our business. Overall, we had 82 shipments affected by the port disruption from August 2014 through February 2015, forcing an outlay of over \$60,000 in demurrage payments. We filed detailed complaints for each of these instances with the Federal Maritime Commission (FMC) Consumer Affairs and Dispute Resolution Services (CADRS) division. Our demurrage issues halted almost immediately after the contract between the International Longshore and Warehouse Union and Pacific Maritime Association was ratified in 2015, with no discernable problem with delays or demurrage since then.

Centric's inability to pick up its containers during the disruption was beyond its control. First, there was no way to avoid the congestion that the disruption caused. Before the disruption, we would pick all of our containers up during the night gate to avoid congestion and traffic mitigation fees from PierPass. However, the entire day and night gate system was brought to its knees at virtually every terminal due to the disruption. Consequently there were massively long lines waiting to pick up containers. Also, quite often after waiting hours in line to pick up our containers our trucker would be turned away because the yard was closed. When the whole situation came to a critical mass, our trucker started to charge us for wait times.

Second, for those terminals where there was an appointment system, we had significant problems scheduling appointments to pick up our containers. For example, I sat with our drayage company while he attempted multiple times to make an appointment on the Seaside Transportation Services (STS) terminal website after we received arrival notices for our containers. The system would not accept any appointments. I personally witnessed this several times. This problem persisted throughout the period of port disruption. More often than not, when we could finally book an appointment, it was scheduled long after our last free day.

The terminals were reluctant to waive demurrage charges when they arose for reasons beyond our control. For example, I reached out to both the general manager and the terminal manager at STS to complain about being charged demurrage when in fact we had made all practical efforts to book a pickup before free time was up. They both stated that unless we could prove that we had made attempts they would make no adjustments. I requested that they produce the logs from their system proving that we had signed on. They claimed that retrieving the logs was not possible. Thus, there was no way to prove that we attempted to make an appointment, because their system did not record the attempt or provide any confirmation that we had made an attempt. Another example is an instance where our trucker was attempting to pick up two containers from the same Bill of Lading (BOL). Both containers had accrued demurrage. He explained to the demurrage desk clerk at the terminal that he had been attempting to make appointments for days and this was the earliest available time. The clerk



excused himself and went back to have someone sign off on the waiver. When he came back he only had a waiver for one of the two containers. When our driver asked about the other container, the desk clerk said he didn't have time to go back and ask for a waiver for the second container!

Carriers also were reluctant to waive demurrage charges that accrued for reasons beyond our control. It took almost 7 months of negotiations with the steamship lines to get any refunds on demurrage charges we paid. Even after filing complaints with CADRS at the FMC, we were only able to negotiate an overall 50% recovery of the demurrage charges accrued during the disruption.

The demurrage practices of the carriers and terminals also resulted in significant indirect costs. The time spent by myself and our staff on the phone with the terminals, our drayage company and the sales people from the various steamship lines to try to mitigate the demurrage issues and attempts to pick up cargo was substantial.

Charging shippers demurrage when they cannot retrieve their containers during free time due to port disruptions beyond their control and being uncooperative in resolving the disruption is unfair. The FMC should take measures to eliminate this practice.

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

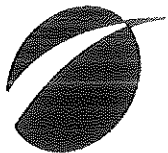
A large, stylized handwritten signature in black ink, appearing to read "Steve Hughes".

Steve Hughes

Vice President – Governmental Affairs – Supplier Development - Logistics



# **EXHIBIT C-4**



## AMERICAN COFFEE CORPORATION

30 Montgomery Street Suite 215 Jersey City NJ 07302

www.amcof.com t: 201.433.2500 f: 201.433.2501

May 10, 2016

To whom it may concern,

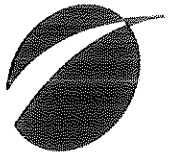
The American Coffee Corporation has imported green coffee beans into the U.S. since 1992. On average, the company imports approximately 1,800 containers a year of green coffee into most major U.S. ports on all three coasts. Imported primarily from Mexico, Central and South America, South East Asia and East Africa, the green coffee beans are sold to large and small U.S. manufacturing clients whose "roast and ground" or "whole bean" coffee products are commonly found on the supermarket shelves throughout the country.

As president of American Coffee, I am responsible for overseeing the daily activities of the company including, but not limited to, all logistical operations, service contract negotiations with our ocean carriers, Customs and FDA clearances, and transactions with local drayage companies and port area warehouses in which we store coffee inventories.

Like most importers, American Coffee has suffered through numerous instances of service disruptions at marine terminals caused by labor disputes between the carriers and stevedoring unions on all three coasts. These situations are totally beyond the control of the shipper and beneficial cargo owner. However, the disruptions on the west coast during the period of late 2014 to early 2015 caused particularly severe hardships, including delays in deliveries to our customers, degradation of quality to our products, strain on our cashflow, and direct costs associated with contingency planning and diversion of cargo. We were further harmed by the inexplicable and unpredictable manner in which terminal gates were closed without notice while our truckers had already been dispatched and were waiting in line to enter the terminal. They were thus prepared pick up containers that were previously vetted as available for delivery. On the east coast, disruptions have been caused by weather-related shutdowns, such as during Superstorm Sandy and winter snowstorms, as well as labor actions and other unforeseeable events.

We have also incurred demurrage charges when holds are placed by U.S. Customs while the containers are awaiting examinations at the marine terminals or are pending Customs authorization to move the containers to off terminal Customs Exam Sites (CES). We must state that we do find it quite unfair that demurrage is charged, and at punitively high rates, while we as importers are cooperating with US government inspection requirements.

Perhaps even more concerning has been the increased terminal congestion we are seeing as a result of larger vessels, the bunching of calls, poor planning and coordination between the carriers and the MTO, and the lack of investment and focused attention on the land side of the terminal operations. Unfortunately, we suspect that matters will continue to worsen as the industry anticipates still larger vessels, increased vessel sharing agreements, and shifting carrier alliances.



## AMERICAN COFFEE CORPORATION

30 Montgomery Street Suite 215 Jersey City NJ 07302  
www.amcof.com t: 201.433.2500 f: 201.433.2501

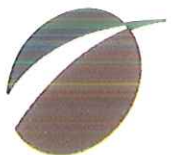
At American Coffee, we negotiate and maintain service contacts directly with a number of large ocean carriers serving routes from coffee growing regions around the world into the U.S. on a port-to-port basis. Each service contract includes defined free time at the port terminals ranging from four (4) working days to ten (10) calendar days. Our contracts also specify the amount of equipment free time which is allowed off-terminal before container detention charges (per diem) would be assessed.

We are generally able to pick up containers and return them empty within our allowed free-time privileges. However, over the years we have experienced numerous instances where we had cargo fully released and our contracted draymen had trucks ready and available to pick up our containers within the free time, but were prevented from doing so due to terminal congestion, gate closures and other causes beyond our control. We were then forced to pay demurrage charges while waiting to make another attempt the following work day. One of the most egregious instances occurred in April 2014 at APM Terminal in Los Angeles, which had previously adopted an appointment system for picking up import containers.

Briefly stated, American Coffee Corp. imported a container# MRKU9500778 containing 275 Bags of Colombian Arabica Coffee Beans shipped with Maersk Line from Buenaventura, Colombia under B/L# MAEU867479701 to Los Angeles. Customs entry was made on March 31, 2014 through our customs broker Thruport International. The vessel Maersk Wolfsburg arrived/discharged on April 2, 2014. The container was held by U.S. Customs and designated for a USDA inspection. On Thursday, April 10, Customs ordered the container released to the local Customs Exam Site (CES), Price Transfer. APM Terminals Pacific requires truckers, including CES customs bonded draymen, to access its website to make appointments for container pickups. Upon receipt of the Customs-issued "Permit to Transfer," Price Transfer immediately attempted to make an appointment to pick up the container while it was still within the free time allowed under our service contract; however, the terminal was not accepting any additional appointments at that time. Our terminal free time expired on Friday, April 11, and demurrage began to be charged on that Saturday. Price Transfer made repeated efforts to secure an appointment with APM Terminals, but no appointments were available until Wednesday, April 16. Price Transfer finally secured an available appointment on Wednesday, April 16.

During this period, both the carrier Maersk Line and APM Terminal refused to extend the free time, despite the fact that we took all necessary steps in a timely manner to pick up the container before our original free time expired. American Coffee Corp was charged with and paid "under protest" a total of \$1,175 for the five days the container remained at the terminal beyond the free time and through the date of removal of the container for USDA examination by order of U.S. Customs.

American Coffee made appeals for a refund through our carrier, Maersk Line, but we were directed to take the matter up directly with APM Terminals, which also refused our appeals. We then brought the matter to the FMC CADRS office for mediation, but APM Terminals rejected FMC mediation and refused any further dialogue.



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While the amount of \$1,175 may not sound very significant, we do believe that this particular occurrence demonstrates clearly the unfair business practices exhibited by both the terminal operator APM Terminals and our carrier Maersk Line in assessing demurrage charges against us, although we were acting properly, expeditiously and in good faith. As noted, these circumstances were totally beyond our control and, in fact, caused by active prevention by the terminal operator itself. In short, American Coffee was precluded by the terminal operator itself from picking up the container within our free time due. This situation is paradigmatic of the Catch-22 experienced by importers, who are then unjustifiably subjected to undeserved demurrage penalties.

Thank you for your kind consideration on this matter. Please don't hesitate to contact me with questions.

Sincerely,

**AMERICAN COFFEE CORPORATION**

Donald A. Pisano  
President

Encl.

## Don Pisano

---

**From:** Rebecca Fenneman [rfenneman@fmc.gov]  
**Sent:** Wednesday, May 14, 2014 3:11 PM  
**To:** Don Pisano  
**Subject:** Re: FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Hi Don,

Yes, I'm disappointed APMT chose not to participate, too, but there you have it. I'd love to have a conversation with you about what else you might think about with other offices here (FMC, other than CADRS). I think there are other possibilities for addressing the issue -- of course, none as "low key" as what you had first proposed to APMT. Please let me know if you'd have some time in the next couple of days to chat.

Best,

Rebecca

On Tue, May 13, 2014 at 9:43 PM, Don Pisano <[donp@amcof.com](mailto:donp@amcof.com)> wrote:

Actually Rebecca, I have to ask before I put this file away a lick my wounds, in consideration that :

we have no direct commercial relationship with the terminal operator,

yet we are subject to their charges as they themselves deem warranted regardless of the circumstances, while

the carrier who does have the direct relationship with both the terminal operator and the shipper (in this case ourselves) can remove itself from the dispute,

and the terminal operator can decide for themselves that they do not want to allow the FMC CADRS office to mediate a valid dispute,

where can a shipper go for relief, short of filing a lawsuit against the terminal operator, other than the FMC?

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel [201-433-2807](tel:201-433-2807)

**From:** Don Pisano [mailto:[donp@amcof.com](mailto:donp@amcof.com)]

**Sent:** Tuesday, May 13, 2014 2:54 PM

**To:** 'Rebecca Fenneman'

**Subject:** RE: FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Very disappointing but thank you for your efforts.

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** Rebecca Fenneman [mailto:[rfenneman@fmc.gov](mailto:rfenneman@fmc.gov)]

**Sent:** Tuesday, May 13, 2014 2:49 PM

**To:** Don Pisano

**Subject:** Re: FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Dear Don,

I have just heard back from APMT. Unfortunately, they have declined to participate in the process we had proposed. I am sorry I could not be of more assistance in this matter.

Sincerely,

Rebecca Fenneman

On Mon, May 5, 2014 at 2:59 PM, Don Pisano <[donp@amcof.com](mailto:donp@amcof.com)> wrote:

Great. Many thanks for your interest in this matter.

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** Rebecca Fenneman [mailto:[rfenneman@fmc.gov](mailto:rfenneman@fmc.gov)]

**Sent:** Monday, May 05, 2014 2:33 PM

**To:** Donald A Pisano

**Subject:** Re: FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Don,

Great to talk to you today. As we discussed, I will reach out to APMT and we will get the ball rolling. I will stay in touch.

Best,

Rebecca

On Fri, May 2, 2014 at 4:29 PM, Rebecca Fenneman <[rfenneman@fmc.gov](mailto:rfenneman@fmc.gov)> wrote:

Great. I will call you at 2 on Monday afternoon. Thanks and have a good weekend.

**From:** Don Pisano [mailto:[donp@amcof.com](mailto:donp@amcof.com)]

**Sent:** Friday, May 02, 2014 04:11 PM

**To:** 'Rebecca Fenneman' <[rfenneman@fmc.gov](mailto:rfenneman@fmc.gov)>

**Subject:** RE: FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Rebecca,

Monday afternoon or Tuesday morning would be fine.

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** Rebecca Fenneman [mailto:[rfenneman@fmc.gov](mailto:rfenneman@fmc.gov)]

**Sent:** Friday, May 02, 2014 2:06 PM

**To:** Don Pisano

**Subject:** Re: FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Dear Mr. Pisano,

With apologies, events have overtaken me! I would like to have another discussion with you on this -- I have some ideas. Could we set up a phone call for sometime next week? Please let me know when might be convenient.

Thanks,

Rebecca

On Tue, Apr 29, 2014 at 10:34 AM, Don Pisano <[donp@amcof.com](mailto:donp@amcof.com)> wrote:

Dear Ms. Fenneman,

Further to our today's conversation, please see below string of communications with Maersk Line.

Our Maersk Line representative is Tony Pacchiano

Office: [800-854-6553](tel:800-854-6553) ex 8102

Mobile: [973-879-5043](tel:973-879-5043)

Email: [anthony.j.pacchiano@maersk.com](mailto:anthony.j.pacchiano@maersk.com)

If you would like to gain some direct information on the appointment process, perhaps you can converse with the folks at Price Transfer or our usual commercial draymen, Ramirez Trucking Co., who would be happy to discuss the procedures and recent experiences with you:

Ramirez Trucking Co., Los Angeles, CA

Contacts: Rebecca or Roger Ramirez

Tel. [323-263-3185](tel:323-263-3185)

We very much appreciate your attention in this matter.



Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** [Tonya.Brown@maersk.com](mailto:Tonya.Brown@maersk.com) [mailto:[Tonya.Brown@maersk.com](mailto:Tonya.Brown@maersk.com)]

**Sent:** Friday, April 18, 2014 1:17 PM

**To:** [donp@amcof.com](mailto:donp@amcof.com); [Fran.Ohlheiser@apmterminals.com](mailto:Fran.Ohlheiser@apmterminals.com); [Pedro.Fierro@apmterminals.com](mailto:Pedro.Fierro@apmterminals.com)

**Cc:** [jackied@amcof.com](mailto:jackied@amcof.com); 'Anthony.J.Pacchiano@maersk.com'; [Dawn.Sandillo@maersk.com](mailto:Dawn.Sandillo@maersk.com)

**Subject:** RE: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

**Importance:** High

Good Afternoon Don

Fran and Peter are managers at APM terminals I would ask that they provide you with a direct contact that can assist you with the below concern.

Fran / Peter

Due to the lack of available appointments caused the above container to accumulate storage charges. Don disputes these charges and requesting a refund. Can you provide a name and number that could assist Don with resolving this issue. He would like to speak with someone directly.

Thanks and Best Regards,

Tonya Brown

Care Business Partner

9300 Arrowpoint Blvd.

Charlotte, NC 28273

1-877-338-0165

[www.maerskline.com](http://www.maerskline.com)

**From:** Don Pisano [mailto:[donp@amcof.com](mailto:donp@amcof.com)]  
**Sent:** Friday, April 18, 2014 11:01 AM  
**To:** Brown, Tonya  
**Cc:** [jackied@amcof.com](mailto:jackied@amcof.com); 'Anthony.J.Pacchiano@maersk.com'; Sandillo, Dawn  
**Subject:** RE: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Tonya,

Please advise a specific contact.

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** [Tonya.Brown@maersk.com](mailto:Tonya.Brown@maersk.com) [mailto:[Tonya.Brown@maersk.com](mailto:Tonya.Brown@maersk.com)]  
**Sent:** Thursday, April 17, 2014 5:41 PM  
**To:** [donp@amcof.com](mailto:donp@amcof.com)  
**Cc:** [jackied@amcof.com](mailto:jackied@amcof.com); 'Anthony.J.Pacchiano@maersk.com'; [Dawn.Sandillo@maersk.com](mailto:Dawn.Sandillo@maersk.com)  
**Subject:** RE: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Hello Don,

The below number is for their customer group, they should be able to direct you to the appropriate department.

310-221-4100 (Customer Service)

I hope this information is helpful, please feel free to reach out to me for assistance.

Thanks and Best Regards,  
Tonya Brown  
Care Business Partner  
9300 Arrowpoint Blvd.  
Charlotte, NC 28273  
1-877-338-0165  
www.maerskline.com

**From:** Don Pisano [<mailto:donp@amcof.com>]  
**Sent:** Thursday, April 17, 2014 5:13 PM  
**To:** Brown, Tonya  
**Cc:** 'Jackie Doray Amcof'; '[Anthony.J.Pacchiano@maersk.com](mailto:Anthony.J.Pacchiano@maersk.com)'; Sandillo, Dawn  
**Subject:** RE: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Hello Tonya,

Was hoping to have a resolution on the matter.

As you know, we have no commercial relationship with APM Terminals as they work on behalf of Maersk Line and other carriers. But if we need to be speaking with APM directly, please provide an appropriate contact person and phone number, one that can effectively deal with this matter and make a decision on refunding the full \$1,175.00 in charges wrongly assessed against us.

Thanks in advance.

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** Don Pisano [<mailto:donp@amcof.com>]  
**Sent:** Thursday, April 17, 2014 9:01 AM  
**To:** '[Tonya.Brown@maersk.com](mailto:Tonya.Brown@maersk.com)'

**Cc:** 'Jackie Doray Amcof'; 'Anthony.J.Pacchiano@maersk.com'

**Subject:** RE: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Tonya,

Freight released Monday, April 7, 2014 but on USDA hold.

Container selected by customs for agricultural examination to be performed at CES Price Transfer.

Attempts at making appointments by Price Transfer beginning Thursday, April 10, 2014.

Free-time expired Friday, April 11, 2014

Daily attempts continued through April 16, 2014 – appointment finally granted for 2:00 PM PDT

Container gated out April 16, 2014 at 16:10 hours

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** Tonya.Brown@maersk.com [mailto:Tonya.Brown@maersk.com]

**Sent:** Wednesday, April 16, 2014 5:38 PM

**To:** donp@amcof.com; 'jackied@amcof.com'

**Subject:** FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Hello Don.

I am working on this in Dina's absence.

Can you provide more details on this issue,

Can you advise a timeline starting from the first attempt made to get an appointment, if you have any supporting documents that you send that will be great.

I have reached out to the terminal as well for more details.

I hope to get this resolved soon. I will keep you updated.

Thanks, Tonya

**From:** Sandillo, Dawn  
**Sent:** Thursday, April 17, 2014 12:21 AM  
**To:** USAImport  
**Subject:** FW: P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last free day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Can you urgently assist on below ?

**From:** Don Pisano [<mailto:donp@amcof.com>]  
**Sent:** Wednesday, April 16, 2014 11:49 AM  
**To:** 'Anthony.J.Pacchiano@maersk.com'; 'DINA.WRACHFORD@maersk.com'  
**Cc:** 'jackied@amcof.com'; 'John.Joyce@Maersk.com'; 'Dawn.Sandillo@maersk.com'  
**Subject:** P006767 RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last free day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Dina,

We have been advised that Price Transfer has just obtained an appointment for pickup today 2:00 PDT and charges paid through today.

We will be looking for a full refund of the \$1,175.00 paid to date as Price Transfer has been trying to obtain appointment since April 10<sup>th</sup>, before the expiry of our free-time.

Copies of the three invoices attached:

\$ 675.00 Receipt# CCLS258002 4/12-4/14 3 days

\$ 225.00 Receipt# CCLS258243 4/15 1 day

\$ 275.00 Receipt# CCLS258557 4/16 1 day

\$1,175.00 Total demurrage charges paid to date

Please advise how or with whom we should proceed.

Regards.

AMERICAN COFFEE CORP.

Don Pisano

Tel 201-433-2807

**From:** [Anthony.J.Pacchiano@maersk.com](mailto:Anthony.J.Pacchiano@maersk.com) [mailto:[Anthony.J.Pacchiano@maersk.com](mailto:Anthony.J.Pacchiano@maersk.com)]

**Sent:** Wednesday, April 16, 2014 11:26 AM

**To:** [donp@amcof.com](mailto:donp@amcof.com); [DINA.WRACHFORD@maersk.com](mailto:DINA.WRACHFORD@maersk.com)

**Cc:** [jackied@amcof.com](mailto:jackied@amcof.com); [John.Joyce@Maersk.com](mailto:John.Joyce@Maersk.com); [Dawn.Sandillo@maersk.com](mailto:Dawn.Sandillo@maersk.com)

**Subject:** RE: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Don, if this is an appointment terminal and the appointment is provided after the LFD than they freetime should be extended. I have copied in Dina so see can coordinate and advise.

**Kind Regards**

**Tony Pacchiano**

Senior Account Executive- East Region

Maersk Line

2 Giralda Farms, Madison, NJ USA 07940

Office +1-800-854-6553 ex 8102

Mobile [+1-973-879-5043](tel:+1-973-879-5043)  
[anthony.j.pacchiano@maersk.com](mailto:anthony.j.pacchiano@maersk.com)  
[www.maerskline.com](http://www.maerskline.com)

**From:** Don Pisano [<mailto:donp@amcof.com>]  
**Sent:** Wednesday, April 16, 2014 11:17 AM  
**To:** Pacchiano, Anthony J  
**Cc:** 'Jackie Doray Amcof'; Joyce, John  
**Subject:** FW: MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last fre day April 11 : Pending pick up for USDA examination at Price Transfer : URGENT!

