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BEFORE THE
FEDERAL MARITIME COMMISSION

KAWASAKI KISEN KAISHA, LTD.,
("K" Line), A Corporation
Complainant

V

DOCKET NO. 07- 10

-----X
FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC.
A Corporation
GEMINI SHIPPERS ASSOCIATION, INC., A Corporation
Sara Mayes
Harold Sachs
Respondents



-----X
COMPLAINT

I. THE PARTIES

A. Kawasaki Kisen Kaisha, Ltd. is a Japanese corporation operating as an ocean common carrier, FMC Organization No. 001466, at Hibiya Central Building 2-9, Nishi-Shinbashi 1-chome, Minato-ku, Tokyo 105-8421, Japan.

B. "Gemini Shippers Association, Inc." is a Delaware corporation set up as a non-profit corporation. It is referenced on a "Gemini Shippers Group" website.

C. "Fashion Accessories Shippers Association, Inc." ("FASA") was set up as a Delaware non-profit corporation. It is referenced on the "Gemini Shippers Group" website. "Gemini Shippers Group" is a d/b/a of FASA. "Gemini Shippers Association" is a d/b/a of FASA.

- D. Sara Mayes is president of FASA.
- E. Harold Sachs is executive director of FASA.
- F. Respondents are all located at 350 Fifth Avenue, Suite 2030, New York, NY 1011.

II. JURISDICTION

A. The Commission has jurisdiction under the Shipping Act of 1984, as amended, (“the Act”), 46 U.S.C. § 40502, to regulate service contracts and in fact does so in its regulations at 46 C.F.R. Part 530. 46 U.S.C. § 41301 (a).

B. The Commission has authority to rule on violations which occur in connection with service contracts. The Commission has both the authority and the duty to rule on the validity of service contracts and their implementation, regardless of arbitration clauses in the service contracts. Of paramount importance is the Commission’s obligation to ensure the legality of service contracts. 46 U.S.C. § 40502 and 46 C.F.R. § 530.1

C. The Commission exercises jurisdiction over persons, including individuals, as necessary to achieve its regulatory objectives. Particularly in this situation, where there is a number of entities, “d/b/as” and purported associations or groups, the principals behind the whole operation must be reached by the Commission in order for the Commission to exercise its regulatory power. 1 U.S.C. § 1.

D. The Commission has authority to determine whether any person or persons knowingly and willfully by false means or other unjust or unfair devices obtained or attempted to obtain transportation at less than the applicable charges. 46 U.S.C. § 41102 (a).

III. STATEMENT OF THE CASE

A. Introduction

1. Respondent, Fashion Accessories Shippers Association, Inc. ("FASA") was set up as a non-profit Delaware corporation. FASA purports to act as a shippers' association and enters into service contracts with ocean common carriers as "Gemini Shippers Association". Respondent FASA uses "Gemini Shippers Group" as a "d/b/a", and maintains a website in that name (Excerpts in Attachment D hereto) soliciting the participation of shippers in service contracts which are signed by FASA under the d/b/a "Gemini Shippers Association". In "K" Line's experience, "K" Line negotiates shipper-specific (and non-specific) rates with the shippers, having negotiated certain non-specific rates or charges with FASA; "K" Line then brings those rates to the officers of FASA for incorporation into the "Gemini" contracts.

2. The "K" Line/"Gemini Shippers Association" contracts specify rates which include royalty payments to be made from "K" Line by check to "Gemini Shippers Association" for the privilege of carrying cargoes under the contract rates. The royalties paid by "K" Line (and undoubtedly other carriers) are deposited by FASA and, based on the number of "members" of FASA must total hundreds of thousands of dollars annually. The disposition of these monies is unknown.

3. FASA does not operate as a shippers' association. Insofar as "K" Line can determine, there are no shippers who actually hold the status of members of FASA or any entity related to FASA. Their status is like that of subscribers to a FASA/Gemini service contract franchise. Shippers are apparently denied access to financial records of the operation, and (at least in recent years) do not participate in any corporate or "association" governance regarding any FASA/Gemini entity.