Tony,

We are now paying at the higher rate of \$275 per day! This is not right and our payment will indicate "PAID UNDER PROTEST". The terminals can not deny appointments and continue to charge demurrage all the while! We will demand for refund for all demurrage charges paid against this container MRKU9500778 totaling \$1,175.00.

Please advise with whom this matter should be addressed to obtain full refund.

Regards,

AMERICAN COFFEE CORP.

Don Pisano

Tel [201-433-2807](tel:201-433-2807)

**From:** Jackie Doray [<mailto:jackied@amcof.com>]  
**Sent:** Wednesday, April 16, 2014 10:12 AM  
**To:** [Pier400Imports@apmterminals.com](mailto:Pier400Imports@apmterminals.com); [Fran.Ohlheiser@apmterminals.com](mailto:Fran.Ohlheiser@apmterminals.com); [LorrainePonce@pricetransfer.com](mailto:LorrainePonce@pricetransfer.com); [LorenaCervantes@pricetransfer.com](mailto:LorenaCervantes@pricetransfer.com); [Pedro.Fierro@apmterminals.com](mailto:Pedro.Fierro@apmterminals.com); Carrier - Maersk Sales Tony Pacchiano; Carrier - Maersk Dawn Sandillo  
**Cc:** Amcof - Don Pisano

**Subject:** MRKU9500778 - 1 x 20ft discharged L.A. April 2 Last free day April 11 ; Pending pick up for USDA examination at Price Transfer : URGENT!

Good morning Dawn / Tony

MRKU 9500778 : 1 x 20ft discharged L.A. April 2 : USDA Hold

This container discharged on April 2 with last free day of April 11.

It has been flagged for off-dock examination at the customs designated facility Price Transfer Warehouse.

The PTT (permit to transfer) was not issued by customs till April 10 mid afternoon.

Price Transfer has been trying to get an appointment for this box since April 11. (see communication below between Price and APM Terminal)

We have already paid the demurrage of \$900 from April 12 till April 15. (\$4 days at \$225 each = \$900)

The last message from APM terminals last evening mentions that they are capacity for appointment today and tomorrow.

We need to get this container out as we cannot be expected to keep paying demurrage for a situation beyond our control (USDA Hold and lack of appointment at APM terminal)

Please help!!

Regards

Jackie Doray

American Coffee Corporation

30 Montgomery Street Suite 215

Jersey City, New Jersey 07302 USA

Tel: 201 433 2500 Fax: 201 433 2501

**From:** [Pier400Imports@apmterminals.com](mailto:Pier400Imports@apmterminals.com) [<mailto:Pier400Imports@apmterminals.com>]

**Sent:** Tuesday, April 15, 2014 7:22 PM

**To:** [Fran.Ohlheiser@apmterminals.com](mailto:Fran.Ohlheiser@apmterminals.com); [LorrainePonce@pricetransfer.com](mailto:LorrainePonce@pricetransfer.com); [LorenaCervantes@pricetransfer.com](mailto:LorenaCervantes@pricetransfer.com); [Pedro.Fierro@apmterminals.com](mailto:Pedro.Fierro@apmterminals.com)

**Cc:** [jackied@amcof.com](mailto:jackied@amcof.com)

**Subject:** RE: Maersk Contact MRKU9500778



Lorraine,

We are at capacity for appointments for both shifts today and tomorrow. As of now we will not be adding any more appointments.

I do not show any records of this container having a prior appointment. I also do not show any records of it being UTL. UTL's are usually reported when driver comes in to pick it up and can not find it. I do not see record of that.

You will have to keep checking Term Point for possible cancellations.

Regards,

Sandy Skelton

Import Customer Service

APM Terminals, Pier 400

2500 Navy Way

Terminal Island, CA 90731

(310) 221-4496

Pier400Imports@APMTerminals.com

Lifting Global Trade

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**From:** Ohlheiser, Fran

**Sent:** Tuesday, April 15, 2014 3:58 PM

**To:** Lorraine Ponce; Lorena Cervantes; Fierro, Peter; Imports Pier 400 APM Terminals

**Cc:** Jackie Doray

**Subject:** RE: Maersk Contact MRKU9500778

Lorrain,

My apologies, I'm adding the import team and C.S. Management team.

They will be in touch with you.

Fran Ohlheiser

Manager Key Client Services

APM Terminals Los Angeles

2500 Navy Way

Terminal Island CA 90731

310-221-4262 office

562-577-2732 cell

[Fran.ohlheiser@apmterminals.com](mailto:Fran.ohlheiser@apmterminals.com)

**Lifting Global Trade**

**[www.apmterminals.com](http://www.apmterminals.com)**

**From:** Lorraine Ponce [<mailto:LorrainePonce@pricetransfer.com>]

**Sent:** Tuesday, April 15, 2014 3:36 PM

**To:** Lorraine Ponce; Lorena Cervantes; Ohlheiser, Fran

**Cc:** Jackie Doray

**Subject:** RE: Maersk Contact MRKU9500778

3<sup>rd</sup> request. Please assist below.

Regards,

*Lorraine Ponce*

Price Transfer, Inc. - Dispatch

2790 E. Del Amo Boulevard

Rancho Dominguez, CA 90221

Tel: 800.397.7423 Opt. 4

Fax: 310.817.2184

Email: Dispatch@pricetransfer.com

*"Please visit our website @ [www.pricetransfer.com](http://www.pricetransfer.com) for C.E.S. exam process and service information"*

***OUR FUEL SURCHARGE IS SUBJECT TO CHANGE WITHOUT NOTICE – PLEASE CHECK WITH A REPRESENTATIVE FOR ACTUAL PERCENTAGES.***

**From:** Lorraine Ponce

**Sent:** Tuesday, April 15, 2014 12:22 PM

**To:** Lorraine Ponce; Lorena Cervantes; 'Fran.Ohlheiser@apmterminals.com'

**Cc:** 'Jackie Doray'

**Subject:** RE: Maersk Contact MRKU9500778

Fran,

Your assistance is greatly appreciated.

I have added our Customer to this email as well.

Regards,

*Lorraine Ponce*

Price Transfer, Inc. - Dispatch

2790 E. Del Amo Boulevard

Rancho Dominguez, CA 90221

Tel: 800.397.7423 Opt. 4

Fax: 310.817.2184

Email: Dispatch@pricetransfer.com

*"Please visit our website @ [www.pricetransfer.com](http://www.pricetransfer.com) for C.E.S. exam process and service information"*

***OUR FUEL SURCHARGE IS SUBJECT TO CHANGE WITHOUT NOTICE – PLEASE CHECK WITH A REPRESENTATIVE FOR ACTUAL PERCENTAGES.***

**From:** Lorraine Ponce  
**Sent:** Tuesday, April 15, 2014 10:20 AM  
**To:** Lorena Cervantes; '[Fran.Ohlheiser@apmterminals.com](mailto:Fran.Ohlheiser@apmterminals.com)'  
**Subject:** RE: Maersk Contact

Fran,

Good morning, I have been trying to get an appointment on container MRKU9500778 since Thursday, it was UTL and located yesterday. My broker has been paying demurrage ever since Friday due to no appointments being available. Its there any thing you can do to accommodate this container and the cost of the customer?

Regards,

*Lorraine Ponce*

Price Transfer, Inc. - Dispatch  
2790 E. Del Amo Boulevard  
Rancho Dominguez, CA 90221  
Tel: 800.397.7423 Opt. 4  
Fax: 310.817.2184

Email: [Dispatch@pricetransfer.com](mailto:Dispatch@pricetransfer.com)

*"Please visit our website @ [www.pricetransfer.com](http://www.pricetransfer.com) for C.E.S. exam process and service information"*

***OUR FUEL SURCHARGE IS SUBJECT TO CHANGE WITHOUT NOTICE – PLEASE CHECK WITH A REPRESENTATIVE FOR ACTUAL PERCENTAGES.***

**From:** Lorena Cervantes  
**Sent:** Tuesday, April 15, 2014 10:17 AM  
**To:** '[Fran.Ohlheiser@apmterminals.com](mailto:Fran.Ohlheiser@apmterminals.com)'  
**Cc:** Lorraine Ponce  
**Subject:** Maersk Contact

Regards,

*Lorena Cervantes*

Customer Service Supervisor  
Price Transfer, Inc. - Dispatch  
2790 E. Del Amo Boulevard  
Rancho Dominguez, CA 90221  
Tel: 800.397.7423 Opt. 4

Fax: 310.817.2184

Email: [Dispatch@pricetransfer.com](mailto:Dispatch@pricetransfer.com)

"Please visit our website @ [www.pricetransfer.com](http://www.pricetransfer.com) for C.E.S. exam process and service information"

**OUR FUEL SURCHARGE IS SUBJECT TO CHANGE WITHOUT NOTICE – PLEASE CHECK WITH A REPRESENTATIVE FOR ACTUAL PERCENTAGES.**

--

Rebecca A. Fenneman

Director, Office of Consumer Affairs and Dispute Resolution Services

Federal Maritime Commission

(202) 523-5807

email: [rfenneman@fmc.gov](mailto:rfenneman@fmc.gov)

website: [www.fmc.gov](http://www.fmc.gov)

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Rebecca A. Fenneman

Director, Office of Consumer Affairs and Dispute Resolution Services

Federal Maritime Commission

(202) 523-5807

email: rfenneman@fmc.gov

website: www.fmc.gov

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Rebecca A. Fenneman

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Federal Maritime Commission

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Rebecca A. Fenneman

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# MAERSK LINE

## BILL OF LADING FOR OCEAN TRANSPORT OR MULTIMODAL TRANSPORT

SEA: MAEU

BA No: 867479701

Shipper  
NOBLE COLOMBIA SAS  
AVENIDA 82  
NUMERO 10-33 OFICINA 901 CO  
BOGOTA COLOMBIA  
BOGOTA  
CO

Booking No:  
867479701

Export references

Svc Contract  
427651

Onward inland routing (Not part of Carriage as defined in clause 1. For account and risk of Merchant)

Consignee (negotiable only if consigned "to order", "to order of" a named Person or "to order of bearer")  
TO THE ORDER OF AMERICAN COFFEE CORPORATION  
30 MONTGOMERY STREET, SUITE 215 JERSEY CITY,  
NJ 07302 USA

Notify Party (see clause 22)  
AMERICAN COFFEE CORPORATION  
30 MONTGOMERY STREET, SUITE 215  
JERSEY CITY NJ 07302

Vessel (see clause 1 + 19)  
MAERSK KINLOSS

Voyage No.  
1404

Place of Receipt. Applicable only when document used as Multimodal Transport B/L. (see clause 1)

Port of Loading  
Buenaventura

Port of Discharge  
Los Angeles, CA, US

Place of Delivery. Applicable only when document used as Multimodal Transport B/L. (see clause 1)

### PARTICULARS FURNISHED BY SHIPPER

Kind of Packages; Description of goods; Marks and Numbers; Container No./Seal No.

275 BAGS DESCRIBED AS CLEAN AND DRY COFFEE, PACKED IN GRASS BAGS LCL/FCL.  
SERVICE CONTRACT: 427651/  
TRILLADORA AL GRANO 15160791988/ FDA NOBLE COLOMBIA SAS 10271408024/  
NOBLE COL REF.S-130630-CCG/ NOBLE REF:S-130346-COL/ BUYER  
REF.P006767/CL72915/  
SERVICE CONTRACT.427651  
TOTAL NET WEIGHT 19412  
SAE 6027569145300

Weight  
19577.000 KGS

Measurement

NOBLE COLOMBIA SUPREMO  
3-325-0780X275  
G.W.19577  
N.W.19412

MRKU9500778 ML-CO0010785 20 DRY 8'6 275 BAGS 19577.000 KGS  
Shipper Seal : 00000  
Customs Seal : 4466390  
FREIGHT COLLECT

CFS/CY

Above particulars as declared by Shipper, but without responsibility of or representation by Carrier (see clause 14)

Freight & Charges	Rate	Unit	Currency	Prepaid	Collect
Carrier's Receipt (see clause 1 and 14). Total number of containers or packages received by Carrier. 275 pieces	Place of Issue of B/L Bogota	<p>SHIPPED, as far as ascertained by reasonable means of checking, in apparent good order and condition unless otherwise stated herein, the total number or quantity of Containers or other packages or units indicated in the box entitled "Carrier's Receipt" for carriage from the Port of Loading for the Place of Receipt, if mentioned above, to the Port of Discharge (or the Place of Delivery, if mentioned above), such carriage being always subject to the terms, rates, charges, provisions, conditions, exceptions, limitations, and liabilities hereof (EXCLUDING ALL THOSE TERMS AND CONDITIONS ON THE REVERSE HEREOF DATED 1-26 AND THOSE TERMS AND CONDITIONS CONTAINED IN THE CARRIER'S APPLICABLE TARIFF) and the Merchant's attention is drawn in particular to the Carrier's liabilities in respect of on deck stowage (see clause 18) and the carrying vessel (see clause 19). Where the bill of lading is not negotiable the Carrier may give delivery of the Goods to the named consignee upon reasonable proof of identity and without requiring surrender of its original bill of lading. Where the bill of lading is negotiable, the Merchant is obliged to surrender one original, duly endorsed, in exchange for the Goods. The Carrier accepts a duty of reasonable care to check that any such documents which the Merchant tenders to it as a bill of lading is genuine and original. If the Carrier complies with this duty, it will be entitled to deliver the Goods against what it reasonably believes to be a genuine and original bill of lading, such delivery discharging the Carrier's delivery obligations. In accepting this bill of lading, the Merchant agrees to be bound by all terms and conditions stated herein. IN WITNESS WHEREOF the number of original Bills of Lading stated on this side have been signed and wherever one original Bill of Lading has been surrendered any others shall be void.</p>			
Number & Sequence of Original B(s)/L 3/THREE	Date of Issue of B/L 2014-03-21				
Declared Value (see clause 7.3)	Shipped on Board Date (Local Time) 2014-03-18				

Signed for the Carrier A.P. Moller - Maersk A/S trading as Maersk Line

Maersk Colombia S.A.  
As Agent(s) for the Carrier



**Donald Pisano**

---

**From:** Harvey Chavez [harvey@thruport.com]  
**Sent:** Thursday, April 10, 2014 3:19 PM  
**To:** "priceMET"; "Dispatch"  
**Cc:** 'Jackie Doray'; Pier400Customs@apmterminals.com  
**Subject:** DO FOR CONTAINER #MRKU9500778 FOR EXAM AQI  
**Attachments:** DeliveryOrder\_DeliveryOrderNo00001008300001\_635327395502330000.pdf  
  
**Importance:** High

Good afternoon,

Please find attached the D/O for the movement of the above container to Price Transfer.

APM Terminal,


I have included the broker authorization form below.

**BROKER AUTHORIZATION FORM**  
\*\*\*\*\*

Please have the form below completed by the Broker only and returned via email for processing. Do not send as an attachment we need the below authorization in it's original format.

Type of Hold : MET EXAM  
Name of the Broker : THRUPORT INTERNATIONAL  
Address: 2204 MORRIS AVENUE, SUITE 309, UNION, NJ 07083  
Phone number : 908-867-8478  
E/mail Address: [HARVEY@THRUPORT.COM](mailto:HARVEY@THRUPORT.COM)  
Container Number(s) : MRKU9500778  
BL Number(s) : MAEU67479701  
Vessel and Voyage : MAERSK WOLFSBURG 1408  
Trucking Company authorized to dray this container : PRICE TRANSFER  
Exam site (warehouse) to be drayed to : PRICE TRANSFER

**Harvey Chavez**  
Senior CHB Entry Writer

**thruport**   
international

2204 Morris Avenue #309  
Union, NJ 07083

908 867 THRU (8478)  
908 867 8477 Fax

[www.thruport.com](http://www.thruport.com)

# Delivery Order

**thruport**  
international

Page 1 of 1

MAERSK SEALAND - APM TERMINALS P400  
2500 NAVY WAY  
TERMINAL ISLAND, CA 90731

DATE  
4/10/2014

OUR REF. NO.  
000010083

THE MERCHANDISE DESCRIBED BELOW  
WILL BE ENTERED AND FORWARDED  
AS FOLLOWS:

IMPORTING CARRIER MAERSK WOLFSBURG (MAEU)	LOCATION W185-MAERSK SEALAND - APM TERMINALS P400	FROM PORT OF ORIGIN AIRPORT
BL OR AWB NO. MAEU867479701	ARRIVAL DATE 4/2/2014	FREE TIME EXP.
LOCAL DELIVERY OR TRANSFER BY (DELIVERY ORDER ISSUED TO) PRICE TRANSFER		
DELIVER TO ▲	HAWB NO.	ENTRY NO. E4A-0010083-0
		CUST. REF. NO. P006767

FOR DELIVERY TO

ROUTE

PRICE TRANSFER  
2711 E DOMINGUEZ  
LONG BEACH, CA 90810

NO. OF PKGS.	DESCRIPTION OF ARTICLES, SPECIAL MARKS & EXCEPTIONS	WEIGHT	DO NOT USE
275 PCS	COFFEE MASTER NO.: MAEU867479701 CONTAINER NO.: MRKU9500778 CNW20 SEAL NO. CO0010785	19577.00 Kg 43159.45 Lb	
***** PLEASE CHECK AVAILABILITY AT PICKUP LOCATION ***** AND ADVISE US IMMEDIATELY REGARDING ANY PROBLEMS			

W185-2500 NAVY WAY, TERMINAL ISLAND, CA 90731

ORIGINAL DELIVERY ORDER

DOC. No. : 000010083-00001

**INLAND FREIGHT**

PREPAID / COLLECT  
PrePaid

Received in Good Order  
By:

SERGIO MOUTELA DBA THRUPORT INTL  
2204 MORRIS AVENUE #309  
UNION, NJ 07083  
PER ph: 908-867-8478 fax: 908-867-8477  
HARVEY CHAVEZ

Liability, including negligence is limited to the sum of \$50.00  
per shipment, unless a greater valuation shall be paid for or  
agreed to be paid in writing prior to shipping.

**DELIVERY CLERK: DELIVER  
TO CARRIER SHOWN ABOVE**

IMPORTANT: NOTIFY US AT ONCE IF DELIVERY CANNOT BE EFFECTED AS INSTRUCTED.

FORM Approved  
OMB No. 1545-0047

**AGRICULTURE**  
**EXAM REQUIRED**  
BROKER CODE: E-7

BROKER CODE: E4  
ABI CERTIFIED

TR# 18104

19 CFR 142.3, 142.10, 142.22, 142.24

## 27. CERTIFICATION

20. CBP USE ONLY

OTHER AGENCY ACTION REQUIRED: NAMELY:  
 Delivered Authorized  
 by DHS-CBP  
 for examination at  
 Port of Entry  
 Name: [Signature] 1003 Date: 4/12

 CBP EXAMINATION REQUIRED

ADJ 5AM  
ENTRY REJECTED, BECAUSE:

20. BROKER OR OTHER GOVT. AGENCY USE

CUSTOMS TEAM: 718  
GROSS WEIGHT: 19577KG  
TOTAL UNITS: 275

If examination is required, cargo will be moved  
TO: PRICE TRANSFER (C.E.S.)

Containers:  
MRKU9500778

## FDA May Proceed

PRICE TRANSFER, INC.

APR 11 2014

EXAM / RECEIVED

[illegible]

CBP Form 3401 (01/09)

[Logout](#) [Home](#) [Demo](#) [Contact](#) [Exam Rates](#)1 OF 3**APM Terminals Pacific Ltd**

Payee: American Coffee Corporation

Receipt Number: CCLS268002

DEMURRAGE

30 Montgomery Street

Date: 4/11/2014

P006767

Jersey City, NJ 07302

PO Number: P006767

COLOMBIA

Contact: Don Pisano

Paid to the Order of:

APMT Pacific Ltd

USDA EXDM

Attn: Pier 400 Demurrage Department

LSA  
Contact (310) 221-4498  
Info:

2500 Navy Way

PRICE

Terminal Island, CA 90731

APRIL 12 - APRIL 14

Please print this receipt out and keep for your records.

Item Description	Product	Total Price
MRKU9500778 - Paid Thru: 04/14/2014 In Los Angeles	Demurrage BOL: 867479701	\$675.00
		Total: \$675.00

[Logout](#) [Home](#) [Demo](#) [Contact](#) [Exam Rates](#)2 of 3**APM Terminals Pacific Ltd**

Payee: American Coffee Corporation

Receipt Number: CCLS258243

30 Montgomery Street

Date: 4/14/2014

Jersey City, NJ 07302

PO Number: P006787

P006787

COLOMBIA

USDA @ PRICE

Contact: Don Pisano

Paid to the Order of: APMT Pacific Ltd

Attn: Pier 400 Demurrage Department

LSA  
Contact (310) 221-4498  
Info:

2500 Navy Way

Terminal Island, CA 90731

Please print this receipt out and keep for your records.

Item Description	Product	Total Price
MRKU9500778 - Paid Thru: 04/15/2014 In Los Angeles	Demurrage BOL: 867479701	\$225.00
		Total: \$225.00

[Logout](#) [Home](#) [Demo](#) [Contact](#) [Exam Rates](#)

3 of 3

**APM Terminals Pacific Ltd**

Payee: American Coffee Corporation

Receipt Number: CCLS258557

30 Montgomery Street

Date: 4/16/2014

Jersey City, NJ 07302

PO Number: P006767 - PAID UNDER PROTEST

Contact: Don Pisano

Paid to the Order of:

APMT Pacific Ltd

Attn: Pier 400 Demurrage Department

LSA  
Contact (310) 221-4498  
Info:

2500 Navy Way

Terminal Island, CA 90731

Please print this receipt out and keep for your records.

Item Description	Product	Total Price
MRKU9500778 - Paid Thru: 04/16/2014 in Los Angeles	Demurrage BOL: 867479701	\$275.00
		Total: \$275.00

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A.P. Moller Maersk Group

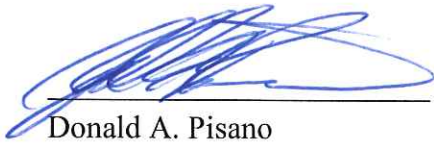
P006767

COLUMBIA

USDA @ Price.

# VERIFICATION

I verify under penalty of perjury that the foregoing letter dated May 10, 2016 is true and correct.



---

Donald A. Pisano

# **EXHIBIT C-5**



November 18, 2016

To Whom It May Concern:

On behalf of Chico's FAS Inc., I urge the Federal Maritime Commission to limit the ability of ocean carriers to charge demurrage when a consignee cannot receive its goods at a port due to port congestion.

Chico's FAS Inc. is a specialty retailer of private label women's apparel, accessories, and related products. Annually, it imports approximately 850 FEU containers of these items from various Asia origins. It sells these items via the internet and in 1,518 boutiques and outlets throughout the U.S. and Canada. As Vice President-Logistics & Customs Compliance, I am responsible for managing the flow of our merchandise from factories in Asia to our distribution center in Atlanta, GA and ultimately to our stores and customers.

Recent labor issues at the ports of Los Angeles and Long Beach have had a disruptive effect on Chico's FAS's business. Beginning around October 2014, labor issues at these ports caused significant congestion, delaying hundreds of Chico's FAS containers and, thus, disrupting the flow of 8-10 million Chico's FAS garments. In one instance in late October 2014, 18 containers were held at the port, resulting in a 30% increase in freight costs and late deliveries to Chico's FAS stores.

This congestion was beyond the control Chico's FAS. Not only did Chico's FAS not have a role in the labor disputes at Los Angeles and Long Beach, but also in many instances the ports would not allow drivers to access containers awaiting pickup. In fact, a key cause of the congestion was the unannounced closing of port areas where containers were awaiting pickup. This made pickup impossible and required multiple pickup attempts. Also, workers at the ports took longer to perform chassis inspections, deepening congestion.

No carrier extended free time at these ports to address the congestion, even though it was beyond Chico's FAS's control. Before the congestion issues arose, Chico's FAS had four days of free time to retrieve its containers, which was sufficient. But when the congestion began, the time needed to retrieve containers more than doubled to 7-9 days. As a result, Chico's incurred approximately \$80,000 in demurrage.

Although the congestion at Los Angeles and Long Beach subsided in the Summer of 2015, it still remains an issue. Productivity, measured in container moves per hour, at Los Angeles and Long Beach is below many other ports. Thus, dwell times for containers is almost equivalent to the free time that the carriers make available, leaving no margin for error. As vessel sizes increase, Chico's FAS expects dwell times at the ports to increase, resulting in shippers being unable to retrieve their goods within their allotted free-time period and incurring demurrage, through no fault of their own.

Through their handling of demurrage related to the port congestion at Los Angeles and Long Beach, carriers have demonstrated that they are not willing to provide consignees a fair opportunity to retrieve their containers during the free time period. This practice forces shippers like Chico's FAS to incur unexpected demurrage charges and business disruption. By curtailing

this practice, the Commission will incentivize the timely resolution of congestion at the ports and minimize the cascading effects of port congestion on shippers and consumers.

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

 11.21.16  
Shana Riggs  
Vice President – Logistics, Customs Compliance and Supply Chain Operations

# **EXHIBIT C-6**



November 18, 2016

To Whom It May Concern:

Subject: Petition for Rulemaking on Demurrage Practices

VLM Foods Inc. is a frozen fruit and vegetable importer supplying top quality products to food processors, foodservice distributors and retailers across North America. As a long standing partner in CBP's C-TPAT supply chain security program, we have piloted numerous CBP trade facilitation initiatives. We fully appreciate our responsibilities in ensuring that shipping containers are picked up and returned to carriers in a timely fashion.

While the vast majority of our shipments benefit from prompt and problem free cargo clearance and empty container return, port delays have a severe impact on VLM's business. Because the margins in our business are razor thin, demurrage and other delay costs usually results in VLM taking a loss on delayed shipments.

As a responsible importer we appreciate that carriers and terminal operators face both real and opportunity costs when containers needlessly idle at ports of entry. Having said this, terminals and carriers alike use demurrage to engage in opportunistic "taxing." The Federal Maritime Commission should take action to curb this practice.

VLM has experienced multiple situations where it incurred delays and demurrage charges through no fault of its own. Often, carriers will hold our containers at a port pending additional payment after discovering that they underbilled VLM. Because carriers rarely verify that they billed and collected the proper amount until a container is ready to be released, rectifying their billing issue usually results in delays and demurrage charges. Imposing demurrage charges on VLM for these delays is unfair, because the delays are the direct result of carrier billing errors and the carriers choose not to audit their billings early enough to avoid delay.

VLM also incurs demurrage because many terminals do not properly sequence its containers for Customs inspections. To avoid port delays for its containers, VLM has obtained C-TPAT status from U.S. Customs and Border Protection (CBP). This status reduces the likelihood that CBP will examine VLM's containers and gives the container's "front-of-line" status for CBP exams. But many terminals do not move VLM's containers to the front of the line for CBP exams, often resulting in the container's exceeding free time.

VLM has also incurred demurrage for a day in which a terminal was closed. Over a July 4th weekend, VLM containers arrived at the port of New York and New Jersey. The terminal was closed for July 4th and had issued notice that July 4th would count as a "free day." The ocean carrier, however, refused to extend free time, which ended on the 4th, to July 5th, when the port reopened. Thus, VLM incurred demurrage for picking up the containers on July 5th, even though it did not have the benefit of the full free-time period. Moreover, the carrier incurred no real

VLM Foods Inc.

1651 Blvd. Saint-Regis, Dollard-des-Ormeaux, Qc Canada H9B 3H7

Tel (514) 426 4100 / e-mail: [info@vlmfoods.com](mailto:info@vlmfoods.com) / web: <http://www.vlmfoods.com/en/contact#>

costs and zero opportunity costs due to the July 5th pickup, because the terminal extended free time to the carrier for July 4th. This is a prime example of how carriers are using demurrage to generate revenue.

We ask the Federal Maritime Commission to address situations where carriers charge demurrage, but shippers, like VLM, have done everything reasonably possible to retrieve their containers during free time. Moreover, carriers should be required to extend free time where a terminal is closed during the original free time period.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Sincerely,



Mark FeDuke

VLM Foods Inc.

1651 Blvd. Saint-Regis, Dollard-des-Ormeaux, Qc Canada H9B 3H7  
Tel (514) 426 4100 / e-mail: [info@vlmfoods.com](mailto:info@vlmfoods.com) / web: <http://www.vlmfoods.com/en/contact#>

# **EXHIBIT C-7**



100 North Drive

Ronkonkoma, NY 11779

November 30, 2016

Federal Maritime Commission  
800 North Capital Street, NW  
Washington DC 20573

Re: Petition for Rulemaking on Demurrage Practices

Our company is an importer moving goods through the Port of New York & New Jersey.

Over the past two years, we have paid exorbitant charges for demurrage and detention when equipment could not be picked up or dropped off at the terminals due to circumstances that were completely out of our control.

For instance, during the winter months of 2014-2015, when we had inclement weather and the ports were closed, we were penalized for those days, and had to incur fees and demurrage charges on our containers. Although the transportation of our cargo between the Customs exam site and terminal was also delayed by many days due to the weather, which was beyond our control, we incurred demurrage charges on this cargo at normal rates. Overall, during the winter of 2014-2015, we had been hit with fees on almost all of our containers, adding up to tens of thousands of dollars, all which could be avoidable. This directly affected our bottom line profits dramatically.

The carriers and terminals cite their "tariffs" as justification for their detention charges, without any consideration of whether we had any control over our ability to pick up our cargo before free time expired. They also insist on payment of demurrage charges before freight will be released, even where we dispute the demurrage charges. This places considerable strain on our business while we work through disputes with the carriers.

We believe the Commission is in a unique position to ensure that the regulations do not work to favor one industry participant over another and instead promote fairness.

Thank you for your attention to this matter.

Sincerely,

Gregg Singer  
Owner, EVP Budpak, Inc.

A handwritten signature in black ink, appearing to read "Gregg Singer", with a long horizontal flourish extending to the right.



## VERIFICATION

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

A handwritten signature in black ink, appearing to read 'Gregg Singer', with a long horizontal flourish extending to the right.

---

Gregg Singer

Owner, EVP Budpak, Inc.

# **EXHIBIT C-8**

December 2, 2016

To Whom It May Concern:

Subject: Verified Statement of Andrew Wertheim in Support of Petition for Rulemaking on Demurrage and Detention Practices

My name is Andrew Wertheim. I am the President of Tea Importers, Inc., which is located at 47 Riverside Avenue, Westport, Connecticut 06880. Tea Importers is an importer of tea, hop twine and activated charcoal. In the course of our business, I have become familiar with the fees charged by vessel operating common carriers (VOCCs), marine terminal operators (MTOs), and other transport providers.

During the period of labor unrest on the West Coast in 2014 and 2015, my company was charged demurrage by a VOCC on a shipment of hop twine from Colombo, Sri Lanka to Seattle, Washington. The amount was \$225 and assessed on a daily basis. We were charged this demurrage even though the delay was not our fault, but solely a result of labor actions at the port. In fact, we attempted to pick up the shipment before free time expired. Ultimately, we were not able to have this fee waived.

During the same period, the same VOCC charged our trucker detention on a shipment of hop twine from Colombo, Sri Lanka, to Newark, New Jersey. The amount was \$800 and assessed on a tier basis per day. Our trucker was charged this detention even though the delay in returning the container was not their fault, but solely a result of congestion at the port due the overflow of cargo from the West Coast labor actions. Our trucker agreed to not charge us for the detention.

We also incurred "congestion" charges by truckers on door shipments as a result of the delays at West Coast ports from the labor actions during the period of 2014 and 2015. At the port of Los Angeles, the "congestion" charges totaled \$2,682 and involved a single VOCC, who also operated the terminal involved. Nevertheless, the VOCC's designated trucker charged us these fees, and we were not able to have these charges waived. We have never experienced such extra charges on a door delivery. Moreover, at the same time, we had other door deliveries by a different VOCC and we were never asked to pay any congestion surcharges by their designated trucker.

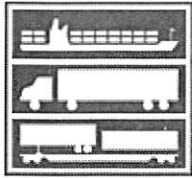
#### VERIFICATION

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

A handwritten signature in purple ink, appearing to read "Andrew Wertheim", is written over a horizontal line.

Andrew Wertheim

# **EXHIBIT C-9**



**ContainerPort  
GROUP**

**Intermodal Container and Cargo Solutions**

Headquarters

ContainerPort Group, Inc.  
1340 Depot Street, 2<sup>nd</sup> Floor  
Cleveland, Ohio 44116  
P: 440-333-1330

[www.containerport.com](http://www.containerport.com)

5/2/2016

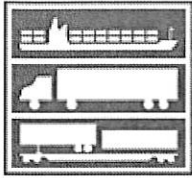
The statements below are respectfully submitted by **Robert Leef, ContainerPort Group, Inc., Senior Vice President, East Region.**

Through its fleet of nearly 600 independent contractors, ContainerPort Group, Inc. ("CPG") provides local, regional and long haul container trucking services. CPG hauls over 50,000 loads of international cargo, in and out of the above ports annually. As Senior Vice President of the East Region, I am directly responsible for 250 trucks that interchanged international cargo in and out of the East Coast ports in NY, NJ, MD, PA and VA, in 2014 and 2015.

In 2014 and 2015, CPG, and the independent contractors who haul on our behalf, experienced a constant battle with the impacts of port delays. These delays, caused by factors such as labor disruption, weather, road construction, system failures, and port congestion, were beyond the control of the motor carriers interchanging international cargo at the port facilities. While there are numerous examples of the causes for these delays, the following are just a few to illustrate the point:

- January 2015 - Winter Storm Marcus hit 1/26/15. The impacts of this storm continued for a month and eventually resulted in the NS embargo which closed the Norfolk International Terminal (NIT), Virginia Port Authority's largest terminal, as well as other NS facilities around the country.
- Spring of 2015 - As fallout from the series of winter storms continued the queue at the Port of NY/NJ extended over 3 miles outside the facility entrance. The backup was so significant that the issue received media attention.
- January 2016 - Winter Storm Jonas causes closures for the better part of three business days. As the Ports begin to recover from this storm there was the ILA labor stoppage on 1/29/16.
- April 14, 2014 - the beginning of work on the Pulaski Skyway in New Jersey causing major traffic delays and congestion to one of the major terminals in the area. This is a two year project still going on.

Despite the various factors that were beyond the control of the motor carriers, many VOCCs and MTOs still assessed both per diem and demurrage fees in accordance with the Uniform Intermodal Interchange and Facilities Access (UIIA) Agreement and the MTO schedules, respectively. The UIIA provides the VOCCs a basis to assess per diem charges against a motor carrier as a party in physical possession of a container, chassis or other related intermodal freight equipment during an interchange. Each VOCC files an "Addendum" to the UIIA that specifies that carrier's allotted free time and per diem rates. Contracts between our customers and VOCCs also address similar terms involving free time and per diem rates which may be different from those provided under the UIIA.



**ContainerPort  
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Cleveland, Ohio 44116  
P: 440-333-1330

[www.containerport.com](http://www.containerport.com)

Despite not being privy to those contract terms, the common practice today is for VOCCs to invoice motor carriers for per diem charges, forcing the motor carriers to endure the administrative burden of processing and collecting appropriate amounts due under the applicable terms.

As you will see in the examples to follow, per diem is generally invoiced to the motor carrier within 60 days of container termination while MTO demurrage is generally due at the time of pick-up.

#### **Exhibit A**

On 5/1/2015 VOCC "A", billed CPG \$2,090 in per diem relative to 3 export containers that were delayed due to the NS embargo.

CPG terminated these 3 export containers at the NS in Columbus, OH (within the allotted free time). From there the containers were railed to the Port of Virginia - which was closed due to the extensive snowfall from winter storm Marcus. As the Port was closed VOCC "A" argued that the "time clock" continued to run on these loads.

Despite the fact that CPG terminated these containers within the allotted free time in Columbus, OH, VOCC "A" was adamant that CPG (or someone) should be liable for per diem incurred while the units sat at a CLOSED Port of Virginia.

After months of back and forth discussions, the shipper begrudgingly agreed to pay the \$2,090 to VOCC "A" to satisfy these seemingly absurd charges.

#### **Exhibit B**

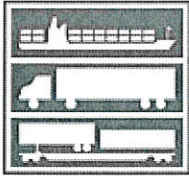
Over the course of a three month period CPG was invoiced \$25,610 in per diem charges by VOCC "B", specific to door moves that were performed in Norfolk, VA during a time of heavy Port Congestion triggered by two winter storms in 2015.

Due to the congestion the independent contractors were sitting in lines for hours which had a number of effects. The drivers were not able to complete their normal amount of moves in one day due to lost hours of productivity waiting in line, or the drivers simply refused to make multiple turns in a day due to the time and resources required to pull a load. Ultimately the congestion compromised our ability to move freight in a timely manner.

VOCC "B" Per Diem/EDI Coordinator rejected our dispute stating: *"We do not waive [per diem] due to congestion we encourage the truckers to e-mail for the [last free day] so they can plan ahead. The best I can do is offer you a payment plan for the invoice in March/April because unfortunately you will get shut out [for non-payment]."*

#### **Exhibit C**

In March 2016, CPG was invoiced \$22,410 in per diem from VOCC "C" for 27 containers. The per diem was due to Winter Storm Jonas which closed the NY/NJ/BAL ports from 1/22/16-1/26/16. Severe congestion followed once the ports reopened, incurring additional charges.



**ContainerPort**  
GROUP

Headquarters

ContainerPort Group, Inc.  
1340 Depot Street, 2<sup>nd</sup> Floor  
Cleveland, Ohio 44116  
P: 440-333-1330

**Intermodal Container and Cargo Solutions**

[www.containerport.com](http://www.containerport.com)

CPG disputed the charges due to Force Majeure/weather beyond our control and the disputes were initially denied. The VOCC's reason was because the free time was calculated as calendar days (vs. working days); therefore they would not extend due to port closures and weather. CPG usually gets customers involved in disputing the invoices for these charges, especially when a particular customer has potential negotiating power due to the amount of volume it ships. After several further emails/requests for assistance, they eventually waived most of the charges.

***Exhibit D***

Routine delays caused by the implementation or failure of a terminal's internal systems that are beyond the control of the motor carriers are also a source for charges. For example, Exhibit D includes an email notification from a terminal that it was experiencing truck processing issues because it was implementing new technology. While charges resulting from delays due to these types of instances are not as significant as ones mentioned above, they continue to be assessed against CPG and its customers on a regular basis.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Robert Leef

**Exhibit A**  
**of**  
**Exhibit C-9**



Cindy Szabo

Exhibit A

**From:** Cindy Szabo  
**Sent:** Friday, April 29, 2016 9:09 AM  
**To:** Cindy Szabo  
**Subject:** IV. A.2., G# \$2090 perdiem due to NS Embargo 2015  
**Attachments:** RE: Inquiry on two containers; RE: Virginia Terminals; Congestion Mitigation at The Port of Virginia; RE: Inquiry on two containers; Congestion Mitigation Update - March 16, 2015; Congestion Mitigation Update - March 18, 2015; ALERT-Weather Contingencies at The Port of Virginia; Inquiry on two containers; DOC062615.pdf  
**Importance:** High

billed CPG perdiem for 3 export containers that were booked as port bookings. Although CPG ingated the loads to the local rail timely, perdiem incurred in Norfolk, VA due to the NS embargo which resulted from Winter Storm Marcus, 2015. The containers were railed via NS from Columbus to Norfolk. The Port of Norfolk was closed so the containers sat outside the gate.

CPG disputed, I cancelled and then reissued the invoices. Total charge: \$2090 (paid by directly to I

---

**From:** Cindy Szabo  
**Sent:** Friday, June 26, 2015 7:54 AM  
**To:** Hammac, Paula <PaulaHammac@>  
**Cc:** cpqcol <cpqcol@containerport.com>  
**Subject:** FW: perdiem charges  
**Importance:** High

Good morning Paula. cancelled their previous invoice after we disputed with your attachments but reissued under invoice 190302 (attached) dated 5/1/15. We never rec'd this reissued invoice but our account is now past due. We accept responsibility for the perdiem on SUDU7541011 -- please provide approval to rebill for CADU2008848 and SUDU1741814. Thank you.

---

**From:** Hammac, Paula [<mailto:PaulaHammac@F> om]  
**Sent:** Thursday, May 07, 2015 10:14 AM  
**To:** Cindy Szabo  
**Cc:** cpqcol  
**Subject:** RE: f perdiem charges

Hi Cindy

Keith suggested I send you all the info I have on the two containers mentioned below.

There is a lot of info - but plenty to prove that it was definitely at no fault of ours getting these to the port in time.

Hope this helps

Let me know if I can get involved in anyway

Thanks  
Paula

CONTAINER PORT GROUP, INC

PAGE

1

INVOICE DATE 05/01/15

INVOICE NO. 190302

# INVOICE

PAYMENT IS DUE WITHIN (15) FIFTEEN DAYS OF BILLING DATE

CONTAINER	FROM TO	START DATE	DUE DATE	END DATE	DAYS	CHARGE DESCRIPTION	AMOUNT
CADU2008848	ORF IOA	02/20/15	02/27/15	03/08/15	9	DETENTION	990.00
MOROS 055 S	250012498L8X					INC. DC 20	
						ARCTO LTDA	
SUDU1741814	ORF IOA	02/20/15	02/27/15	03/08/15	9	DETENTION	990.00
MOROS 055 S	250012498L8Y					INC. DC 20	
						ARCTO LTDA	
SUDU7541011	ORF IOA	03/09/15	03/16/15	03/17/15	1	DETENTION	110.00
MOTAM 064 S	2500127072S6					INC. DC 20	
						ARCTO LTDA	

TOTAL

USD

2090.00

Notices of dispute of charges must be presented by the party invoiced within fifteen (15) business days of the invoice date.

**From:** Hammac, Paula  
**Sent:** Wednesday, May 06, 2015 10:59 AM  
**To:** 'Cindy Szabo'  
**Cc:** cpgcol  
**Subject:** RE: [REDACTED] per diem charges

Sorry - had to investigate what happened. Two was during the snow storm and our containers sat outside the gates when they closed the port of Norfolk so it missed the vessel.

That said,

Our work order CADU2008848 AND SUDU1741814 was for the empty to be dropped 2/23 with a load date of 2/24 - this invoice shows start date 2/20 - dispatched 2 days early? We will pay for 7 days  $\$770.00 \times 2 = \$1540.00$

Our work order for SUDU7541011 was to drop 3/10 for 3/11 loading but your invoice shows start date of 3/9. Nothing due from us on this one.  
Dispatched a day before our request date.

These are port to port moves so we are responsible for the time the container is out from *when we ask to be dropped* to when we return the full container.  
However, we do not feel we are responsible if CPG dispatched the empty earlier than the date requested for say convenience. As mentioned above, all it takes is a snow storm and we end up paying a lot of money so every day counts for us and days it is out and not provided to us as requested is not fair to ask us to pay.

Please send us an invoice for the ones mentioned above and we will pay the \$1540.00.