4. The setup is a scheme whereunder the FASA principals purport to legitimize the shippers' discounted rates and charge ocean carriers for the privilege of participating in the scheme, under a "royalty" clause (Attachment A hereto) in the service contracts. The FASA operation indirectly locks shippers into FASA contracts and controls rate levels, by means of an "exclusive dealing" clause in the service contracts (Attachment B hereto) which prohibits the ocean carrier signatory from contracting with either a "member" or a "former member". The definitions of these two terms are unclear.

5. "K" Line seeks findings that the FASA/Gemini subscriber operation cannot lawfully enter into service contracts, that the royalty clause and the exclusive dealing clause are unlawful, that the receipt by FASA/Gemini and their principals of payments under the royalty clause is unlawful and that Respondents must cease and desist from pursuing any arbitration implementing these clauses.

B. Facts

1. "K" Line entered into a contract (No. 12842) signed in the name of Gemini Shippers Association" for the term April 18, 2001 to December 22, 2002. The Appendix referred to a "constituent

shippers association...the Fashion Accessories Shippers Association, inc. (sic)". A separate contract apparently was entered into for the period April 18, 2001 to December 1, 2002, signed by "Gemini Shippers Association." As of October 10, 2003, the New York authorities have advised that a Certificate of Assumed Name was filed by Fashion Accessories Shippers Association, Inc. for the use of the name "Gemini Shippers Group," in New York County, and a second certificate to the same effect was filed December 19, 2003.

2. "K" Line entered into Service Contract No. 13473 signed by "Gemini Shippers Association" (Sara Mayes President) for the period December 23, 2002 to March 31, 2004. New York authorities have forwarded four Certificates of Assumed Name for New York County filed by Fashion Accessories Shippers Association, Inc., in February 2004, one for the initials "NAFA," one for the initials "FASA," one for the initials "NFAA.," and one for "Gemini Shippers Association."

3. "K" Line entered into Service Contract No. 14042 signed by "Gemini Shippers Association" (Sara Mayes President) for the period of April 1, 2004 to November 26, 2005. The Shipper and Contract Party listed in the Contract Appendix was "Gemini Shippers Association." No affiliates were listed.

4. "K" Line entered into Contract No. 14682 on May 27, 2005 , with "Fashion Accessories Shippers Association, Inc d/b/a Gemini Shippers Association" (Sara Mayes President). The Appendix carried the same legend and the "Shipper" was listed as the same name. The Contract term was from June 1, 2005 to May 31, 2006.

5. Finally, 'K' Line entered into Contract No. 15115 on June 15, 2006 with "Gemini Shippers Association" (Sara Mayes President) with a term ending May 31, 2007. "The Fashion Accessories Shippers Association" name did not appear on the signature page. It did appear in the Appendix, once on the first page, once as the "shipper" and once as a "constituent shipper's (sic) association," under "Special Notes."

6. The Appendix to No. 15115 contained the "royalty clause," (Attachment A) whereunder "K" Line was supposed to "collect from the Member shipper and forward to the Contract Party Association....Gemini Association dues...for cargo transported by Carrier under this Contract...." The amount of the royalty/rebate ranged from \$40.00 to \$70.00, and was \$55.00 on a dry forty foot container. "K" Line was billed for such royalties on the billhead of "Gemini Shippers Group." Upon recently being pressed for payment, "K" Line informed Gemini's counsel that "K" Line had no contract with such an entity. Counsel merely scratched out the word "Group," wrote in the word "Association," and returned the invoice to "K" Line's counsel.

7. "K" Line, in a meeting in 2006 with Sara Mayes, "President," informed Mayes that "K" Line had been approached independently by a shipper who had contracted with "K" Line under the umbrella of the "Gemini" contract. Ms. Mayes agreed to "K" Line's offering rates to the shipper, but only if they were higher than her contract rates, of course with the exclusive dealing clause as the vehicle to enforce her position. The "member" rejected the "K" Line offer of rates at the Gemini level, and "K" Line entered into a service contract with the "member" at lower rates.