Thank you

Paula Hammac  
Export Services Manager  
Telephone:  
Fax: [REDACTED]

---

**From:** Cindy Szabo [<mailto:Cindy.Szabo@containerport.com>]  
**Sent:** Wednesday, May 06, 2015 10:23 AM  
**To:** Hammac, Paula  
**Cc:** cpgcol  
**Subject:** RE: [REDACTED] per diem charges

Good morning - Have you had a chance to review? We only have 15 days to dispute [REDACTED] invoices so I don't mean to push, but we are already over that limit. I've attached my original email with the backup for your review. Thank you.

Cindy Szabo, Supervisor - Equipment Cost Management - ContainerPort Group, Inc.  
**Corporate Office:** 1340 Depot Street Ste 200 - Cleveland, OH 44116  
**P:** 440-895-8124 | **F:** 440-333-9413  
[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



**ContainerPort**  
GROUP

Intermodal Container and Cargo Solutions

---

**From:** Cindy Szabo  
**Sent:** Thursday, April 30, 2015 9:34 AM  
**To:** Hammac, Paula  
**Cc:** cpqcol  
**Subject:** RE: [REDACTED] per diem charges

Understood. Thanks for acknowledging and we'll await your findings.

---

**From:** Hammac, Paula [mailto:PaulaHammac@ [REDACTED]]  
**Sent:** Thursday, April 30, 2015 9:21 AM  
**To:** Cindy Szabo  
**Cc:** cpqcol  
**Subject:** RE: [REDACTED] per diem charges

Will need a couple of days to investigate.

Due to an absence here, I am doing the job of two people so may not get to this until early next week

Thanks

---

**From:** Cindy Szabo [mailto:Cindy.Szabo@containerport.com]  
**Sent:** Wednesday, April 29, 2015 3:10 PM  
**To:** Hammac, Paula  
**Cc:** cpqcol  
**Subject:** [REDACTED] per diem charges  
**Importance:** High

Good afternoon Paula. We received per diem charges from [REDACTED] for three containers (CADU2008848, SUDU1741814, and SUDU7541011). I disputed the charges with them because the dates we ingated did not match the dates they were billing. I received a call from [REDACTED] to explain that these three containers were booked as port bookings, and we are responsible for the per diem until the containers reached the port. We've never run into this situation before so that is why I am reaching out to you for assistance. I have attached the invoice. Can you please review and advise how we are to handle? Thank you.

Cindy Szabo, Supervisor - Equipment Cost Management - ContainerPort Group, Inc.  
**Corporate Office:** 1340 Depot Street Ste 200 - Cleveland, OH 44116  
**P:** 440-895-8124 | **F:** 440-333-9413  
[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



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Cindy Szabo

---

**From:** Hammac, Paula <PaulaHammac@[REDACTED].com>  
**Sent:** Monday, March 09, 2015 6:55 AM  
**To:** IM Traffic Delivery; 'Carol Holloway'; Mulligan, Kathleen A.; Knudson, Mark K.; 'Jeanne Heilman'; CU VIT Custer; [REDACTED] All; CU NIT Admins; 'Hartkorn-ONEal, Maggie (Maggie.Hartkorn-ONEal@[REDACTED].com)'; 'Fields, Sharon (Sharon.Fields@[REDACTED].com)'; 'Temple, Carl (Carl.Temple@[REDACTED].com)'  
**Subject:** RE: Inquiry on two containers  
**Importance:** High

I See these FINALLY made it in but not until March 8th- the day the vessel was to sail - shows in the yard

[REDACTED] - any chance these made the booked vessel?



http://track.portofvirginia.com/Track/Console



N4

File Edit View Favorites Tools Help



Home

Tracking

Reports ▾

Support

Glossary of Terms

Container Numbers

Enter container numbers: (filtering & check-digit calculation enabled)

SUDU1741814 CADU2008848

Limit 50 Containers

Get Unit Visits

Get Gate Transactions

For Date:

Visit State: Active



CADU2008848

20' 8'6" DR NIT HSD Export Yard

HAMBURG X SDO

Created: 02/24/2015 14:2

In Yard: 03/08/2015 03:32



SUDU1741814

20' 8'6" DR NIT HSD Export Yard

HAMBURG X SDO

Created: 02/24/2015 14:0

In Yard: 03/08/2015 03:22

↑ Track Selected Units in other Systems

VIP/CY System

VIG System Equipment History

VIG System Import Availability

limit one equipment #



Delete...



RE: Inq...



RE: Inq...



Adage...



Stewart...

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

From: Hammac, Paula

Sent: Friday, March 06, 2015 12:26 PM

To: IM Traffic Delivery; 'Carol Holloway'; Mulligan, Kathleen A.; Knudson, Mark K.; 'Jeanne Heilman'; CU VIT Customer Service

(VIT) CustomerService@vit.org; 'Intermodal - All'; CU NIT Admins; 'Hartkorn-ONeal, Maggie (Maggie.Hartkorn-ONeal@[REDACTED].com)'; 'Fields, Sharon (Sharon.Fields@[REDACTED].com)'; 'Temple, Carl (Carl.Temple@[REDACTED].com)' Subject: RE: Inquiry on two containers

Please advise.

---

From: IM Traffic Delivery [IMTrafficDelivery@nscorp.com]

Sent: Friday, March 06, 2015 7:39 AM

To: Hammac, Paula; 'Carol Holloway'; IM Traffic Delivery; Mulligan, Kathleen A.; Knudson, Mark K.; 'Jeanne Heilman'; CU VIT O'Neal@ [REDACTED].com); 'Fields, Sharon (Sharon.Fields@[REDACTED].com)'; 'Temple, Carl (Carl.Temple@[REDACTED].com)' Subject: RE: Inquiry on two containers

NIT in copy to advise

Thank you,

Janet F. Van Effen

Intermodal Customer Service

3 -  
03510

From: Hammac, Paula [mailto:PaulaHammac@[REDACTED].com]

Sent: Friday, March 06, 2015 6:39 AM

To: 'Carol Holloway'; IM Traffic Delivery; Mulligan, Kathleen A.; Knudson, Mark K.; 'Jeanne Heilman'; CU VIT Customer Service (VIT) CustomerService@vit.org; 'Intermodal - All'; CU NIT Admins; 'Hartkorn-ONeal, Maggie (Maggie.Hartkorn-ONeal@[REDACTED].com)'; 'Fields, Sharon (Sharon.Fields@[REDACTED].com)'; 'Temple, Carl (Carl.Temple@[REDACTED].com)' Subject: [EXTERNAL] RE: Inquiry on two containers Importance: High

Still showing no movement - cut is today. Please advise status. Thank you  
[cid:image001.png@01D057E0.B3F827E0]

From: Hammac, Paula

Sent: Thursday, March 05, 2015 2:35 PM

To: 'Carol Holloway'; 'IM Traffic Delivery'; 'Mulligan, Kathleen A.'; 'Knudson, Mark K.'; 'Brown, Glen A.'; 'Jeanne Heilman'; 'Hartkorn-ONeal, Maggie (Maggie.Hartkorn-ONeal@[REDACTED].com<mailto:Maggie.Hartkorn-ONeal@[REDACTED].com>); 'Fields, Sharon (Sharon.Fields@[REDACTED].com<mailto:Sharon.Fields@[REDACTED].com>); 'Temple, Carl (Carl.Temple@[REDACTED].com<mailto:Carl.Temple@[REDACTED].com>)' Subject: RE: Inquiry on two containers

Hi Carol

Do not see any activity since this morning. Any news?

Thanks

Paula

From: Hammac, Paula

Sent: Thursday, March 05, 2015 8:19 AM

To: 'Carol Holloway'; 'IM Traffic Delivery'; Mulligan, Kathleen A.; Knudson, Mark K.; Brown, Glen A.; Jeanne Heilman; Customer Service; Intermodal - All; Intermodal Admins - NIT Only; Hartkorn-ONEal, Maggie (Maggie.Hartkorn-ONEal@franklininternational.com); Fields, Sharon (Sharon.Fields@franklininternational.com); Temple, Carl (Carl.Temple@franklininternational.com)  
Subject: RE: Inquiry on two containers

THANK YOU!

From: Carol Holloway [mailto:cholloway@vit.org]

Sent: Thursday, March 05, 2015 8:07 AM

To: Hammac, Paula; 'IM Traffic Delivery'; Mulligan, Kathleen A.; Knudson, Mark K.; Brown, Glen A.; Jeanne Heilman; Customer Service; Intermodal - All; Intermodal Admins - NIT Only; Hartkorn-ONEal, Maggie (Maggie.Hartkorn-ONEal@franklininternational.com); Fields, Sharon (Sharon.Fields@franklininternational.com); Temple, Carl (Carl.Temple@franklininternational.com)  
Subject: RE: Inquiry on two containers

Let me keep an eye on these 2 and get back with you this afternoon.

From: Hammac, Paula [mailto:PaulaHammac@FranklinInternational.com]

Sent: Thursday, March 05, 2015 7:35 AM

To: Carol Holloway; 'IM Traffic Delivery'; Mulligan, Kathleen A.; Knudson, Mark K.; Brown, Glen A.; Jeanne Heilman; Customer Service; Intermodal - All; Intermodal Admins - NIT Only; Hartkorn-ONEal, Maggie (Maggie.Hartkorn-ONEal@franklininternational.com); Fields, Sharon (Sharon.Fields@franklininternational.com); Temple, Carl (Carl.Temple@franklininternational.com)  
Subject: RE: Inquiry on two containers

Thank you very much for the quick reply Carol.

Do we have a chance of making the booked vessel? Cut is tomorrow at 17:30 We are so close ..... they are right there ...  
[cid:image002.png@01D057E0.B3F827E0]

From: Carol Holloway [mailto:cholloway@vit.org]

Sent: Thursday, March 05, 2015 7:32 AM

To: Hammac, Paula; 'IM Traffic Delivery'; Mulligan, Kathleen A.; Knudson, Mark K.; Brown, Glen A.; Jeanne Heilman; Customer Service; Intermodal - All; Intermodal Admins - NIT Only; Hartkorn-ONEal, Maggie (Maggie.Hartkorn-ONEal@franklininternational.com); Fields, Sharon (Sharon.Fields@franklininternational.com); Temple, Carl (Carl.Temple@franklininternational.com)  
Subject: RE: Inquiry on two containers

Containers haven't been brought onto the Terminal as yet

From: Hammac, Paula [mailto:PaulaHammac@FranklinInternational.com]

Sent: Thursday, March 05, 2015 7:21 AM

To: 'IM Traffic Delivery'; Mulligan, Kathleen A.; Knudson, Mark K.; Brown, Glen A.; Jeanne Heilman; Customer Service; Intermodal - All; Intermodal Admins - NIT Only; Hartkorn-ONEal, Maggie (Maggie.Hartkorn-ONEal@franklininternational.com); Fields, Sharon (Sharon.Fields@franklininternational.com); Temple, Carl (Carl.Temple@franklininternational.com)  
Subject: Inquiry on two containers  
Importance: High



Hello  
Realize you all are quite buried at the moment after receiving the attached e-mail.  
I do, however, have two containers I need status on please. These are booked on \_\_\_\_\_ vessel Monte Aconcagua V058s  
due to sail Sunday.  
They were turned into the Columbus Ohio rail ramp last Tuesday, February 24th so figured for sure they made it in before your  
e-mail but now I am not so sure.  
We are talking over a week on the rail. They are now showing "Arrival at Intransit Location" since Monday, March 2nd at  
05:29am.

Init  
Number  
L/E  
Location  
St  
Event  
Date  
Time  
TZ  
Dest  
Train  
ETA/I

[<https://www2.nscorp.com/mktg/images/plus.gif>]

CADU  
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NORFOLK  
VA  
ARIL  
2015-03-02

05:29:00

EST

NORFOLKI VA

236V125

[<https://www2.nscorp.com/mktg/images/plus.gif>]

SUDU

174181

L

NORFOLK

VA

ARIL

2015-03-02

05:29:00

EST

NORFOLKI VA

236V125

Please advise as these two containers are so close - they are right there. They really need to make the booked vessel.  
Thank you and Best Regards  
Paula Hammac

Telephone: 614-445-1431  
Fax: 614-445-1431

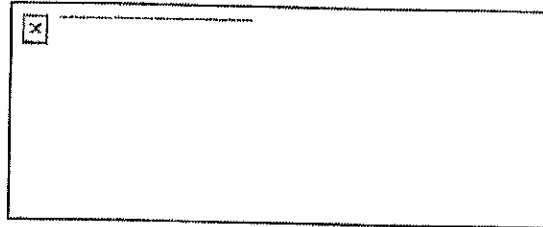
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## Cindy Szabo

---

**From:** The Port of Virginia <carla@portofvirginia.ccsend.com> on behalf of The Port of Virginia  
<marketingnews@portofvirginia.com>  
**Sent:** Wednesday, March 18, 2015 10:49 AM  
**To:** Hammac, Paula  
**Subject:** Congestion Mitigation Update - March 18, 2015

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**To: All Port Users**  
**From: Port Operations Team**  
**Date: March 18, 2015**

**Subject: Congestion Mitigation Update #5**

The Port of Virginia is continuing to take immediate action to reduce the congestion and stack density at Virginia International Gateway (VIG) as heavy volumes continue at that terminal. Today, the port operations team has taken the following action:

- Beginning at the start of business on Thursday, March 19, VIG will reduce the window for delivery of exports to seven (7) from nine (9) days. This temporary measure will allow the VIG operations team time to reduce the density in that terminal's stacks, which are currently at capacity.
- Additionally, port partners, stakeholders and users are reminded that Portsmouth Marine Terminal (PMT) is accepting export cargo. In order to optimize cargo handling assets at PMT, the terminal's operations team is working the gate / motor carriers during the normal operating hours (8 a.m. - 5 p.m., hard-stop at 7 p.m.) and working vessels during the evening and overnight.

On March 16, the port announced these measures:

- Optimizing vessel arrivals at VIG to control inventory and better balance resource demand.
- The port will maintain its Saturday gate hours at VIG, NIT and PPCY through Saturday, June 27; PMT will have Saturday gates on March 28.

- The port will maintain Sunday gate hours at VIG and the PPCY through Sunday, April 26, at which point the need will be re-evaluated.
- At VIG, the operations team is grounding select containers outside RMG stacks to reduce density in the stacks.
- The port is encouraging logistics and dray companies and cargo owners with containers at NIT to direct motor carriers to that terminal, if possible.

On March 13, the port announced these measures:

- The shift of two vessel services, ZIM's ZCP and Maersk's SAE to PMT from VIG: On Saturday, March 21, the ZIM Haifa will call PMT and on Saturday, March 28, the terminal will receive the Maersk Varamo. The terminal is open to receive exports for those services.
- Begin receipt of 400, 40-foot chassis that will be integrated into HRCPII during the next five weeks. Once here, the units will undergo an inspection and immediately be placed into service. The port will continue to add more assets to its chassis fleet in the coming months.
- In order to further increase chassis supply, the port is implementing a program to recover chassis from its terminals. When and where possible, operations team members will be grounding empty containers on wheels to better utilize the chassis. In this port-wide effort, the first area of focus will be those damaged empty containers that are mounted on a chassis, but can be grounded without interruption of service / repairs.
- Use of an inter-terminal barge during the weekend to reduce drayage between the terminals and stack density at VIG and NIT.

On March 12, the port announced these measures:

- Implementation of a policy to reduce the number of days an export container can dwell on all terminals to 9 from 10.
- For ocean carriers, an extension of free-time for all containers at VIG by two days.
- Sunday gate hours at VIG and PPCY.

On March 11, the port announced these measures:

- Extended evening gate hours until 9 p.m., March 11-13 (EXPIRED).
- Keeping empty container moves out of the gates at both VIG and Norfolk International Terminals (NIT).
- A project to segregate rail and truck cargo at VIG.
- Requesting that ocean carriers evacuate as much of their cargo from the terminals as possible.

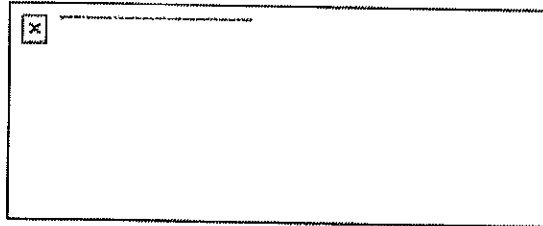
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**Cindy Szabo**

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**From:** The Port of Virginia <carla@portofvirginia.ccsend.com> on behalf of The Port of Virginia  
<marketingnews@portofvirginia.com>  
**Sent:** Thursday, March 05, 2015 4:27 PM  
**To:** Hammac, Paula  
**Subject:** ALERT-Weather Contingencies at The Port of Virginia

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## **MEMORANDUM**

**To:** Port Customers and Partners  
**From:** Ops Team  
**Date:** March 5, 2015

**Subject: Port Monitors Approaching Weather System and Announces Contingencies**

Southeastern Virginia, including the Hampton Roads Region, is under a Winter Weather Advisory from 4:00 p.m. today, March 5, through 3:00 a.m. Friday, March 6. During this period, a mixture of snow and sleet may create dangerous travel conditions. Accumulations of 1-2 inches are possible, with temperatures forecast to fall below freezing Thursday afternoon and remain there throughout the day on Friday (March 6).

With safety as our overriding goal, the port operations and maintenance teams are prepared to respond to this weather event. Proactive measures are being taken today, March 5, to insure the positioning of assets and materials, with a goal of minimizing, or avoiding, operational impacts at our marine terminals.

The near certainty of accumulating snow and ice, combined with sub-freezing temperatures over the next 24 hours, prompt the following contingencies:

- All terminal work continues, per posted operating hours, on Thursday, March 5, as long as safe operations can be sustained
- All terminal truck gates will observe a delayed start - 8:00 a.m. - on Friday, March 6
- Our terminal operations and facilities teams will closely monitor the effects of the weather tonight, March 5
- Based on the forecast timing of the storm, our teams will make a final assessment (after 10:30 p.m. on March 5) regarding the safety and feasibility of an 8:00 a.m. start on March 6
- A public message will be distributed following that 10:30 p.m. conference on March 5
- The Port of Richmond will open two hours late - 10:00 a.m. - on Friday, March 6
- The Virginia Inland Port in Front Royal will be CLOSED on Friday, March 6

As with all weather systems, a high degree of variability exists. Please continue to monitor the port website, as well as alternative messaging platforms (Twitter, Facebook, text alerts) for the most current information.

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The Port of Virginia | 600 World Trade Center | Norfolk | VA | 23510

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**Exhibit B**  
**of**  
**Exhibit C-9**

Exhibit B

Cindy Szabo

**From:** Cindy Szabo  
**Sent:** Friday, April 29, 2016 9:00 AM  
**To:** Cindy Szabo  
**Subject:** IV. C.1., G. ... Perdiem due to Port Congestion/Norfolk 2015, \$25k  
**Attachments:** RE: CPG perdiem due to weather 5.13.15.pdf

**Importance:** High

CPG requested discount from ... for perdiem incurred due to Norfolk port congestion, resulting from winter storms (Winter Storm Marcus, NS embargo) 2015. See graph below.

**From:** Cindy Szabo  
**Sent:** Thursday, May 14, 2015 3:52 PM  
**To:** James Lee <James.Lee@...>  
**Cc:** Jordan Hunt <jordan.hunt@...>  
**Subject:** FW: CPG requesting assistance with perdiem due to port congestion in Norfolk  
**Importance:** High

James, we understand ... standard policies, but as you know these port congestion issues are not standard. We are not asking China Shipping to waive all of the charges – we are asking for assistance in the form of a discount. We respectfully request that you review and advise.

Thank you.

Cindy Szabo, Supervisor - Equipment Cost Management – ContainerPort Group, Inc.  
**Corporate Office:** 1340 Depot Street Ste 200 – Cleveland, OH 44116  
**P:** 440-895-8124 | **F:** 440-333-9413  
[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



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**From:** Alexis Moore [<mailto:alexiu.moore>]  
**Sent:** Thursday, May 14, 2015 3:33 PM  
**To:** Cindy Szabo; James Lee; /  
**Cc:** Jordan Hunt  
**Subject:** RE: CPG requesting assistance with perdiem due to port congestion in Norfolk

Cindy,

Dispute denied we do not waive due to congestion we encourage the truckers to email for the LFD so they can plan ahead. The best I can do is offer you a payment plan for the invoice in March – April because unfortunately you will get shut out because of the ones over 60 days old.

Regards, Alexis Moore  
Per Diem /EDI Coordinator, National Customer Service and Operations Center



Toll: 888-868-4751 – option 6 Tel: 678-355-4865; Fax: 678-355-4808  
Email: [alexius.moore@csna.net](mailto:alexius.moore@csna.net) WEB: [www](http://www)

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**From:** Cindy Szabo

**Sent:** Thursday, May 14, 2015 2:22 PM

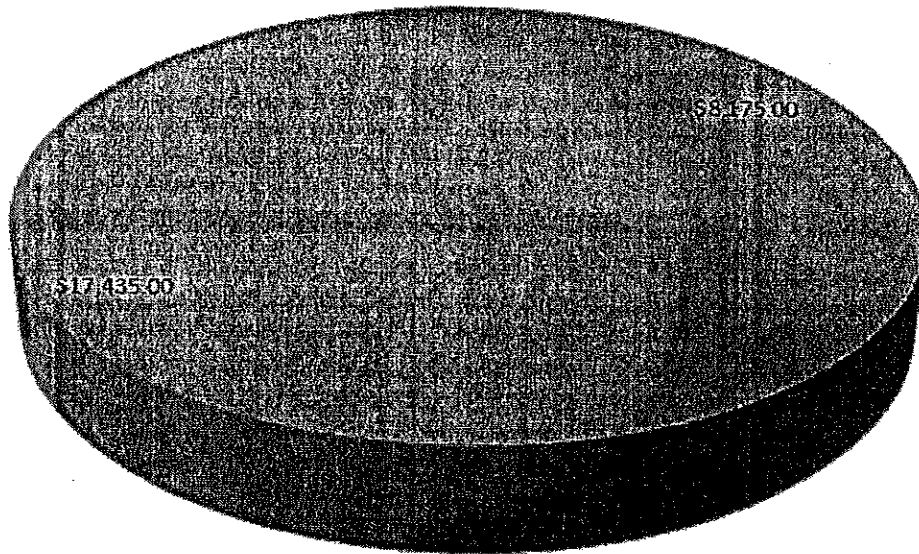
**To:** James Lee <[James.Lee@](mailto:James.Lee@)>

**Cc:** Jordan Hunt <[jordan.hunt@containerport.com](mailto:jordan.hunt@containerport.com)>

**Subject:** CPG requesting assistance with perdiem due to port congestion in Norfolk

**Importance:** High

Good afternoon. We are reaching out to request assistance with \$17,435 in pending perdiem invoices. The perdiem was caused by the port congestion in Norfolk which can be verified in the news articles of the 3 links below. CPG cannot rebill these charges and we cannot continue losing money on every move due to perdiem. We would appreciate any assistance you can provide in waiving or reducing perdiem for the below invoices while the port congestion issue remains such a problem. To date, we have invoiced CPG \$25,610 in perdiem just for our Norfolk Terminal. We have paid \$8175 so far (today's check is attached). Please review and advise if we are able to offer any assistance. Thank you.



■ Paid to  
YTD 2015 but  
could not rebill  
\$7155 of \$8175

■ Pending to pay  
. but  
cannot rebill

**Total invoiced by YTD 2015 for Norfolk: \$25,610**  
**Total CPG cannot rebill/recoup: \$24,590**

## PORTSMOUTH

A month after back-to-back snowstorms closed the port for nearly four days, a logistical meltdown is continuing to unfold at Virginia International Gateway, one of its two main container terminals.

Last week, the congestion there was so bad that trucks were backed up onto the shoulder of Va. 164.

Vaughn Wilson, a local trucker, was driving one of them. By the time he got to the end of the ramp, where he would ordinarily turn into the terminal, Wilson saw police officers directing traffic.

His dispatcher told him not to bother trying to get in.

"It was so jam-packed that she told me to take my box back," Wilson said. "That's unprecedented."

<http://hamptonroads.com/2015/03/congestion-headaches-remain-ports-facilities>

<http://www.suffolknewsherald.com/2015/03/21/congestion-snarls-ports/>

<http://www.portofvirginia.com/congestion-mitigation-update-march-20-2015/>

Invoice Number	Invoice Date	Terminal	Amount due by container	Total Invoice Amount	Import/Export
PD00128861	3/9/2015	NOR	\$775.00	\$2700.00	IMPORT
PD00128861	3/9/2015	NOR	\$525.00	\$2700.00	IMPORT
PD00128861	3/9/2015	NOR	\$1400.00	\$2700.00	IMPORT
PD00129868	4/6/2015	NOR	\$1525.00	\$6730.00	IMPORT
PD00129868	4/6/2015	NOR	\$1025.00	\$6730.00	IMPORT
PD00129868	4/6/2015	NOR	\$1900.00	\$6730.00	IMPORT
PD00129868	4/6/2015	NOR	\$2025.00	\$6730.00	IMPORT
PD00129868	4/6/2015	NOR	\$255.00	\$6730.00	IMPORT
PD00130488	4/20/2015	NOR	\$170.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$340.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$725.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$170.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$825.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$1325.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$255.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$315.00	\$4380.00	IMPORT
PD00130488	4/20/2015	NOR	\$255.00	\$4380.00	IMPORT
PD00130755	4/27/2015	NOR	\$625.00	\$2785.00	IMPORT
PD00130755	4/27/2015	NOR	\$925.00	\$2785.00	IMPORT
PD00130755	4/27/2015	NOR	\$725.00	\$2785.00	IMPORT
PD00130755	4/27/2015	NOR	\$85.00	\$2785.00	IMPORT
PD00130755	4/27/2015	NOR	\$425.00	\$2785.00	IMPORT
PD00131003	5/4/2015	NOR	\$105.00	\$525.00	IMPORT
PD00131003	5/4/2015	NOR	\$210.00	\$525.00	IMPORT
PD00131003	5/4/2015	NOR	\$105.00	\$525.00	IMPORT

PD00131003	5/4/2015	NOR	\$105.00	\$525.00	IMPORT
PD00131216	5/11/2015	NOR	\$315.00	\$315.00	IMPORT

Cindy Szabo, Supervisor - Equipment Cost Management – ContainerPort Group, Inc.

**Corporate Office:** 1340 Depot Street Ste 200 – Cleveland, OH 44116

**P:** 440-895-8124 | **F:** 440-333-9413

[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



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## Cindy Szabo

---

**From:** Cindy Szabo  
**Sent:** Tuesday, May 12, 2015 2:15 PM  
**To:** James Lee  
**Cc:** Jordan Hunt  
**Subject:** RE: CPG per diem due to weather

Good afternoon. Have you had a chance to review? We are awaiting your response and have not sent payment to for these two invoices yet. Thank you.

Cindy Szabo, Supervisor - Equipment Cost Management – ContainerPort Group, Inc.  
**Corporate Office:** 1340 Depot Street Ste 200 – Cleveland, OH 44116  
**P:** 440-895-8124 | **F:** 440-333-9413  
[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



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---

**From:** Cindy Szabo  
**Sent:** Wednesday, April 29, 2015 11:06 AM  
**To:** James Lee  
**Cc:** Jordan Hunt  
**Subject:** CPG per diem due to weather

Good morning James. CPG has been very diligent in keeping our per diem account up to date with. Currently we have a couple of invoices that are starting to age (for \$2,700 and for \$6,730).

Both invoices are comprised of charges that were incurred due to weather related delays, etc. We previously disputed these with as we felt these were legitimate issues we could not control, but our appeals were denied. Additionally, our customer(s) have refused to provide any type of reimbursement of these expenses given the weather inflicted delays. As you can understand \$9,430 is quite a large sum for any Motor Carrier to absorb.

I am respectfully asking for your consideration in reducing the amount due on these invoices. Again, this is a total loss to our company.

Thank you for your time and attention. It is truly appreciated.

Cindy Szabo, Supervisor - Equipment Cost Management – ContainerPort Group, Inc.  
**Corporate Office:** 1340 Depot Street Ste 200 – Cleveland, OH 44116  
**P:** 440-895-8124 | **F:** 440-333-9413  
[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



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**Exhibit C**  
**of**  
**Exhibit C-9**

Cindy Szabo

Exhibit C

**From:** Cindy Szabo  
**Sent:** Friday, April 29, 2016 8:14 AM  
**To:** Cindy Szabo  
**Subject:** IV. A.2., C.1, G. ' j, Perdiem due to blizzard Jan 2016, port closures  
**Attachments:** RE: Can they do this??; Maryland Port Administration: Port of Baltimore Blizzard Watch;  
Maryland Port Administration: Port of Baltimore Hauling Permit Weather Update; FW: Baltimore  
closing; BAL ports closed 1.25.16 FW: Maryland Port Administration: Port of Baltimore terminal  
schedule for 1/25/16; Maryland Port Administration: Port of Baltimore post blizzard schedule for  
Tuesday 1/26/16; Maryland Port Administration: Port of Baltimore Schedule Change for 1/26/16;  
Dispute Inv CHS9160407394P; Dispute Inv CHS9160410563P;  
RE: Dispute v CHS9160370278P (now CHS9160383929P); RE: Dispute '  
inv CHS9160370270P (now CHS9160383962P); FW: Dispute ' Inv  
CHS9160370364P (now CHS9160383832P)

\$22,410 in perdiem due to Winter Storm Jonas, January 2016. Port closures 1/22-1/26 & resulting congestion (BAL). Required many disputes/emails to get perdiem waived/reduced.

CARU5736517: \$1340  
MEDU1670524: \$730  
CRXU9149170: \$1340  
GLDU7455867: \$950  
MEDU8090507: \$950  
MEDU8119220: \$1145  
MSCU8169056: \$595  
MSCU9225236: \$950  
MSCU9744057: \$950  
TGHU8668694: \$1145  
MEDU7349620: \$950  
MSCU7905846: \$365  
MSCU9256767: \$1145  
TCLU9488635: \$595  
TCNU7163833: \$595  
TCNU9920371: \$755  
DFSU6593503: \$595  
FSCU8336433: \$595  
GLDU7388835: \$435  
MSCU5050021: \$595  
MSCU5728783: \$950  
MSCU7077715: \$595  
TTNU5788249: \$595  
SCZU3949939: \$1340  
TGHU4678457: \$1340  
GLDU0934071: \$435  
MSCU9176830: \$435

Disputed due to weather and were told that because the free time is calculated as calendar days, they would not extend due to port closures and weather.

This has a happy outcome as they cancelled the majority of the charges after several disputes.

Jordan — this is one example of the invoices I told you about last week where they initially billed over \$11k per invoice; after many disputes, I got the invoices down to several hundred to a couple thousand.

Cindy Szabo, Supervisor - Equipment Cost Management — ContainerPort Group, Inc.

**Corporate Office:** 1340 Depot Street Ste 200 — Cleveland, OH 44116

**P:** 440-895-8124 | **F:** 440-333-9413

Cindy.Szabo@containerport.com



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## Cindy Szabo

---

**From:** Cindy Szabo  
**Sent:** Tuesday, April 05, 2016 3:45 PM  
**To:** perdiemdisputes@ js  
**Subject:** Dispute Inv CHS9160407394P  
**Attachments:** Maryland Port Administration; Port of Baltimore Blizzard Watch; Maryland Port Administration; Port of Baltimore Hauling Permit Weather Update; FW: Baltimore closing; BAL ports closed 1.25.16 FW: Maryland Port Administration; Port of Baltimore terminal schedule for 1/25/16; Maryland Port Administration; Port of Baltimore post blizzard schedule for Tuesday 1/26/16; Maryland Port Administration; Port of Baltimore Schedule Change for 1/26/16; Dispute 2 inv CHS91603881870, CHS9160397968P

**Importance:** High

I had previously disputed these containers under inv . 7968P because they were billed with the wrong free time. These containers were also affected by Winter Storm Jonas which began 1/22. The ports were also closed 1/25 and 1/26 which then created a backlog and congestion at the ports. I've attached documentation of the port closures. Please advise if any assistance can be given due to this Force Majeure situation. Thank you.

CRXU9149170  
GLDU7455867  
MEDU8090507  
MEDU8119220  
MSCU8169056  
MSCU9225236  
MSCU9744057  
TGHU8668694

I had also disputed the container this morning -- MSCU7204506. I've attached the dispute for your convenience.

Thank you,

Cindy Szabo, Supervisor - Equipment Cost Management - ContainerPort Group, Inc.  
**Corporate Office:** 1340 Depot Street Ste 200 - Cleveland, OH 44116  
**P:** 440-895-8124 | **F:** 440-333-9413  
[Cindy.Szabo@containerport.com](mailto:Cindy.Szabo@containerport.com)



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## Cindy Szabo

---

**From:** Cindy Szabo  
**Sent:** Friday, March 25, 2016 11:47 AM  
**To:** Bob Leef; Karen Bush  
**Subject:** RE: Can they do this??

I'll bill it. s. Karen, to clarify, the SSL will extend free time IF the closures occurred during the free time period. These closures occurred after the free time ended and lapsed into the billable days. That is why they will not waive. Someone may want to give them a heads up so they don't short-pay and dispute the perdiem. Thanks!

---

**From:** Bob Leef  
**Sent:** Friday, March 25, 2016 11:26 AM  
**To:** Karen Bush <karen.bush@containerport.com>  
**Cc:** Cindy Szabo <Cindy.Szabo@containerport.com>  
**Subject:** RE: Can they do this??

Bill,

Robert Leef, Senior Vice President, East – ContainerPort Group, Inc.  
Newark Office: 99 East Peddie Street – Newark, NJ 07114  
P: 973-733-4990 x 3228 | C: 973-271-7546  
[Bob.Leef@containerport.com](mailto:Bob.Leef@containerport.com)



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**From:** Karen Bush  
**Sent:** Friday, March 25, 2016 11:24 AM  
**To:** Bob Leef  
**Cc:** Cindy Szabo  
**Subject:** RE: Can they do this??

Sorry, I didn't fully read your email. Of course they were advised by email, they also had a blizzard and were closed as will

Cindy,  
Please clarify. is saying no extensions were given due to the blizzard and closures? Correct?

*Karen Bush*, Transportation Manager – ContainerPort Group, Inc.  
Baltimore Office: 8208 Fischer Rd. – Baltimore, MD 21222  
P: 410-477-0702 x 6202 | F: 410-477-0707  
[Karen.Bush@containerport.com](mailto:Karen.Bush@containerport.com)



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**From:** Bob Leef  
**Sent:** Friday, March 25, 2016 11:11 AM

**To:** Karen Bush  
**Cc:** Cindy Szabo  
**Subject:** RE: Can they do this??

Please review with Cindy on the phone and see if we can bill this

Robert Leef, Senior Vice President, East – ContainerPort Group, Inc.  
Newark Office: 99 East Peddie Street – Newark, NJ 07114  
P: 973-733-4990 x 3228 | C: 973-271-7546  
[Bob.Leef@containerport.com](mailto:Bob.Leef@containerport.com)



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**From:** Karen Bush  
**Sent:** Friday, March 25, 2016 11:10 AM  
**To:** Bob Leef  
**Cc:** Cindy Szabo  
**Subject:** RE: Can they do this??

I would not think so !! Makes no sense to me ,,

*Karen Bush*, Transportation Manager – ContainerPort Group, Inc.  
Baltimore Office: 8208 Fischer Rd. – Baltimore, MD 21222  
P: 410-477-0702 x 6202 | F: 410-477-0707  
[Karen.Bush@containerport.com](mailto:Karen.Bush@containerport.com)



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**From:** Bob Leef  
**Sent:** Friday, March 25, 2016 10:37 AM  
**To:** Karen Bush  
**Cc:** Cindy Szabo  
**Subject:** FW: Can they do this??

Karen,

Please look in your emails and see if you notified ( ) of the weather issues. if you did we should rebill them since we could return the boxes

bob

Robert Leef, Senior Vice President, East – ContainerPort Group, Inc.  
Newark Office: 99 East Peddie Street – Newark, NJ 07114  
P: 973-733-4990 x 3228 | C: 973-271-7546  
[Bob.Leef@containerport.com](mailto:Bob.Leef@containerport.com)



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**From:** Cindy Szabo  
**Sent:** Friday, March 25, 2016 9:11 AM  
**To:** Bob Leef  
**Subject:** Can they do this??

I disputed some " "s because they were billed with the wrong free time. When they sent the revised invoices, I realized that the LFD fell during winter storm Jonas (or the day of) so I redisputed because the ports were closed. Their response is that because the free time is calendar days, they won't extend. Example is the LFD was Jan 22, Friday, the day the storm started. Ports were closed Monday & Tuesday so we terminated Weds/Thurs.  
I can try to rebill it to " "s but I know they will not pay. Opinions?

Cindy Szabo, Supervisor - Equipment Cost Management -- ContainerPort Group, Inc.

**Corporate Office:** 1340 Depot Street Ste 200 -- Cleveland, OH 44116

**P:** 440-895-8124 | **F:** 440-333-9413

Cindy.Szabo@containerport.com



**ContainerPort**  
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**Cindy Szabo**

---

**From:** broadcastemail@emodal.com  
**Sent:** Friday, January 22, 2016 10:55 AM  
**To:** Corporate ECM  
**Subject:** Maryland Port Administration: Port of Baltimore Hauling Permit Weather Update



#### 1/22/2016 Snow Emergency Declaration for Entire State

A snow emergency declaration is being issued for the entire State of Maryland. Movement of loads requiring a hauling permit are therefore **STRICTLY PROHIBITED FROM NOON TODAY UNTIL FURTHER NOTICE**. Emergency move requests should be directed to the Statewide Operations Center at 410-582-5650. SOC will contact on call Division personnel to handle the request. Permit loads already in transit should make immediate plans to lay over at a safe location.

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## Cindy Szabo

---

**From:** Cindy Szabo  
**Sent:** Monday, January 25, 2016 6:59 AM  
**To:** Cindy Szabo  
**Subject:** BAL ports closed 1.25.16 FW: Maryland Port Administration: Port of Baltimore terminal schedule for 1/25/16

**From:** broadcastemail@emodal.com [mailto:broadcastemail@emodal.com]  
**Sent:** Sunday, January 24, 2016 5:10 PM  
**To:** Corporate ECM  
**Subject:** Maryland Port Administration: Port of Baltimore terminal schedule for 1/25/16

Please be advised of the following schedule for port of Baltimore terminals and processors for Monday 1/25/16:

CNH: closed  
Ceres: open normal hours  
Balterm: closed at Dundalk and South Locust Point  
Amports: open for truck away only  
MAT: open normal hours  
WW VSA: open  
Ports America: closed at Seagirt and Dundalk  
Project Stevedoring: open normal hours  
Westway: open normal hours  
Amports Chesapeake: closed  
AWC: closed  
Mercedes Benz: open at 830 am

snow removal is on-going around the clock after a historic snowfall and normal operations will resume as quickly as possible

thank you for your patience

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Cindy Szabo

---

**From:** broadcastemail@emodal.com  
**Sent:** Monday, January 25, 2016 6:55 PM  
**To:** Corporate ECM  
**Subject:** Maryland Port Administration: Port of Baltimore Schedule Change for 1/26/16



Please be advised Balterm will now be closed at both Dundalk & South Locust Point marine terminals

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Cindy Szabo

---

From: broadcastemail@emodal.com  
Sent: Thursday, January 21, 2016 4:30 PM  
To: Corporate ECM  
Subject: Maryland Port Administration: Port of Baltimore Blizzard Watch

 The Maryland Port Administration is closely monitoring a potentially severe winter storm that is forecast to hit our area beginning Friday evening and possibly through early Sunday morning. We are already underway with storm preparations that include:

Coordinating vessel arrivals and preparing for possible delayed berthing of ships due to the weather;

Mobilizing snow team personnel who will work 12-hour shifts beginning Friday 0001 hrs;

Preparing snow removal equipment for the plowing and salting of the marine terminals.

We will keep you updated throughout this storm event on any changes to general Port of Baltimore public marine terminal operations through this e-broadcast messaging.

Thank you for your business and your support of the Port of Baltimore.

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**Cindy Szabo**

---

**From:** Jordan Hunt  
**Sent:** Friday, January 22, 2016 3:23 PM  
**To:** Corporate Operations  
**Subject:** FW: Baltimore closing

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

**From:** Bob Leef  
**Sent:** Friday, January 22, 2016 3:00 PM  
**To:** IT Group; DAP; Commercial; Glenn Fehribach; Russ Graef  
**Cc:** Karen Bush  
**Subject:** Baltimore closing

All

It is starting to snow in Baltimore. The piers are getting ready to close and no more trucks are going in. Baltimore and the area are in a state of emergency.

We will be closing the office in the next 30 minutes. All our trucks are back Bob

Sent from my iPhone



**Cindy Szabo**

---

**From:** broadcastemail@emodal.com  
**Sent:** Monday, January 25, 2016 3:50 PM  
**To:** Corporate ECM  
**Subject:** Maryland Port Administration: Port of Baltimore post blizzard schedule for Tuesday 1/26/16

**Follow Up Flag:** Follow up  
**Flag Status:** Completed



- > CNH: open
- > Ceres: open
- > Balterm DMT/SLP: open
- > Amports DMT: open 8 am
- MAT: open
- > WW VSA: open 8 am
- > Ports America: open at DMT & SMT
- > Project Stevedoring: open
- > Westway: open
- > Amports FMT: closed
- > AWC: open 8 am
- > Mercedes Benz: open 8 am

This will be the last update from this storm as full operations are expected to resume on Wednesday 1/27/16.  
Please contact terminal operators directly for any changes

Thanks for your patience while we continue to dig out!

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**Exhibit D**  
**of**  
**Exhibit C-9**

**Bob Leef**

---

**Subject:** FW: Maher Terminal Truck Processing Issues

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

From: PAalerts [mailto:alerts@paalerts.com]

Sent: Monday, June 27, 2016 7:36 AM

To: Bob Leef <bob.leef@containerport.com>

Subject: Maher Terminal Truck Processing Issues

Maher Terminal is experiencing truck processing issues. Please follow directions of PAPD.

To unsubscribe: [https://urldefense.proofpoint.com/v2/url?u=http-3A\\_\\_paalerts.com\\_loginpage.aspx-3Fem-3Dleefb-40containerport.com&d=CwIGaQ&c=Cw6jQ1O21v\\_aGXA\\_UaKobx5Hu7RYVWKFNSkSTAdyM40&r=ao3-GgO9A-iSocRjoaNkTVvESlyfapcdfz8vUCDLZP0&m=48moxT7z\\_5-ZCZs65Uk-vwQ2EnrrX9xg18p57OOYUs4&s=j5XhK6Ruomogkm3AdJBVj4fqmKjJ8dwvteecY1RyShl&e=](https://urldefense.proofpoint.com/v2/url?u=http-3A__paalerts.com_loginpage.aspx-3Fem-3Dleefb-40containerport.com&d=CwIGaQ&c=Cw6jQ1O21v_aGXA_UaKobx5Hu7RYVWKFNSkSTAdyM40&r=ao3-GgO9A-iSocRjoaNkTVvESlyfapcdfz8vUCDLZP0&m=48moxT7z_5-ZCZs65Uk-vwQ2EnrrX9xg18p57OOYUs4&s=j5XhK6Ruomogkm3AdJBVj4fqmKjJ8dwvteecY1RyShl&e=)

# **EXHIBIT C-10**



## *California Multimodal, LLC*

May 9, 2016

Chairman Mario Cordero  
Federal Maritime Association  
800 North Capital Street, NW, Suite 1000  
Washington, D.C. 20573

### **RE: Per Diem, Demurrage, and Detention**

Dear Chairman Cordero:

The California Cartage Family of Companies is an integral organization that plays a significant role within the intermodal industry. We have been in business since 1944 and offer a variety of services within the supply chain. We own and operate six drayage firms with 1,200 units and 3 warehouse brands with a nationwide footprint of 4.5 million square feet of warehouse space. We have the largest cross-dock transload network on the West Coast and the largest fleet of specialized equipment.