8. The exclusive dealing clause in the Appendix to No.15115 (Attachment B) purports to prohibit “K” Line from dealing with either a “member” or a “former member” while the Service Contract is in effect with “K” Line. Apparently, the Gemini principals interpret “member” as including all shippers who have checked in on the “Gemini Shippers Group” website, but they may define the term as including shippers whose rates are filed under any Gemini Contract with any ocean carrier.

9. “K” Line entered into contracts with the so-called “member” and a “former member” during the 2006-2007 contract term, Contract Numbers 15118 and 15669. “FASA d/b/a Gemini Shippers Association” then instituted a New York arbitration in 2006, demanding damages from “K” Line based on speculation that FASA would have received royalties, absent the “K” Line Contract, because the shippers would have shipped with “K” Line or another ocean carrier under the higher “Gemini” contract rates, which included the royalty amounts. FASA demanded \$75,000.00 (plus legal fees) to enforce the exclusive dealing clause. Respondents, through their counsel, advised they would not negotiate with “K” Line for a 2007-2008 service contract unless “K” Line withdrew its defense to the FASA arbitration demands, and agreed to the exclusive dealing clause.

10. The exclusive dealing clause requires “K” Line to attempt to ascertain the “membership” status of shippers (whatever that means). “K” Line must look not only to any current “members”, but must hark back to the first “K” Line contract in 2001 with the then-fictitious “Gemini Shippers Association,” or perhaps back to any “Gemini” contract with any carrier, or even strive to identify any shipper who checked in on the Gemini Group website or otherwise became a “member” in FASA’s eyes.

11. The royalty clause (Attachment A) requires “K” Line to pay a royalty per container to the Gemini operation, which monies are deposited to a FASA bank account (see Attachment C hereto). Whether the so-called “members” know their payments to “K” Line for freight include royalties is unknown. Another unknown is whether the so-called “members” are aware of or agree to the exclusive dealing clause in the “association” contract or to the FASA arbitration seeking to collect money from “K” Line for the alleged breach of it.

12. FASA, by letter of November 3, 1986 to the Antitrust Division of the U.S. Department of Justice, requested a business review letter (“BRL”). The letter affirmed that “FASA members are not obligated to use FASA’s services, they are free to use other services for their shipping needs or route their own traffic and deal directly with carriers. They may join other shippers associations. FASA will simply be one of several alternatives a member may utilize for import transportation services.” *Business Review Letter Request, Fashion Accessories Shippers Association*, November 3, 1986, 1986 DOJBRL LEXIS 37. While FASA does not (insofar as “K” Line is aware) directly prohibit independent “member” or “former -member” contracting, such contracting is prohibited by the device of the exclusive dealing clause. The implementation and enforcement of the exclusive dealing clause are antithetical to the statutory definitions of service contract, shipper and shippers’ association. 46 U.S.C. § 40102(20), (22) and (23).

13. The Association letter further claimed that the members would be charged a “per container” membership fee and that any monies that the association received in excess of administrative and operational expenses would be distributed directly to the members. *Business Review Letter Request, supra*. These statements are incorrect, insofar as “K” Line is aware.

14. In the BRL opinion issued to FASA indicating no DOJ intention to challenge FASA's conduct as set forth in its November 3, 1986 letter, the DOJ conditioned its opinion on FASA's representation that "FASA members will not be required to use any FASA Services and they will remain free to use other transportation options, such as making direct arrangements with carriers or participating in other shippers associations." *Business Review Letter Opinion, U.S. Department of Justice, March 25, 1987, 1987 DOJBRL LEXIS 18.*

15. The obvious mission of the FASA/Gemini principals is not to act as an association for the benefit of the shippers whom they call (sometimes) "members," but to benefit the principals, the individual respondents, by amassing wealth from royalties on every box carried by the ocean carriers who bring their negotiated rates within the Gemini contract umbrella.

16. The FASA/Gemini principals superficially imitate a shipper's association as described in the Act, while in reality operating a service contract franchise business for the principals' benefit. They bar freedom of contract with the shippers they call "members" and "former members", require kickbacks on each container, threaten "K" Line with refusal to deal, and are laying out legal costs in an arbitration trying to enforce their scheme.

17. FASA is a kind of service contract broker or franchise operator dedicated to controlling the ocean rates charged to its clients and restricting competition in the level of those rates. Once the client-specific rates are tailored to each client's situation and filed under the Gemini contract, the exclusive dealing clause operates to lock any "member" or "former member" out of negotiating a better rate with

that carrier (or apparently any other Gemini Group contracting carrier) or even to contract for service different from that specified in the Contract. For so long as a carrier has a service contract in effect with the Gemini Group, it is debarred from entering into any contract for any service in any trade with a “former member”. FASA shipper-subscribers are, on information and belief, uninformed as to the exclusive dealing clause, much less have they consented to the clause or its enforcement. The respondents use the various entities’ names and “d/b/a’s” interchangeably, but there is no entity or association which is either organized as a shippers’ association or functions as one in accordance with the definition in 46 U.S.C. § 40102(20), (22) and (23). Through no fault of their own (it appearing the shippers are ignorant of the scheme) the shippers who negotiate their individual rates with “K” Line are not members of any shippers’ association, nor are they members of Fashion Accessories Shippers Association, Inc. or Gemini Shippers Association, Inc. No shipper participates as a member of either corporation. No books are open to the shipper members.

18. Respondent Mayes and perhaps other principals negotiate the royalties with each carrier and, insofar as “K” Line can ascertain, funnel the monies into FASA’s bank account, presumably for their own benefit in some way, shape or form. While FASA is nominally organized as a “non-profit” corporation, the Gemini operation does not appear to be non-profit, since there are huge profits from the royalties paid by the ocean carriers. The setup is a business operation.

19. Using the exclusive dealing clause and legal action as a club, the principals work to block carriers (based on “K” Line’s experience) from contracting with the shippers at lower rates than the filed Gemini rates. When “K” Line acceded to a “member’s” and “former member’s” demands for lower rates than the FASA contract rate, FASA hired lawyers to enforce its anti-competitive scheme by punishing

“K” Line for giving the shippers lower rates. The principals thus act in direct opposition to the defining purpose of a shippers association, which is to negotiate lower rates for its members. The FASA/Gemini principals act not primarily to get lower rates for the “members”, but for their own financial benefit, contravening the essence of a Shipping Act shippers’ association (46 U.S.C. § 40102(20), (22) and (23)).

20. The exclusive dealing clause is uncertain and vague. The clause is written to prohibit a carrier from contracting with “any member or any former member, except upon notice to the Association and subject to mutual agreement between the carrier and the Association.” When approached by a shipper to negotiate a service contract, the ocean carrier would have to retrieve and pore over Gemini “membership” records going back to Gemini’s inception in 1991, in an attempt to verify whether the shipper had ever been a “member,” however briefly.

21. The FASA/Gemini principals do not negotiate the shipper-specific rates, which is the principal function defining a shippers’ association (they do negotiate certain blanket charges). A shipper who has checked in on the Gemini Shippers Group site negotiates its own rates with the carriers outside the ambit of the Gemini operation, then the carrier takes those rates to the principals to be legalized by insertion in the Gemini Contract Appendix. The principals have devised a lucrative scheme for selling the carriers the opportunity to use the Gemini service contracts as safe harbors for rates negotiated with shippers. The only unknown is how the principals funnel the money to themselves.

IV. VIOLATIONS OF THE ACT

A. FASA, d/b/a "Gemini Shippers Association," is not a shippers association within the definition in the Act, for the following reasons:

1. There is no voluntary association known as "Gemini Shippers Association" or as "Fashion Accessories Shippers Association."