My name is Robert Loya and I am the Director of Operations for California Multimodal, LLC (CMI) which is part of the California Cartage Family of Companies. I am responsible for all intermodal drayage activities in Southern California for CMI. My responsibilities include: safety; P&L financial responsibilities; ensuring compliance with all Federal, State and local laws; the evaluation of all business growth and revenue opportunities; manage all vendor relations; manage and foster Independent Contractor relations; and foster business relations and integration with our family of companies.

On behalf of the California Cartage Family of Companies, this "Verified Statement" represents the collective occurrences that were experienced by our family of companies at the Ports of Los Angeles and Long Beach during the 2014-2015 labor negotiations between the Pacific Maritime Association (PMA) and International Longshoremen Warehouse Union (ILWU). These prolonged discussions and negotiation tactics that were deployed by each of the respective parties led to months of significant delays and congestion at the marine terminals that were beyond the control of the draymen. From September 2014 to March 2015, there was substantial congestion and backlog of cargo that ultimately led to the unreasonable levy of demurrage/detention/per diem charges by the Steamship Lines (SSL) and Marine Terminals Operators (MTO) to all of our customers and drayage companies.

We contract with more than 300 Independent Contractors on a daily basis to move intermodal cargo in and out of the ports for our customers through San Pedro Port complex. The business practices that were deployed by the West Coast marine terminals during this 2014/2015 time period created undue expense to our drayage companies and customers. Collectively, we

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moved several thousand shipments during this specified period of which several hundred were levied per diem, demurrage and/or detention charges. We are providing a sample of these shipments to demonstrate the severity of the situation during this timeframe. The administrative burden and costs associated with every shipment in these instances were not factored into our calculations, but were in the thousands.

The largest issues you will note by the monthly incremental increase in Port Congestion related billing to both the Beneficial Cargo Owners and the Steamship Lines were:

- a) Driver Standby
- b) Demurrage
- c) Per Diem

Financial records from one of our companies, Container Freight/EIT, LLC, provides that from January 2014 through October 2015, total demurrage outlay for Container Freight/EIT was \$2,698,616. From September 2014 through March 2015 alone, demurrage outlay for Container Freight/EIT's customers was in excess of \$2,500,000. The strife caused by the ILWU/PMA negotiations can be directly correlated to 92.5% of these costs (\$2,500,000 divided by 2,698,616 equals .925). See Exhibit A. These costs would not have existed during normal operating conditions. See Exhibit A. In addition, the total per diem costs paid by Container Freight/EIT was \$1,770. See Exhibit A. Similarly, among all of our drayage companies I have estimated that a total of approximately \$50,000 in per diem charges were paid by our companies during this time. Again, I would like to reiterate the fact that these are a small fraction of the total costs associated with the ILWU/PMA contract strife of 2014/2015, e.g. administrative cost (mentioned above), driver standby, and per diem. See Exhibit A.

There were obvious travesties associated with the manner in which these demurrage charges were invoiced and paid during this period.

One of the most egregious practices by both the MTO's and the Steamship Lines was the untimely notification by the SSL of contractual free time to the MTOs. Below is an example that played out routinely. Keep in mind that, it was common and routine for one of our major BCO's to have 150 to 500 containers on a single vessel.

- a) Customer "A" has a contract with a particular SSL of ten working days of free time on the Port.
- b) Marine Terminal system would reflect free time as "five calendar days."
- c) First available appointment on the "Availability Notification" from the MTO would be after the MTO's system reflected container on demurrage.

The drayage provider would not be allowed to request an extension of the free time, until the MTO's system reached it Last Free Day (LFD).

- d) It would take two to four working days after the free time extension request was sent before it was actually extended.

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During this period, the dray provider could not make an appointment in the MTO system due to containers having a “demurrage hold” because the expiration of their free time. All this transpired prior to the dray operator having a single opportunity to pick up the container. Additionally, the fact that there are various appointment systems and business rules in effect by each terminal in the Ports, complicated matters further. For example:

- a) Drayage providers could not make appointments until containers were reflecting “Available” in the MTO’s system.

During the period, once a container was “Available” in the MTO’s system, an attempt to secure an appointment would be made. However, unfortunately, due the limited number of appointments and/or the lack thereof, it was rare that an appointment was secured on the 1st day that the containers became “available.” In addition, appointments could be arbitrarily cancelled by the MTO’s for any of the following reasons; Area or gate closed by the MTO due to congestion in yard creating a safety concern, MTO equipment malfunction, drivers arriving late due to long queue times at the MTO gates, Containers were Unable to locate (UTL). As a result, appointments typically took 4 to 5 days after cargo became available to attain the first appointment. This became the norm during the 5 to 6 month ILWU/PMA strife period in the Port.

- b) A missed appointment, for whatever reason, would put the container back in the queue of another 4 to 5 day cycle to attain a second appointment.
- c) Contractual free time was a myth, since the free time did not automatically extend when appointments were not available. In essence, you cannot pick up a container without an appointment and appointments were not available, but the “free-time” clock never stops ticking and the MTOs continued to levy demurrage against the cargo owner and/or trucker...
- d) The MTOs that had/have appointment systems in place had/have various operating constraints that made/make it impossible to optimize your fleet. Assuming you could obtain an appointment, Terminal “A,” gave you a 2-hour window to arrive for your appointment. If you missed the window, your appointment was cancelled, irrespective of the fact that you were in line well within your window time. You simply failed to reach the pedestal to enter the terminal in time. Terminal “B” on the other hand, you would have a 4-hour window block to arrive for your appointment. Terminal B’s policy was more flexible, but it would drive poor behavior by truckers and it would create severe congestion because the likelihood of making your window was greater. Each terminal acted and continues to act independent of each other and as a result, these inconsistent practices affected and continue to affect each other’s gates negatively.

Marine terminals restricted transactions at the Port. The following describes restrictions on transactions at the Ports that also occurred during this time:

- a) Typical restrictions by the terminals were that there could be no empty receiving at the Port. Dual transactions were the only transactions allowed. A dual transaction is

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where you need to bring a load or empty and pick up a load or empty. While there was no empty receiving, you had to bring a chassis in order to pick-up an import load.

- b) Daily or multiple advisories were sent throughout a day by the MTOs indicating that they were no longer accepting a particular piece of equipment and/or a piece of equipment from a particular SSL diverting equipment from one terminal to another.

These diversion notices would be container/chassis type specific, creating a scramble amongst drayage providers to locate a marine terminal or off dockyard that would accept the equipment. The additional drayage costs to the draymen were well into the thousands of dollars.

During this period, drayage providers refused to pick up empties from their customers because of the additional drayage charges they would incur to shuttle empties between terminals and their yards. Assuming they had yard to return to empty back to. In addition, no truckers wanted to be responsible for failing to return the empty back to the marine terminals and be left holding the bag with per diem charges.

This was a double edge sword, no chassis to move imports because we could not return the empties. In general, the marine terminals were well over 100% capacity with imports and empties. They were not evacuating empties out of the terminals because they were not ordering labor due to negotiating tactics, etc.

- c) Terminals were closing a large number of blocks within their yards for vessel operations. At certain times, discharging entire vessels into yard blocks and sailing the vessel without loading any empties back to the vessel. Once again, artificially creating their own congestion.

The scenarios above only scratches the surface of the issues associated with the period in question. Most if not all of these practices persist in the Port of LA/LB today. While not as costly due to productivity levels returning to some level of new normalcy, the contractual arrangement between the Lines and the Cargo owners for the transit and delivery of cargo at U.S. Ports are egregious as they tear at the very base of the economic engine that are the Ports of LA/LB.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Robert Loya

*Our Family of Companies*





**Exhibit A**  
**of**  
**Exhibit C-10**

ContainerFreight/EIT, LLC									
			Incremental increase in Port Congestion related Revenue						
FY2014									
Month	Containers	Demurrage Expense	Demurrage Rebill	Per Diem Expense	Per Diem Rebill	Standby Time	Port Congestion Fees	Totals	Cost per Container
January	9,048	\$ 5,205.00	\$ 3,366.00		\$ 8,845.00	\$ 74,654.00		\$ 92,070.00	\$ 10.18
February	7,099	\$ 100.00	\$ 3,499.00		\$ 3,180.00	\$ 61,764.00		\$ 68,543.00	\$ 9.66
March	6,859		\$ 4,547.32		\$ 1,885.00	\$ 66,723.00		\$ 73,155.32	\$ 10.67
April	10,048	\$ 375.00	\$ 2,800.00	\$ 85.00	\$ 2,792.00	\$ 76,382.00		\$ 82,434.00	\$ 8.20
May	9,669	\$ 10,092.00	\$ 2,053.00	\$ 438.00	\$ 4,220.00	\$ 80,356.00		\$ 97,159.00	\$ 10.05
June	9,616	\$ 4,259.00	\$ 9,137.00		\$ 2,510.00	\$ 101,260.00		\$ 117,166.00	\$ 12.18
July	8,950	\$ 5,650.00	\$ 12,718.00		\$ 2,790.00	\$ 132,832.00	\$ 61,625.00	\$ 215,615.00	\$ 24.09
August	8,400	\$ 2,425.00	\$ 4,720.00		\$ 870.00	\$ 107,511.00	\$ 115,510.00	\$ 231,036.00	\$ 27.50
September	8,495	\$ 625.00	\$ 34,488.00		\$ 3,335.00	\$ 127,982.00	\$ 118,675.00	\$ 285,105.00	\$ 33.56
October	9,057	\$ 304.00	\$ 223,188.00		\$ 9,835.00	\$ 139,364.00	\$ 102,545.00	\$ 475,236.00	\$ 52.47
November	7,450	\$ 430.00	\$ 222,275.00	\$ 1,770.00	\$ 56,224.00	\$ 203,451.00	\$ 114,270.00	\$ 598,420.00	\$ 80.32
December	7,468	\$ 1,375.00	\$ 1,648,464.00		\$ 31,990.00	\$ 214,659.00	\$ 120,000.00	\$ 2,016,488.00	\$ 270.02
<b>Total:</b>		\$ 30,840.00	\$ 2,171,255.32	\$ 2,293.00	\$ 128,476.00	\$ 1,386,938.00	\$ 632,625.00	\$ 4,352,427.32	
FY2015									
Month	Containers	emurrage Expens	Demurrage Rebill	Per Diem Expense	Per Diem Rebill	Standby Time	Port Congestion Fees	Totals	
January	6,559	\$ 275.00	\$ 345,052.00		\$ 16,186.00	\$ 161,344.00	\$ 128,900.00	\$ 651,757.00	\$ 99.37
February	5,074		\$ 5,845.00			\$ 125,784.00	\$ 82,920.00	\$ 214,549.00	\$ 42.28
March	7,838	\$ 220.00	\$ 54,537.00			\$ 173,122.00	\$ 103,595.00	\$ 331,474.00	\$ 42.29
April	7,440	\$ 5,465.00	\$ 35,886.00			\$ 196,934.00	\$ 78,835.00	\$ 317,120.00	\$ 42.62
May	7,280	\$ 10,113.00	\$ 23,635.00		\$ 29,570.00	\$ 219,718.00	\$ 79,540.00	\$ 362,576.00	\$ 49.80
June	7,510		\$ 6,262.00		\$ 13,855.00	\$ 236,551.00	\$ 76,340.00	\$ 333,008.00	\$ 44.34
July	7,760	\$ 6,856.00	\$ 27,111.00		\$ 2,025.00	\$ 292,890.00	\$ 66,900.00	\$ 395,782.00	\$ 51.00
August	7,518	\$ 1,038.00	\$ 14,514.00		\$ 16,555.00	\$ 238,180.00	\$ 58,470.00	\$ 328,757.00	\$ 43.73
September	6,918	\$ 1,200.00	\$ 10,519.00		\$ 57,220.00	\$ 246,051.00	\$ 52,275.00	\$ 367,265.00	\$ 53.09
October	7,589	\$ 750.00	\$ 4,000.00		\$ 52,035.00	\$ 265,924.00	\$ 57,660.00	\$ 380,369.00	\$ 50.12
<b>Total:</b>			\$ 527,361.00		\$ 187,446.00				
			Demurrage Rebill		Per Diem Rebill				
	<b>Total:</b>	Jan. 2014-Oct. 2015	\$2,698,616.32		\$ 315,922.00				
	<b>Total:</b>	Sep. 2014-Mar. 2015	\$2,533,849.00		\$ 117,570.00				
			94%		37%				

## CMI LA

	Containers	Per Diem	Per Diem Rebilled	Demurrage	Demurrage Rebilled	Standby Time	TOTAL	Cost Per Container
1/2014	11884	450.00	10,360.00	510.00		25,725.00	48,929.00	\$4.12
2/2014	11034	410.00	19,745.00	1,580.00	1,545.00	22,002.00	56,316.00	\$5.10
3/2014	10931	1,918.00	15,015.00	2,400.00		22,862.00	53,126.00	\$4.86
4/2014	12843	7,435.00	8,916.00	4,420.00	590.00	24,704.00	58,908.00	\$4.59
5/2014	12280	4,210.00	14,868.00	1,370.00	1,810.00	21,857.00	56,395.00	\$4.59
6/2014	11352	2,330.00	37,493.00	11,160.00	3,552.00	28,488.00	94,375.00	\$8.31
7/2014	12369	1,977.00	49,931.00	-929.30	145.00	35,862.00	99,354.70	\$8.03
8/2014	11372	101,485.14	141,757.80	10,381.00	11,710.50	32,163.00	308,869.44	\$27.16
9/2014	11396	-55,060.00	119,371.00	9,189.11	42,638.40	43,216.00	170,750.51	\$14.98
10/2014	10902	-33,790.00	302,110.20	-5,370.00	97,403.25	61,314.00	432,569.45	\$39.68
11/2014	7189	8,653.00	194,343.40	22,645.12	86,273.25	92,419.00	411,522.77	\$57.24
12/2014	7683	2,567.50	170,210.00	27,938.00	80,537.65	72,355.00	361,291.15	\$47.02
<b>Total</b>	<b>131,235</b>	<b>42,585.64</b>	<b>1,084,120.40</b>	<b>85,293.93</b>	<b>326,205.05</b>	<b>482,967.00</b>	<b>2,152,407.02</b>	<b>\$16</b>
	Containers	Per Diem	Per Diem Rebilled	Demurrage	Demurrage Rebilled	Standby Time	TOTAL	Cost Per Container
1/2015	7169	0.00	184,137.00	2,740.00	178,457.85	56,737.00	429,240.85	\$59.87
2/2015	5600	1,155.00	126,494.00	8,035.90	28,202.25	38,483.00	207,970.15	\$37.14
3/2015	9282	540.00	102,456.00	0.00	383,179.79	53,987.00	549,444.79	\$59.19
4/2015	10258	660.00	80,393.00	5,977.80	233,244.86	48,667.00	379,200.66	\$36.97
5/2015	9098	190.00	81,200.00	8,280.68	50,062.95	54,033.00	202,864.63	\$22.30
6/2015	9672	7,040.00	99,269.00	-30,589.22	22,533.53	60,835.00	168,760.31	\$17.45
7/2015	9979	10,332.00	133,254.00	16,230.00	12,685.89	47,388.00	229,868.89	\$23.04
8/2015	10287	13,950.98	91,506.00	23,313.28	53,224.32	36,333.00	228,614.58	\$22.22
9/2015	9979	23,709.00	36,531.20	22,342.46	5,095.60	43,950.00	141,607.26	\$14.19
10/2015	9301	5,192.00	59,038.00	4,119.00		54,127.00	131,777.00	\$14.17
<b>Total</b>	<b>90,625</b>	<b>62,768.98</b>	<b>994,278.20</b>	<b>60,449.90</b>	<b>966,687.04</b>	<b>494,540.00</b>	<b>2,669,349.12</b>	<b>\$29</b>

		Per Diem Rebilled	Demurrage Rebilled
Total:	Jan. 2014-Oct. 2015	2,078,398.60	1,292,892.09
Total:	Sep. 2014-Mar. 2015	1,199,121.60	896,692.44
		58%	69%

	Containers	Per Diem	Per Diem Rebilled	Demurrage	Demurrage Rebilled	Standby Time	TOTAL	Cost Per Container
1/2016	8110	220.00	51,925.00	2,770.00	508.80	31,449.00	94,982.80	\$11.71
2/2016	8656	3,468.00	149,074.00	-4,195.00		40,406.00	197,409.00	\$22.81
3/2016	7996	2,065.00	26,453.00	1,770.00		29,227.00	67,511.00	\$8.44
4/2016	7833	2,032.00	12,333.00	1,595.00	1,220.00	29,595.00	54,608.00	\$6.97
5/2016	7892	470.00	17,815.00	3,465.00	2,000.00	17,991.00	49,633.00	\$6.29
6/2016							0.00	
7/2016							0.00	
8/2016							0.00	
9/2016							0.00	
10/2016							0.00	
11/2016							0.00	
12/2016							0.00	
<b>Total</b>	<b>40,487</b>	<b>8,255.00</b>	<b>257,600.00</b>	<b>5,405.00</b>	<b>3,728.80</b>	<b>148,668.00</b>	<b>464,143.80</b>	

Does not include port congestion fees

Per Diem and Demurrage is based off of P&Ls

Per Diem Rebilled (ARPERDIE) and Demurrage Rebilled (ARDEM,ARDEMSRV) is from Ops Margin Report

# **EXHIBIT C-11**

May 5, 2016

Federal Maritime Commission  
800 North Capital Street, NW  
Washington DC 20573

Re: Petition for Rulemaking on Demurrage Practices

Seafrigo USA, Inc. is an **CHB/FF/NVO** moving and clearing goods through ALL USA ports, including the Port of New York & New Jersey.

Over the past two years, **we and/or our clients** have paid exorbitant charges for **demurrage and/ or detention** when equipment could not be picked up or dropped off at the terminals due to circumstances that were completely out of our control.

**Such instances include massive port congestion due to various sub-par port conditions (overloaded workload, lack of equipment to name a couple), vessel delays by the carriers causing imbalanced work flow at the ports, labor disputes / slow downs, increased CBP exams.**

The carriers and terminals cite their “tariffs” and insist on payment before freight will be released. We believe the Commission is in a unique position to ensure that the regulations do not work to favor one industry participant over another and instead promote fairness.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Thank you for your attention to this matter.

Sincerely,

Al Raffa  
Vice President of Operations



# **EXHIBIT C-12**

**All In One Customs Brokers Inc.**  
**331 Second Street**  
**Elizabeth NJ 07206**  
**Tel 908-820-9443**

May 5, 2016  
Federal Maritime Commission  
800 North Capital Street, NW  
Washington DC 20573

Re: Petition for Rulemaking on Demurrage Practices

Our firm is a Customs broker moving goods through the Port of New York & New Jersey.

Over the past two years, our clients have paid exorbitant charges for demurrage or detention when equipment could not be picked up or dropped off at the terminals due to circumstances that were completely out of our control.

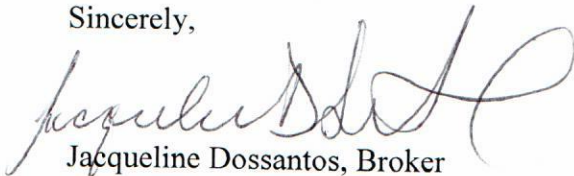
We had one particular client who's container was sent to East Coast Warehouse for a Customs exam on 3-24-2016. The exam was completed on 4-5-2016. The container was picked up on 4-7-2016 and returned empty to the terminal on 4-8-2016. On 4-19-2016, the steamship line sent an invoice for detention charges of \$1,115. How can a steamship line get away with sending an invoice for detention charges 11 days after the container was returned empty and the same container was being held by U.S. Customs for an exam. There was no way the importer could of picked up this container any earlier. Yet, importers and trucking companies are forced to pay these charges.

The carriers **and** terminals cite their "tariffs" and insist on payment before freight will be released. We believe the Commission is in a unique position to ensure that the regulations do not work to favor one industry participant over another and instead promote fairness.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Thank you for your attention to this matter.

Sincerely,



Jacqueline Dossantos, Broker

# **EXHIBIT C-13**





75 Montgomery Street,  
Suite 300  
Jersey City, NJ 07302  
Tel: 201-860-9600  
Fax: 201-860-9686  
www.serraintl.com

Headquarters:  
Jersey City

US Offices:  
New York  
Los Angeles  
Miami

May 9, 2016

Federal Maritime Commission  
800 North Capitol Street, N.W.  
Washington D.C. 20573

Subject: Petition for Rulemaking on Demurrage Practices

As a licensed Customs Broker (Lic. No. 4053) and OTI ( Lic. No. 0282F and Serra Shipping, Inc. Lic. No. 16314N), our company has suffered from trying to help our customers cope with the problems, delays, and costs stemming from port congestion and service disruption, most notably in Los Angeles / Long Beach and New York / New Jersey.

We are far less efficient and able to respond quickly in our processing of ocean freight shipments than we were two years ago, quite simply because we must be constantly tracking free time, working to extend it if possible, pausing from what we are doing to arrange and update demurrage payments in order to obtain freight release, and communicating with frantic customers about the status of their shipments. Our clients have borne the tremendous financial penalty of having to pay demurrage or detention for use of equipment even when circumstances were outside of their control. Our import and export customers want to move their freight to and from the port as quickly as possible. They have no incentive to keep it tied up and sitting at a terminal. In contrast, steamship lines and their appointed terminals are protected by the present system from working efficiently to move containers off the port. Demurrage is automatically triggered within a limited number of days once a container is grounded. An importer, for example, must pay demurrage even if they are not at fault or responsible for the movement of the container off the pier.