2. There are no shipper members of FASA or any other related entity and there is no shipper membership participation in FASA or any related entity.

3. FASA does not negotiate the shipper-specific rates, only some of the rates or charges of general application.

4. FASA is a broker/franchisor, in that it is not an association of shippers, but sells its service contract safe harbor to ocean carriers for a per container fee under its contract royalty clause.

5. FASA limits its shipper-subscribers' and its former shipper-subscribers' service and rate opportunities by means of its contract exclusive-dealing clause, which is blatantly anti-competitive and in direct opposition to the purpose of a legitimate shippers' association.

6. FASA denies its shipper-subscribers access to its books.

7. Neither FASA nor any FASA-related entity is a non-profit operation; FASA is amassing huge profits which undoubtedly are and/or will be funneled into the pockets of the FASA principals either by extraordinarily high salaries or by some other device or devices; obviously these large sums will not simply be allowed to accumulate (unless they are being rebated *ad infinitum* to the shippers).

B. Because there is no lawful shippers' association party to Contract No. 15115, all respondents are involved in a scheme to obtain transportation at less than the otherwise applicable (tariff) rates, and have obtained transportation at less than the otherwise applicable rates, all in violation of 46 U.S.C.41102(a).

C. Because there is no lawful shippers' association party to Contract No. 15115, the Contract is invalid under the Shipping Act of 1984, as amended, and the Commission's regulations, and is therefore unenforceable.

D. The New York arbitration is an attempt to enforce the invalid service contract, and more particularly the invalid loyalty clause, and to secure transportation at less than the otherwise applicable tariff rates, thus it is itself an unlawful activity.

E. The exclusive dealing clause in Contract No. 15115 is uncertain and vague, in violation of 46 C.F.R.530.8(c). The definitions of "member" and "former member" are not set out. No matter what those definitions may be in FASA's view, compliance with them requires reference to sources outside the service contract, which in itself is impermissible under 46 C.F.R.530.8(c), and is an imprecise and unreliable process. For these reasons, the clause is invalid and unenforceable.

F. The exclusive dealing clause may require carriers to refuse to deal with shippers who FASA claims are "members" or "former members" of FASA, in possible violation of 46 U.S.C.41104(10). For this reason, the clause is unlawful and unenforceable.

G. FASA's claim for "damages" and legal fees in the New York arbitration, based on "K" Line's lawfully contracting with shippers in accordance with the Act, is itself an attempt to obtain transportation at less than the otherwise applicable rates in violation of 46 U.S.C.41102 (a), thus it is an unlawful activity.

V. RELIEF REQUESTED

"K" Line submits the Commission should find as follows:

A. Neither FASA nor any related entity is a shippers' association entitled to enter into service contracts. There is no resemblance to a membership organization or any "member" participation in governance, nor is FASA, or any related entity, actually a non-profit association. FASA acts as a gatekeeper and toll collector regarding "member"-negotiated rates, selling its service contract umbrella to the contracting carriers.

B. Because the FASA operation is not a shippers' association as defined in the Act, it has no authority to enter into a service contract as a shippers' association, therefore the royalty and exclusive dealing clauses in Contract No. 15115 are unenforceable.

C. The exclusive dealing clause in Contract No. 15115 is invalid because it lacks clarity and requires a carrier to go outside the contract to try to determine whether a shipper was ever a "member" of one of the Gemini facades, then to breach confidentiality with the shipper by approaching the Group for "permission" to contract with the shipper.

D. The exclusive dealing clause in Contract No. 15115 attempts to force ocean carriers to refuse to deal in violation of the Act with shippers who are so-called “members” or “former members”.

E. The exclusive dealing clause in Contract No. 15115 is invalid because it is used as part of the Gemini principals’ scheme to control rates charged by ocean carriers, which is not a valid purpose of a shippers’ association.

F. Respondents, through their officers, have attempted to control rates negotiated by “K” Line with a so-called “member” by ordering “K” Line, pursuant to the exclusive dealing clause, not to negotiate rates with the shipper below the FASA contract rates.

G. The receipt of royalties under the royalty clause of Contract No. 15115 is either a receipt of a rebate BY the service contracting party (FASA) or, if any proceeds are passed to the shipper-subscribers, BY the shippers themselves, in violation of 46 U.S.C.41102(a).

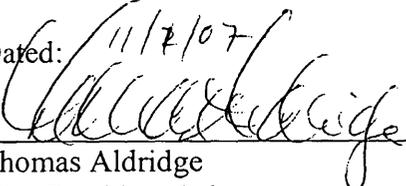
H. “K” Line submits the Commission should order Respondents to cease and desist from representing the FASA/ Gemini operation, as it presently exists, as a shipper’s association, to cease and desist from negotiating or implementing contract clauses such as the royalty clause or the exclusive dealing clause and to cease and desist from any attempts to influence, by contract or threats, the rates charged by ocean carriers to shippers.

I. "K" Line submits the Commission should find the exclusive dealing clause and the royalty clause to be in violation of the Act; issue a cease and desist order against respondents' use of such devices in the future, find that FASA/Gemini's New York arbitration or any other means for seeking to enforce the unlawful exclusive dealing and royalty clauses is unlawful, and enjoin FASA/Gemini, Inc. and their principals from continuing their scheme as currently constructed.

J. Finally, in accord with these findings, the Commission should issue a cease and desist order against any respondent pursuing the New York arbitration against "K" Line or reinstating any similar arbitration for enforcement of either of the clauses.

The parties have not engaged in mediation.

A hearing in Washington, D.C. is requested.

Dated: 11/7/07

Thomas Aldridge
Vice President-Sales
"K" Line America, Inc.
890 Mountain Ave
Suite 200
Murray Hill, NJ 07974

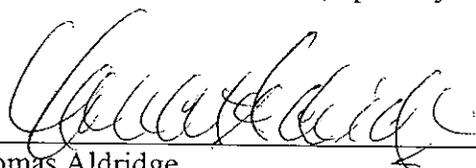

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Fax: (212) 245-3009
Attention: Jeffrey H. Daichman, Esq.

VERIFICATION

I, Thomas Aldridge, Vice President-Sales of "K" Line America, Inc., signed the foregoing Complaint, and I state under penalty of perjury that I believe the facts stated therein to be true and correct, upon my knowledge, information and belief.



Thomas Aldridge
Vice President-Sales
"K" Line America, Inc.
890 Mountain Avenue
Suite 200
Murray Hill, NJ 07974

Date: 11/1/07

ATTACHMENT A
TO THE COMPLAINT BEFORE THE
FEDERAL MARITIME COMMISSION

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

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

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

OTHER SPECIAL NOTES:

GEMINI ASSOCIATION
DUES

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

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

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

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

The Above rates are inclusive of the current Association Dues.

ATTACHMENT B
TO THE COMPLAINT BEFORE THE
FEDERAL MARITIME COMMISSION

46.CFR530.6.

Service Commitment

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

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

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

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

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

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

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

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

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

The contract shall not be subject to amendment fee.

ATTACHMENT C
TO THE COMPLAINT BEFORE THE
FEDERAL MARITIME COMMISSION

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND CONTAINS A VOID PANTOGRAPH AND MICROPRINTING

<p>K <u>"K" LINE AMERICA, INC.</u> AS AGENTS FOR "K" LINE 8730 Stony Point Parkway Suite 400 Richmond, VA 23235</p>	<p>Bank of America 901 West Trade Street Charlotte, NC 28255 66-798/531</p>	<p>Check No. 4000587</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Check Date</td> </tr> <tr> <td style="text-align: center; padding: 2px;">06/18/2007</td> </tr> </table> <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">Check Amount</td> </tr> <tr> <td style="text-align: center; padding: 2px;">\$ 4,750.00</td> </tr> </table>	Check Date	06/18/2007	Check Amount	\$ 4,750.00
Check Date						
06/18/2007						
Check Amount						
\$ 4,750.00						
<p>PAY <i>Four Thousand Seven Hundred Fifty AND 00/100</i></p>						
<p>TO THE ORDER OF GEMINI SHIPPERS ASSOCIATION 350 5TH AVE SUITE 2030 NEW YORK, NY 10118 UNITED STATES</p>	<p><i>David N. Tidd</i> Senior Vice President & Corporate Secretary</p>					