A typical example of this resulted in one of our custom brokerage clients having to pay almost \$17,000 in demurrage for six 40' containers that arrived at Los Angeles port on September 18, 2015. The overseas shipper had booked with the steamship to deliver the containers to door in Southgate, CA on a prepaid basis. On the same vessel they shipped two 40' Flat Racks and asked our company to have the pieces stripped and delivered to the same receiver. We arranged pick up of the flat racks, stripping, delivery and return of equipment within the free time. The receiver requested that the

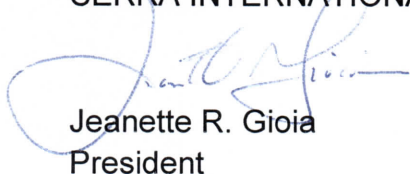
steamship line drop the container for unloading and pick up the next day. Because this created an unexpected cost, the steamship line needed to get the approval to do so from the overseas shipper. On Monday, September 28, 2015, the steamship line received the approval for the additional cost. Instead of immediately engaging the truckers to deliver the six containers, on Thursday, October 1, 2015, the steamship line notified us that demurrage would have to be paid through October 7 for all six containers. At \$2,928 per container this totaled \$16,952.00. On October 2, 2015 our company paid that amount to the terminal on behalf of the overseas shipper. We believe it was unreasonable for the steamship line and terminal to require advance payment of demurrage through October 7<sup>th</sup>. If the steamship line and terminal had to bear the cost of keeping those containers at the port, they would have found a way to move them to the receiver by September 30<sup>th</sup>. They had no incentive to do so because their tariffs and the regulatory system allow them to work slowly and pass the costs to the shipper/ importer. Since this was a door movement, neither the shipper nor the importer could control when the containers would depart from the port. We find this to be an unconscionable abuse.

This is just one example of many that take place every day. We believe it is time for a review of these practices and the regulations that inadvertently encourage them. The FMC has the authority, knowledge, and experience to address this situation, which is harmful to the shipping public. We support the petition for a rulemaking to prohibit the automatic pass through of demurrage and detention charges in circumstances that are beyond the control of the shipper / importer. Thank you for your serious consideration of this matter.

The undersigned verifies that the information provided is true and correct and thanks you for your serious consideration of this matter.

Respectfully,

SERRA INTERNATIONAL, INC.



Jeanette R. Gioia  
President

# **EXHIBIT C-14**



My name is Peggy Mecca and I am the treasurer of Mecca & Son Trucking Co. located at 580 Marin Blvd. Jersey City, NJ 07310. Mecca & Son Trucking Co. is a family owned asset based drayage carrier operating since 1950. Our operations involve 25 to 35 trucks that service the port of NY/NJ, moving approximately 7,000-8,000 containers each year.

My job responsibilities include managing corporate finances and overseeing company operations.

Some of my daily responsibilities involve corresponding with MTOs and VOCCs to extended free time, seek waivers of demurrage charges, and/or request additional time to pay per diem charges until such charges are resolved by negotiated settlements. Based on my experience, the VOCC and MTOs appear to be financially benefiting from their own inability to properly service the drayman and their customers.

During 2014 and 2015, our company of 25 to 35 drivers paid over \$300,000 in demurrage and per diem charges. To my best qualified estimation, a minimum of 50% (\$150,000) of these charges were directly due to congestion not caused by trucker, but due to an inability to promptly ingate, outgate, and return empties. Although we tried to rebill our shippers for this cost, many did not pay leaving it a trucker responsible.

MTOs assess demurrage charges if a container is not removed from the terminal after the specified amount of free time provided in their tariffs. Per diem is charged by a VOCC per the Uniform Intermodal Interchange and Facilities Access (UIIA) Agreement. MTOs and VOCCs servicing the port of NY/NJ are able to assess charges against drayage carriers and their customers under the UIIA Agreement, VOCC tariff, NY terminal conference tariff, and Maher Terminal tariff. I have attached relevant pages of the Maher Terminals tariff which indicate the allotted amount of free time and demurrage rates at its terminal. See Exhibit A.

All containers, and product in those containers, being drayed are effected by port congestion causing a domino effect that impacts the ability to timely outgate and ingate containers at the port. When a container is unable to be picked up, it leaves the next day with double the amount of work, and so on. In 2014 and 2015, our operations were significantly impacted due to port congestion at the port of NY/NJ which was caused by a variety of reasons, including:

1. Weather, such as a snow storm that occurred in February 2015,
2. Labor slowdowns at the Maher Terminal,
3. The shift of imports to the port of NY/NJ from West Coast ports due to their own labor related congestion,
4. Terminal computer issues,
5. Poor internal systems within the terminals,
6. Chassis issues, including shortages,



7. Shorter working weeks due to holidays or weather related closures, and
8. The overall domino effect of congestion issues.

The following is a specific incident at the Maher Terminal which was caused by a 2015 snow storm occurring during a shorter working week due to a Monday holiday. See Exhibit B. Ultimately, we were forced to pay \$2,640.00 for 2 dry coffee containers, EISU2015571 and MAGU2354055, that were unable to outgate during the week of February 16-20, 2015 with the containers' last free day being Friday, February 20th. The following Monday, February 23<sup>rd</sup>, we were forced to pay the terminal \$2,640.00 (\$1,320.00 for each container) in demurrage. See Exhibit C. The demurrage charges included charges for Saturday and Sunday when terminal was not open. We were not able to get reimbursed by our shipper for any of these charges.

The following includes a timeline of events for the week February 16-20, 2015:

- a. Monday, February 16<sup>th</sup>, Maher Terminals closed for Presidents Day. See Exhibit B.
- b. Tuesday, February 17<sup>th</sup>, there was a snowstorm, chassis shortage and severe delays at terminal and portwide. See Exhibit B.
- c. Wednesday, February 18<sup>th</sup>, there was a chassis shortage and severe delays at terminal. See Exhibit B.
- d. Thursday February 19<sup>th</sup>, there was extremely cold weather, continuing chassis shortages. Maher Terminal ceased allowing drivers to make double moves at the terminals. See Exhibit B.
- e. Friday, February 20<sup>th</sup>, the congestion remained and it was the last free day for many of our containers. See Exhibit B, including Maher emails on Friday indicating "heavy" inbound and outbound traffic. As a result, on Friday morning, I emailed the terminal notifying them of the congestion issues throughout the week, and requested assistance if we were not able to pick up some containers that were on their last free day. A copy of this email is attached as Exhibit D. Throughout the day, our drivers worked many hours. It was not unusual for drivers to leave the terminal after 8 PM, after waiting in long lines. The Trailer Inspection Receipts (TIR), attached as Exhibit E show three of our drivers were outgated on Friday as late as:

- 8:13 PM (20:13) 2833970
- 9:05 PM (21:05) 2834281
- 8:25 PM (20:25) 2834233

Despite all of our efforts, 2 of our containers, with Friday as their last free day, could not be outgated in time due to the congestion caused by the week's prior events, as set forth above. The attached delivery order from one of our customers and TIR corresponding with container number EISU2015571 shows an outgate was attempted, but voided out on February 20<sup>th</sup> at 6:46 (18:46). See Exhibit F.



- f. Two months later, after many emails and a meeting the Vice President of Maher Terminals for his consideration to waive the assessed demurrage charges, I was advised that the terminal was fluid that week – see attached. See Exhibit G.

Unfortunately, the terminal conduct described above is a common practice. Occasionally the terminals in the port of NY/NJ may waive the demurrage and per diem charges after time consuming requests, pressure from negative publicity and at their individual discretion. Many steamship lines would not waive the charges, but may give a slight discount with repeated disputes. Disputing these charges, however, is time consuming to small operations that work with small margins and limited staff.

There is no economic justification of the level of charges that are assessed. Per diem and demurrage charges ranging from \$100 to \$500 per day is unconscionable. A study should be done to see the true cost of the value of the penalty. What is a reasonable daily per diem charge for a container worth \$5,000? What is the true land cost of the container when it sits in the terminal?

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

A handwritten signature in black ink, appearing to read 'Peggy Mecca', is written over a printed name.

Peggy Mecca

**Exhibit A**  
**of**  
**Exhibit C-14**

MAHER TERMINALS LLC	Page 1 of 41
	Revised Date: 28 August 2014

**Rates effective October 1, 2014**

**Marine Terminal Schedule No. 010599**

**NAMING RULES, REGULATIONS AND COMMODITY RATES ON CARGO MOVING  
IN CONTAINERS/BREAKBULK**

This schedule is issued by Maher Terminals LLC hereafter referred to as "MTL" under authority of the Federal Maritime Commission and supersedes all previously issued schedules.

This schedule shall be applicable at any terminal facility within the Port of Greater New York and New Jersey and vicinity in which MTL operates.

**Maher Container Terminal, Port Elizabeth  
Berths 52, 54, 56, 58, 60, 62, 64, 66, 68, 70, 72, 74, 76, 78, 80**

**PUBLISHED BY:**

**Maher Terminals LLC  
1210 Corbin Street  
Elizabeth, NJ 07201**

**PHONE: (908) 527-8200**

**FAX: (908) 436-4812**

**WEB PAGE ADDRESS: <http://www.maherterminals.com>**



MAHER TERMINALS LLC	Page 21 of 41
	Revised Date: 28 August 2014

1. Containerized Cargo (house containers)

Until further notice MTL at its discretion may honor a containership line's demurrage provisions as published in its tariff. For any free time extension of ten (10) or more days, demurrage will accrue from the expiration of free time at the third tier rate. If the containership line's tariff provisions are not acceptable or do not provide appropriate coverage, then the following schedules will apply. Any extended periods of free time granted by a containership line's tariffs will be at the responsibility and liability of the containership line and/or the cargo.

2. General cargo containers:

Four (4) days free time exclusive of Saturdays, Sundays and non worked ILA holidays will be allowed for the removal of containers discharged from vessels in the Port of New York.

3. Refrigerated containers (House Containers) and special equipment.

Two days free time, exclusive of Saturdays, Sundays and non worked ILA holidays will be allowed for the removal of containers discharged from vessels in the Port of New York.

✓ 4. Containers of green coffee beans in bags and cocoa beans in bags will be allowed ten days free time exclusive of Saturdays, Sundays and non worked ILA holidays.

5. All cargo that is entitled to additional free time must be received by MTL one day prior to the arrival of a vessel (in the case of holidays and weekends, the last work day before).

3. COMPUTATION OF FREE TIME PERIOD

Free time on import cargo/containers shall commence at 8:00 a.m. on the first business day following completion of discharge of the vessel and will expire on the last day of free time (Saturdays, Sundays and non-worked ILA holidays excluded). If terminal is open on an ILA holiday and is processing gate transactions, the day will be treated as a business day.

4. SCALE OF DEMURRAGE CHARGES

The following scale of demurrage rates and provisions will apply to cargo remaining undelivered after the expiration of free time:

A. Breakbulk Cargo

1<sup>st</sup> Period Demurrage:

4 cents per 100 lbs. or 3 cents per cubic foot, whichever is greater, per day, or fraction thereof, for the first five (5) calendar days after the expiration of free time. Minimum charge \$25.00.

MAHER TERMINALS LLC	Page 22 of 41
	Revised Date: 28 August 2014

2<sup>nd</sup> Period Demurrage:

6 cents per 100 lbs. or 4 cents per cubic foot, whichever is greater, per day, or fraction thereof, for the next five (5) succeeding days. Minimum charge \$45.00.

3<sup>rd</sup> Period Demurrage:

10 cents per 100 lbs. or 5 cents per cubic foot, whichever is greater, per day, or fraction thereof, for each succeeding day. Minimum charge \$55.00.

✓ B. Merchant Haulage Containers:

1. General cargo containers of all dimensions after the expiration of free time:

1 - 4 days	\$164.00 per calendar day
5 - 9 days	\$214.00 per calendar day
✓ 10 days and above	\$374.00 per calendar day ✓

2. Temperature controlled containers of all dimensions after expiration of free time:

1 - 3 days	\$400.00 per calendar day
4 days and above	\$575.00 per calendar day

3. Special Equipment, Platforms, Flatracks, Open tops, etc., of all dimensions after expiration of free time:

1 - 3 days	\$315.00 per calendar day
4 days and above	\$495.00 per calendar day

4. Tanks

1 - 3 days	\$237.00 per calendar day
4 days and above	\$412.00 per calendar day

An additional charge of \$54.00 per container per calendar day after expiration of electricity free time for electricity usage.

5. UNDELIVERED CARGO

A. Cargo which is undelivered and remains at the terminal beyond the expiration of free time, may be placed in public storage at any time thereafter, at the option of MTL and at the risk and expense of the cargo.

B. Cargo remaining on the terminal in excess of 30 days, will be considered as abandoned and sold for collection of demurrage charges due MTL. At the time of sale, MTL makes no

**Exhibit B**  
**of**  
**Exhibit C-14**

**Peggy Mecca**

---

**From:** Maher Terminals Burst Notification <mburstnotification@maherterminals.com>  
**Sent:** Friday, February 13, 2015 8:35 AM  
**To:** Mecca & Son  
**Subject:** President's Day 2-16-15

[Web Version](#) | [Update preferences](#) | [Unsubscribe](#)

 [Forward](#)



## President's Day 2-16-15

### BURST NOTIFICATION

To: Maher Terminals Customers

As a reminder, all Maher Terminals facilities including the Empty Depot located at Columbia will be closed for business on **Monday, February 16, 2015 (President's Day)**.

Thank you,

Maher Terminals Management

\*This is an automatically generated e-mail sent from an unmonitored alias. Please do not reply.

[Edit your subscription](#) | [Unsubscribe](#)

Maher Terminals LLC  
1210 Corbin Street  
Elizabeth, NJ 07201

# **Maher Terminals**

## ***Daily Terminal Gate Conditions***

Date: Tuesday, February 17, 2015  
Time: 9:00 a.m.

### **Main Terminal**

Inbound: Heavy  
Outbound: Heavy

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Chassis Depot**

For chassis availability please utilize the below contact information.

Reference the daily TRAC Intermodal chassis availability Metro NY/NJ email notification or contact TRAC Intermodal Customer Service at [customerservice@tracintermodal.com](mailto:customerservice@tracintermodal.com)  
Or (877) 987-2226 Option 2

- Status updates
- Add anyone to the daily blast

### **Columbia Empty Depot**

Truck Queue: Light

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Special Notes:**

No passengers are allowed in trucks **unless** they have a **valid** TWIC card.

✓ Total snowfall accumulations / amounts in "inches" reported on February 16 and February 17, 2015

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NEW JERSEY ✓

...BERGEN COUNTY...

ALLENDALE	3.0	700 AM 2/17	PUBLIC
RIDGEWOOD	1.9	902 AM 2/17	TRAINED SPOTTER
BERGENFIELD	1.8	730 AM 2/17	TRAINED SPOTTER
FRANKLIN LAKES	1.8	930 AM 2/17	PUBLIC
MIDLAND PARK	1.3	710 AM 2/17	TRAINED SPOTTER

...ESSEX COUNTY...

NEWARK AIRPORT	✓ 3.2	100 PM 2/17	FAA CONTRACT OBSERVER ✓
WEST ORANGE	3.0	900 AM 2/17	PUBLIC
CEDAR GROVE	2.7	930 AM 2/17	PUBLIC

...HUDSON COUNTY...

JERSEY CITY	3.5	742 AM 2/17	BROADCAST MEDIA
HARRISON	3.1	922 AM 2/17	TRAINED SPOTTER
HOBOKEN	3.0	900 AM 2/17	EMERGENCY MNGR

...PASSAIC COUNTY...

WAYNE	1.9	930 AM 2/17	TRAINED SPOTTER
BLOOMINGDALE	1.7	858 AM 2/17	TRAINED SPOTTER

...UNION COUNTY...

ROSELLE PARK	4.6	1000 AM 2/17	PUBLIC
PLAINFIELD	4.5	820 AM 2/17	TRAINED SPOTTER

...ATLANTIC COUNTY...

EGG HARBOR CITY	6.1	1155 AM 2/17	TRAINED SPOTTER
HAMMONTON	5.0	845 AM 2/17	TRAINED SPOTTER
EGG HARBOR TWP	4.8	700 AM 2/17	SOCIAL MEDIA
PLEASANTVILLE	3.9	705 AM 2/17	TRAINED SPOTTER
ATLANTIC CITY INTL A	3.9	705 AM 2/17	ASOS
COLLINGS LAKES	3.8	930 AM 2/17	SOCIAL MEDIA
MULLICA TWP	3.5	555 AM 2/17	SOCIAL MEDIA
VENTNOR CITY	3.5	615 AM 2/17	SOCIAL MEDIA
ESTELL MANOR	3.4	715 AM 2/17	TRAINED SPOTTER
POMONA	3.0	725 AM 2/17	SOCIAL MEDIA
MAYS LANDING	1.0	155 AM 2/17	SOCIAL MEDIA

...BURLINGTON COUNTY...

MCGUIRE AFB	6.5	730 AM 2/17	SOCIAL MEDIA
FLORENCE	6.1	900 AM 2/17	TRAINED SPOTTER

# **Maher Terminals**

## ***Daily Terminal Gate Conditions***

Date: Wednesday, February 18, 2015

Time: 1:00 p.m.

### **Main Terminal**

Inbound: Heavy

Outbound: Heavy

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Chassis Depot**

For chassis availability please utilize the below contact information.

Reference the daily TRAC Intermodal chassis availability Metro NY/NJ email notification or contact TRAC Intermodal Customer Service at [customerservice@tracintermodal.com](mailto:customerservice@tracintermodal.com)  
Or (877) 987-2226 Option 2

- Status updates
- Add anyone to the daily blast

### **Columbia Empty Depot**

Truck Queue: Normal

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Special Notes:**

No passengers are allowed in trucks **unless** they have a **valid** TWIC card.

# **Maher Terminals**

## ***Daily Terminal Gate Conditions***

Date: Thursday, February 19, 2015

Time: 1:00 p.m.

### **Main Terminal**

Inbound: Heavy

Outbound: Heavy

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Chassis Depot**

For chassis availability please utilize the below contact information.

Reference the daily TRAC Intermodal chassis availability Metro NY/NJ email notification or contact TRAC Intermodal Customer Service at [customerservice@tracintermodal.com](mailto:customerservice@tracintermodal.com)  
Or (877) 987-2226 Option 2

- Status updates
- Add anyone to the daily blast

### **Columbia Empty Depot**

Truck Queue: Normal

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Special Notes:**

No passengers are allowed in trucks **unless** they have a **valid** TWIC card.



# **Maher Terminals**

## ***Daily Terminal Gate Conditions***

Date: Friday, February 20, 2015

Time: 9:00 a.m.

### **Main Terminal**

Inbound: Heavy

Outbound: Heavy

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Chassis Depot**

For chassis availability please utilize the below contact information.

Reference the daily TRAC Intermodal chassis availability Metro NY/NJ email notification or contact TRAC Intermodal Customer Service at [customerservice@tracintermodal.com](mailto:customerservice@tracintermodal.com)  
Or (877) 987-2226 Option 2

- Status updates
- Add anyone to the daily blast

### **Columbia Empty Depot**

Truck Queue: Normal

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Special Notes:**

No passengers are allowed in trucks **unless** they have a **valid** TWIC card.

# **Maher Terminals**

## ***Daily Terminal Gate Conditions***

Date: Friday, February 20, 2015

Time: 1:00 p.m.

### **Main Terminal**

Inbound: Heavy

Outbound: Heavy

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Chassis Depot**

For chassis availability please utilize the below contact information.

Reference the daily TRAC Intermodal chassis availability Metro NY/NJ email notification or contact TRAC Intermodal Customer Service at [customerservice@tracintermodal.com](mailto:customerservice@tracintermodal.com)

Or (877) 987-2226 Option 2

- Status updates
- Add anyone to the daily blast

### **Columbia Empty Depot**

Truck Queue: Normal

*\*Light = A few trucks deep per lane; \*Normal = Half of queue is full; \*Heavy = Full queue*

### **Special Notes:**


No passengers are allowed in trucks unless they have a **valid** TWIC card.

**Exhibit C**  
**of**  
**Exhibit C-14**

Written disputes must be sent within 60 days of the first statement listing the transaction. The Year-End Summary does not extend an expired billing period. See your monthly statement, your Credit Card Agreement or the annual Your Billing Rights notice for details.

### Preparing your taxes

Here is a list of all your transactions between January 1, 2015 and December 31, 2015. To find out more information about itemized deductions such as travel expenses or medical and dental expenses, search "Topic 500" at [www.irs.gov](http://www.irs.gov). To easily track deductions, just mark the "Deduct" column next to each charge. Please note: Here is a list of all your posted transactions.

Services		Services		Amount	Deduct
\$4,629.00		Date	Description		
	C	02/26/15	MAHER TERMINALS LLC	1,320.00	<input type="checkbox"/>
		02/26/15	MAHER TERMINALS LLC	1,320.00	<input type="checkbox"/>
				<b>\$4,629.00</b>	<input type="checkbox"/>

Demurrage  
Pd

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**Exhibit D**  
**of**  
**Exhibit C-14**

## **Peggy Mecca**

---

**From:** Peggy Mecca <peggy.mecca@meccatrucking.com>  
**Sent:** Friday, February 20, 2015 11:30 AM  
**To:** 'Joe McNelis'  
**Subject:** line

Joe

We have a lot of containers to get out of Maher this Today. All week it has been a disaster. We had drivers There until late at night and was hoping today would be Better. If I run into a problem with last free days, then Would you be able to help.