⑈04000587⑈ ⑆053107989⑆ 002210000186⑈ ⑈0000475000⑈

FOR DEPOSIT ONLY
 FASHION ACCESSORIES SHIPPERS ASSOC. INC.
 DBA GEMINI SHIPPERS ASSOC.
 023087272385

INDOCS(MENI)

622791209000

JPMORGAN CHASE BANK, N.A.
 > 821000021 < POSITION#
 06/19/2007 5978719569 5394 14
 12 0000023007230365 000003
 06282667
 021000021
 01706000037

Check Info	
Account:	2210000186
Amount:	4,750.00
Check #:	4000587
Posted Date:	06/21/2007

THE FRONT AND REVERSE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND CONTAINS A VOID FANTOGRAPH AND MICROPRINTING

K **"K" LINE AMERICA, INC.**
 AS AGENTS FOR "K" LINE
 8730 Stony Point Parkway
 Suite 400
 Richmond, VA 23235

Bank of America
 901 West Trade Street
 Charlotte, NC 28255
 66-798/531

Check No. 6656351

Check Date
05/07/2007

PAY *Eighteen Thousand Seven Hundred Sixty Eight AND 00/100*

Check Amount
\$ 18,768.00

TO THE ORDER OF
 GEMINI SHIPPERS ASSOCIATION
 350 5TH AVE
 SUITE 2030
 NEW YORK, NY 10118
 UNITED STATES

David N. Miller
 Senior Vice President & Corporate Secretary

⑈06656351⑈ ⑆053107989⑆ 0480102722⑈ ⑆0001876800⑆

FOR DEPOSIT ONLY
 FASHION ACCESSORIES SHIPPERS
 ASSOC. INC.
 DBA GEMINI SHIPPERS ASSOC.
 023087272385

922701466636

JPMORGAN CHASE BANK, N.A.
 > 021000021 < POSITION
 05/08/2007 5870638128 4935 15 246 2
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Location	Acct #	Check #	Amount	Paid Date	Sequence	Customer Data
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R/T Number	CD VolID/CIMS Key	CD Label	Payee Name			
5310798	07060350040301	07060350040301				

EndrsmtID	EndrsmtOrd	EndrsmtSeq	EndrsmtRT	EndrsmtDate	BOFD	Trunc	EndrsmtBankName
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736	2	4810305999	0	5/9/2007	False	False	JPMORGAN CHASE BANK, NA
735	1	8970332381	0	5/8/2007	False	True	JPMORGAN CHASE BANK, NA

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND CONTAINS A VOID PANTOGRAPH AND MICROPRINTING

K "K" LINE AMERICA, INC.

AS AGENTS FOR "K" LINE
8730 Stony Point Parkway
Suite 400
Richmond, VA 23235

Bank of America
901 West Trade Street
Charlotte, NC 28255
68-798/531

Check No. 6653722

Check Date
03/26/2007

PAY Fifteen Thousand Four Hundred Twenty Two AND 00/100

Check Amount
\$ ****15,422.00

TO THE ORDER OF GEMINI SHIPPERS ASSOCIATION
350 5TH AVE
SUITE 2030
NEW YORK, NY 10118
UNITED STATES

David N. Mill
Senior Vice President & Corporate Secretary

⑈06653722⑈ ⑆053107989⑆ 0480102722⑈ ⑆0001542200⑆

FOR DEPOSIT ONLY
FASHION ACCESSORIES SHIPPERS
ASSOC. INC.
DBA GEMINI SHIPPERS ASSOC.
02308727285

62270150050
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03/27/2007 6070153940 4317 15
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03272007
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0270324715