Peggy Mecca  
Mecca & Son Trucking Co., Inc.  
580 Marin Blvd.  
Jersey City NJ 07310  
Office: 201-792-5866 Ext. 104  
Fax: 201-792-7090  
[www.meccatrucking.com](http://www.meccatrucking.com)

**DISCLAIMER NOTICE:** By using our services, all demurrage responsibility only passes for ONE day if we acknowledge receipt of delivery order and the order is received at least 24 hours before the last free day under normal terminal working conditions. If the order is acknowledge received and not picked up, it is the responsibility of shipper or broker to bring to our attention container remains at the pier to mitigate any further demurrage issues.

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**Exhibit E**  
**of**  
**Exhibit C-14**

TRAILER INTERCHANGE  
RECEIPT  
MAHER TERMINALS

DATE:02/20/15

VISIT:2833970

SEQ:2597140

DELIVER IMPORT EVERGREEN LINE

CONTAINER NO: EISU2203542

CHASSIS NO: METZ265138

SEAL #1: 73817

LOCATION: 1

TRUCKING CO: MECCA & SON TRU

DRIVER ID: 163586

VESSEL/VOYAGE:

ITAL MASSIMA/0673E

BOOKING NO:

PORT: NEW YORK, N

WEIGHT: 47840

HAZARDOUS: NO

INSPECTION:

RIGHT SIDE PANEL DENT - USABLE

LEFT BOTTOM RAIL BENT - USABLE

LEFT SIDE PANEL DENT - USABLE

FRONT PANEL DENT - USABLE

ANY TIR INSPECTION DISCREPANCIES MUST  
BE REPORTED PRIOR TO EXIT. PROCEED  
TO "RED ZONE" AREA AND CALL  
(808) 527-8400 EXT. 4114 FOR  
ASSISTANCE

REMARKS:

TIR IN:19:58 TIR OUT:19:58

TIR: BEALE

OUT: NCORTES

DRV: GAETJENS DARIUS

SEC: NAWAD

TIME IN:18:48 TIME OUT:20:13

NET TIME:3 HRS 27 MINS

CLERICAL SVC TIME:0 HRS 0 MINS

USE OUR WEB APP AT:  
MOBILE.MAHERTERMINALS.COM

I hereby certify that on date stated,  
I carefully inspected the equipment  
described above and that this is a  
true and correct receipt.

Left  
8:13 PM



## TMW Imaging

Send (Print/Fax/Email) All documents ◊ This document  
Work Queue Add all documents ◊ Add this document

4 documents:

Delivery Order (2015-01-29)

POD (2015-02-25)

TIR (2015-02-25)

TIR (2015-02-25)

Sort Order: Date Priority Description

Details for this TIR

Scanned 2015-02-25 by Batch: helenmecca

## Reference Numbers:

Bill Date 2015-02-25  
Bill To ID NOBLCTSTAA  
Chassis Number MRTZ206332  
Company Number 1  
Consignee FLO  
Container Number FCIU3567702  
Driver MOISAN  
Master Bill of Lading EGLV71150000697  
Mecca # M19727  
PO Number RP140376  
Shipper ID MAHER  
Tractor Number 2407  
Trailer Number  
Document ID: 3b7efb46

## History:

2015-02-25 Initial Storage

TRAILER INTERCHANGE RECEIPT	
MAHER TERMINALS	
DATE: 02/25/15	19727
VISIT: 2834281	SSO: 2807400
DELIVER IMPORT EVERGREEN LINE	
CONTAINER NO: FCIU3567702	
CHASSIS NO: MRTZ206332	
SEAL #1: 71387	
LOCATION: 1	
TRUCKING CO: MECCA & SON TRU	
DRIVER ID: 100420	
VESSEL/VOYAGE: ITAL KASSINA/00730	
BOOKING NO:	
PORT: NEW YORK, NY	
WEIGHT: 47840	
HAZARDOUS: NO	
INSPECTION:	
RIGHT BOTTOM RAIL BENT - USABLE	
RIGHT SIDE PANEL DENT - USABLE	
LEFT BOTTOM RAIL BENT - USABLE	
LEFT SIDE PANEL DENT - USABLE	
ANY TIR INSPECTION DISCREPANCIES MUST BE REPORTED PRIOR TO EXIT. PROCEED TO "RED ZONE" AREA AND CALL (608) 527-8400 EXT. 4114 FOR ASSISTANCE	
REMARKS:	
TIR IN: 21:05 TIR OUT: 21:05	
TIR: PERKINS	
OUT: GENTR	
DRV: MOISES SANCHEZ	
SEC: BAILEY	
TIME IN: 17:43 TIME OUT: 21:34	
NET TIME: 0 HRS 41 MINS	
CERICAL SVC TIME: 0 HRS 0 MINS	
USE OUR ESD APP AT: MOBILE.MAHERTERMINALS.COM	

MAHER TERMINALS  
CHASSIS DEPOT  
CHASSIS RECEIPT

Date: 02/25/15  
TIR: 2834281  
TIR: 2834281  
Company: 1  
Bill To: Mecca & Son  
Driver: 100420  
Vessel: ITAL KASSINA  
Booking: 00730  
Port: NEW YORK  
Weight: 47840  
Hazardous: NO

Driver: 100420  
Company: 1

MAHER TERMINALS  
CHASSIS DEPOT

MAHER TERMINALS  
CHASSIS DEPOT

MAHER TERMINALS  
CHASSIS DEPOT

VISIT: 2834281

DATE: 02/25/15

TIR: 2834281

TIR: 2834281

Company: 1

Bill To: Mecca & Son

Driver: 100420

Vessel: ITAL KASSINA

Booking: 00730

Port: NEW YORK

Weight: 47840

Hazardous: NO

10:30  
BA  
NIGHT

TMW

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M19728

TRAILER INTERCHANGE  
RECEIPT  
MAHER TERMINALS

DATE:02/20/15

VISIT:2834233

SEQ:2597441

DELIVER IMPORT EVERGREEN LINE

CONTAINER NO: MAGU2275151  
CHASSIS NO: TRUCKER OWNED

SEAL #1: 73808  
LOCATION: 1  
TRUCKING CO: MECCA & SON TRU  
DRIVER ID: 187554  
VESSEL/VOYAGE:  
ITAL MASSIMA/0873E  
BOOKING NO:  
PORT: NEW YORK,N  
WEIGHT: 47388

HAZARDOUS: NO

INSPECTION:

RIGHT BOTTOM RAIL BENT -  
USABLE

RIGHT SIDE PANEL DENT - USABLE

LEFT BOTTOM RAIL BENT - USABLE

LEFT SIDE PANEL DENT - USABLE

ANY TIR INSPECTION DISCREPANCIES MUST  
BE REPORTED PRIOR TO EXIT. PROCEED  
TO "RED ZONE" AREA AND CALL  
(808) 527-8400 EXT. 4114 FOR  
ASSISTANCE

REMARKS:

M19728

TIR IN:20:20 TIR OUT:20:20  
TIR: MANNUZZA  
CKR: CALELLO  
OUT: NCORTES  
DRV: NILO REGARDIZ  
SEC: SALEEP  
TIME IN:17:25 TIME OUT:20:25  
NET TIME:3 HRS 0 MINS  
CLERICAL SVC TIME:0 HRS 0 MINS

gwpM

USE - SUP -

**Exhibit F**  
**of**  
**Exhibit C-14**

## TMW Document Imaging

Send (Print/Fax/Email) [All documents](#) ◊ [This document](#)  
 Work Queue [Add all documents](#) ◊ [Add this document](#)

5 documents:

Delivery Order (2015-01-29)

TIR (2015-02-23)

TIR (2015-02-24)

TIR (2015-02-25)

TIR (2015-03-24)

Sort Order: Date Priority Description

Details for this Delivery Order

Scanned 2015-01-29 by Batch: MannyBustamante

## Reference Numbers:

Bill Date

Bill To ID

NOBLCTSTAA

Company Number

1

Consignee

FLORENCE

Container Number

EISU2015571

Driver

Master Bill of Lading EGLV711500000697

Mecca #

M19724

PO Number

RP140376

Shipper ID

MAHER

Tractor Number

Trailer Number

Document ID: b71555c5

## History:

2016-04-25 Document Displayed

2015-04-14 Document Displayed

2015-04-14 Document Displayed

2015-02-25 Document Displayed

2015-02-25 Document Displayed

2015-01-29 Initial Storage



Noble Americas Resources Corp.  
 A member of Noble Agri  
 Four Stamford Plaza, 107 Elm Street,  
 Stamford, CT 06902  
 Tel: +1 203 314-0555 Fax: +1 203 363-7140  
 www.nobleagri.com

## Landing Instructions

Date: 29 Jan 2015  
 To: Florence Warehouse Inc.  
 PO Box 475  
 Jersey City, NJ 07310, USA

Dear Sirs,  
 Please release the following coffee to Macca & Son Trucking Company, Inc., who will provide the drag service.  
 Please bring these containers into storage, keep in lots of 275 bags and enter EWRs into EWRs.

Our Ref. No. E-A-140376  
 Warehouse: Florence Warehouse Inc.  
 Destination: New York, USA  
 Product Details: Green Coffee, Cultivar: S. Ecuador Usual Good Quality  
 Total Bags: 3,025

Container Details	Ship	No. of Units	Net Qty	Gross Qty	Mark	Mecca #
1 BMDU212174	20 feet	275 x 70kg	42,346.14 lb	42,768.63 lb	0003-00037-01505	C71330 1
2 DFTU2127060	20 feet	275 x 70kg	42,419.99 lb	42,844.58 lb	0001-00037-01502	C71397 2
3 CFTU217187	20 feet	275 x 70kg	42,225.89 lb	42,658.54 lb	0003-00037-01503	C73411 3
4 DFTU2175033	20 feet	275 x 70kg	42,379.41 lb	42,804.90 lb	0001-00037-01504	C71399 4
5 CGBU2073429	20 feet	275 x 70kg	42,356.57 lb	42,795.06 lb	0001-00037-01509	C73881 5
6 EISU2115571	20 feet	275 x 70kg	42,350.75 lb	42,776.34 lb	0003-00037-01510	C73932 6
7 EISU21203542	20 feet	275 x 70kg	42,218.47 lb	42,641.86 lb	0003-00037-01511	C73917 7
8 EFTU2136418	20 feet	275 x 70kg	42,421.30 lb	42,846.79 lb	0001-00037-01512	C73881 8
9 EFTU2136792	20 feet	275 x 70kg	42,346.34 lb	42,771.83 lb	0003-00037-01508	C71301 9
10 EISU2171551	20 feet	275 x 70kg	42,352.55 lb	42,776.45 lb	0003-00037-01511	C71306 10
11 EISU2135453	20 feet	275 x 70kg	42,412.48 lb	42,837.97 lb	0003-00037-01507	C71305 11
3,025 x 70kg			445,826.59 lb	475,818.00 lb		
S/L Number	EGLV711500000697					
Feeder Vessel	X-PRUSS TAU/MA/CO 17418					
Weight Tolerance	Please weigh 10% weight (10%)					
Notes	To be checked by Florence Warehouse Inc. Please forward EWR numbers once created. Please create one EWR per container					

1- M19718

2- M19720

3- M19721

4- M19722

5- M19723

6- M19724

7- M19725

8- M19726

9- M19727

10- M19728

11- M19729



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✓ Pd demurrage



Port of New York/New Jersey

Welcome WSANTOS (N3271)

[Home](#) [Import](#) [Export](#) [Gate](#) [Equipment](#) [Guarantees/Credit Card Payments](#) [Administrative](#) [Customs](#) [My Account](#) [Tools](#) [Reports](#) [Help](#) [Logout](#)**Gate Activity**

Choose the search option, then click Search.

Search Option:	Container <input checked="" type="checkbox"/>	EISU2015571	Search
----------------	---	-------------	--------

Page 1 of 1						
Visit	Driver	Trucker	Lane In Date	Lane Out Date	Stage	Status
2834717	RENE GUTIERREZ	MECCA & SON TRUCKING CORP.				CANCEL
2840074	NIKOLA HRONCIC	MECCA & SON TRUCKING CORP.	2015-02-23 15:12:08	2015-02-23 16:13:13		COMPLETE
Total Records: 2						



Port of New York/New Jersey

Welcome WSANTOS [M3271]

[Home](#) [Import](#) [Export](#) [Gate](#) [Equipment](#) [Guarantees/Credit Card Payments](#) [Administrative](#) [Customs](#) [My Account](#) [Tools](#) [Reports](#) [Help](#) [Logout](#)**Gate Activity**

Choose the search option, then click Search.

Search Option:	<input checked="" type="checkbox"/> Visit	<input type="checkbox"/> Times	<input type="checkbox"/> Transactions	<input type="checkbox"/> Errors	<input type="text" value="2834717"/>	<input type="button" value="Search"/>
----------------	---	--------------------------------	---------------------------------------	---------------------------------	--------------------------------------	---------------------------------------

Visit Times Transactions Errors

Visit - 2834717

**Lane Times**

Lane In:

Lane In By:

Lane Out:

Lane Out By:

Co-op In:

Co-op In By:

Escort:

Escort By:

Weight Check:

Weight Check By:

2015-02-20 18:46:41 ✓

FPUGLIESE/n4apl1

Guard Out:

Guard Out By:

Co-op Out:

Co-op Out By:

Escort Location:

Escort Reason:

**Exhibit G**  
**of**  
**Exhibit C-14**

---

**From:** Peggy Mecca [<mailto:peggy.mecca@meccatrucking.com>]  
**Sent:** Tuesday, April 21, 2015 12:58 PM  
**To:** 'Ivo Oliveira' <[IOliveira@maherterminals.com](mailto:IOliveira@maherterminals.com)>  
**Cc:** [michael.mecca@meccatrucking.com](mailto:michael.mecca@meccatrucking.com)  
**Subject:** RE: demurrage paid in February

Ivo,

As I recall,  
Monday was a holiday.  
Tuesday and Wednesday there were delays due  
To snow storm.  
Thursday and Friday the port authority police was  
Diverting traffic away from Maher Terminal.  
I have pictures of the lines.  
Would you be willing to go the FMC mediation  
program to take this further?

Peggy Mecca  
Mecca & Son Trucking Co., Inc.  
580 Marin Blvd.  
Jersey City NJ 07310  
Office: 201-792-5866 Ext. 104  
Fax: 201-792-7090  
[www.meccatrucking.com](http://www.meccatrucking.com)

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---

**From:** Ivo Oliveira [<mailto:IOliveira@maherterminals.com>]  
**Sent:** Monday, April 20, 2015 12:19 PM  
**To:** Peggy Mecca  
**Cc:** [michael.mecca@meccatrucking.com](mailto:michael.mecca@meccatrucking.com)  
**Subject:** RE: demurrage paid in February

Hello Peggy. Was a pleasure meeting you, also. Pursuant to our conversation, I didn't infer that particular containers were "waived," rather I said that if there were extenuating circumstances on the days/containers in question, that we in all likelihood would have extended free time for issues that were outside of truckers control. I did in fact follow up on the dates that you outlined below and there were no issues during that time. In fact, during the shortened week (the Monday was a Holiday), we averaged approximately 5000 gate moves a day while delivering between 2500-3000 imports on each of those days. Truck line was rather fluid and daily bursts (twice a day) went



out that week indicating such. Again, was a pleasure meeting you and look forward to seeing you again. Ivo



Ivo Oliveira  
VP Industry Relations  
Maher Terminals LLC  
1210 Corbin Street  
Elizabeth, NJ 07201  
Tel: 908-527-8200 ext. 5136  
Fax: 908-436-4812  
Email: [ivo@maherterminals.com](mailto:ivo@maherterminals.com)

---

**From:** Peggy Mecca [<mailto:peggy.mecca@meccatrucking.com>]  
**Sent:** Tuesday, April 14, 2015 1:05 PM  
**To:** Ivo Oliveira  
**Cc:** [michael.mecca@meccatrucking.com](mailto:michael.mecca@meccatrucking.com)  
**Subject:** demurrage paid in February

Dear Ivo,

It was nice to meet you this morning.

During the week of February 2/16 – 2/20,  
we were dealing with a 4 day week, snow and weather  
related conditions, heavy queue at Maher, and Port Authority  
diverting drivers.

It cost our company 2640.0 for 2 containers for EISU2015571 and  
MAGU2354055 on 2/24.

Anything you can do to help reimburse for this was demurrage which  
was caused by issues outside of our control is appreciated as you seem to think  
these may have been waived for us previously.

In addition, if there anyway for the terminal to advise a trucker or shipper as soon  
a container goes into demurrage – That would be a big proactive step for a terminal to  
do and appreciated by the trucking community.

Peggy Mecca

Mecca & Son Trucking Co., Inc.

580 Marin Blvd.

Jersey City NJ 07310

Office: 201-792-5866 Ext. 104

Fax: 201-792-7090

[www.meccatrucking.com](http://www.meccatrucking.com)

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# **EXHIBIT C-15**



**THUNDERBOLT**  
*Global Logistics, LLC*

To Whom It May Concern

May 6, 2016

Thunderbolt Global Logistics is an international freight forwarder/customs broker/NVOCC based in Baltimore, MD. We work with a large shipper who exports out of the Port of Oakland. We experienced the difficulty of shipping containers from Oakland during the first quarter of 2015.

Due to the congestion issues at the Port of Oakland our motor carriers had difficulty picking up empty containers and returning fully loaded containers back to the port. Sometimes our contracted truckers had to sleep overnight outside the terminal to be able to gate the container in the next day. The delays resulting from congestion getting into the terminal resulted in significant costs for our client.


We also had to pay per diem costs on several containers that were booked with Evergreen due to delays in being able to gate the containers back into the port due to vessel arrival delays which resulted in the containers not being able to be returned to the port so the trucker had to hold them in their yard. I've attached a copy of the invoice from Evergreen.

We had a similar instance in Seattle one time with \$350.00 in yard storage waiting to be able to gate the container back into the terminal.

Congestion has a ripple effect on both import and export shipments at any port in the United States. This was especially the case for us in Oakland. Anything that can be done to prevent this from happening will be good for everyone involved in the logistics process.

I verify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Sincerely,



Jim Shapiro  
Director

*Delivering Excellence Every Time*

**EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION**

**DALLAS OFFICE**

**TOLLWAY PLAZA I 16000 NORTH DALLAS PARKWAY SUITE 400, DALLAS, TX 75248**

## PER DIEM INVOICE

SCAC : MMPS  
M & M TRANSPORT

6905 SAN LEANDRO STREET

OAKLAND CA 94621  
UNITED STATES

CLIENT NO. :USM003949  
INVOICE NO. :PF 1502001928 001  
INVOICE DATE:2015-02-20  
DUE DATE :2015-03-22  
PAGE : 1/2

CONTACT: THIERRY FRANCK TURQUET  
TEL : 1-972-2465531  
FAX : 1-972-2465504  
E-MAIL: [thierryturquet@evergreen-shipping.us](mailto:thierryturquet@evergreen-shipping.us)  
OFFICE : USDLS-LOG

CONSIGNEE CONTAINER REMARKS	CHASSIS	REFERENCE PICK UP LOC	PICK UP DATE	BILL PERIOD FROM TO LAST FREE D.	FREE DAYS	BILL DAYS	TOTAL	P
THUNDERBOLT CLHU8688550	GLOBAL LOGISTICS, LLC	446442696004	2015/01/23	2015/01/23 2015/02/06	5	5	555.00	
		BEN E. NUTTE UNITED STATES		2015/01/30				
THUNDERBOLT GATU8765700	GLOBAL LOGISTICS, LLC	446442696004	2015/01/23	2015/01/23 2015/02/06	5	5	555.00	
		BEN E. NUTTE UNITED STATES		2015/01/30				
THUNDERBOLT HMCU9131300	GLOBAL LOGISTICS, LLC	446442696004	2015/01/23	2015/01/23 2015/02/06	5	5	555.00	
		BEN E. NUTTE UNITED STATES		2015/01/30				
THUNDERBOLT BMOU4802011	GLOBAL LOGISTICS, LLC	446541343100	2015/01/28	2015/01/28 2015/02/10	5	4	420.00	
		OAKLAND INTE UNITED STATES		2015/02/04				
THUNDERBOLT EISU9120753	GLOBAL LOGISTICS, LLC	446541343100	2015/01/28	2015/01/28 2015/02/10	5	4	420.00	
		OAKLAND INTE UNITED STATES		2015/02/04				
THUNDERBOLT SEGU4075706	GLOBAL LOGISTICS, LLC	446541343100	2015/01/28	2015/01/28 2015/02/10	5	4	420.00	
		OAKLAND INTE UNITED STATES		2015/02/04				
THUNDERBOLT BMOU5774819	GLOBAL LOGISTICS, LLC	446541343100	2015/01/29	2015/01/29 2015/02/11	5	4	420.00	
		OAKLAND INTE UNITED STATES		2015/02/05				
THUNDERBOLT BMOU5775414	GLOBAL LOGISTICS, LLC	446541343100	2015/01/29	2015/01/29 2015/02/11	5	4	420.00	
		OAKLAND INTE UNITED STATES		2015/02/05				
							GRAND TOTAL	3,765.00
							PAID	.00
							OUTSTANDING	3,765.00



EVERGREEN SHIPPING AGENCY (AMERICA) CORPORATION

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Remarks:

1. This invoice is due and payable when rendered.
2. Remittance is to be mailed to the address above.
3. Please show invoice number and client number on remittance.
4. The Motor Carrier/Customer shall respond in writing to Evergreen's invoices within 30 days of the invoice date, documenting with appropriate evidence its disagreement with any charges it believes to be incorrect. Otherwise, Evergreen deems all invoices to be billed accurately and the payment should be received by the due date.