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CD	480102722	6653722	\$15,422.00	3/28/2007	1392487500	
P/T Number	CD VolID/CIMS Key	CD Label	Payee Name			
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2538	2	6210309200	0	3/28/2007	False	False	JPMORGAN CHASE BANK, NA
2537	1	8970324715	0	3/27/2007	False	True	JPMORGAN CHASE BANK, NA

THE FACE OF THIS DOCUMENT HAS A COLORED BACKGROUND ON WHITE PAPER AND CONTAINS A VOID PANTOGRAPH AND MICROPRINTING

K "K" LINE AMERICA, INC.

AS AGENTS FOR "K" LINE
8730 Stony Point Parkway
Suite 400
Richmond, VA 23235

Bank of America
901 West Trade Street
Charlotte, NC 28255
66-798/531

Check No. 6650228

Check Date
01/29/2007

PAY Seven Thousand Four Hundred Twenty AND 00/100

Check Amount: \$
\$ 7,420.00

TO THE ORDER OF GEMINI SHIPPERS ASSOCIATION
350 5TH AVE
SUITE 2030
NEW YORK, NY 10118
UNITED STATES

David R. Hill
Senior Vice President & Corporate Secretary

⑈06650228⑈ ⑆053107989⑆ 0480102722⑈ ⑆0000742000⑆

OFFICIAL RESERVE BANK OF GOVERNMENT

FOR DEPOSIT ONLY

FASHION ACCESSORIES SHIPPERS
ASSOC. INC.
DBA GEMINI SHIPPERS ASSOC.
023067272365

97780661734

JP MORGAN CHASE BANK, N.A.
⑆021000021⑆ < POSITION
01/30/2007 5970101161 4581 15
⑆03000196⑆ 13237 16 P02
⑆01/31/07⑆ 050 2261 16
01302007
021000021

6600368966

8770772406

Location	Acct #	Check #	Amount	Paid Date	Sequence	Customer Data
CD	480102722	6650228	\$7,420.00	1/31/2007	6600368966	
R/T Number	CD Void/CIMS Key	CD Label	Payee Name			
5310798	07020250071101	07020250071101				

053000206
11/29/2006
6536310391

This is a LEGAL COPY of
your check. You can use it
the same way you would
use the original check.

0002/28/11 11/28/2006
008570475846
0000001201

 "K" LINE AMERICA, INC. AS AGENTS FOR "K" LINE 8730 Stony Point Parkway Suite 400 Richmond, VA 23335	Bank of America 801 West Trade Street Charlotte, NC 28255 80-769521	Check No. 6646513 Check Date 11/27/2006
	Check Amount \$ 28,610.00	
PAY Twenty Eight Thousand Six Hundred Ten AND 00/100		
TO THE ORDER OF GEMINI SNEPERS ASSOCIATION 330 5TH AVE SUITE 2030 NEW YORK, NY 10118 UNITED STATES	Signature: <i>[Handwritten Signature]</i> Bank of America & Company Secretary <i>[Handwritten Signature]</i>	

⑆06646513⑆ 4⑆053107989⑆ 0480102722⑆ ⑆0002861000⑆

0237695174 11292006 0530-0020-6 ENT=2519 TRC=2542 PK=13 627-0001155	FOR DEPOSIT ONLY FASHION ACCESSORIES SHIPPERS ASSOC. INC. DBA GEMINI SNEPERS ASSOC. BROOKLYN, NY	021000021 11/26/2006 008570475846 074904962 11/29/2006 006210075093 *053000206* 11/29/2006 6536310391
JPMORGAN CHASE BANK, N.A. ⑆021000021⑆ < POSITION 112872006 427064130 5255 15 23 800002001 224 ⑆ 000003	BANK OF AMERICA, N.A. ⑆05300196⑆ ES4⑆ 0570475846 11/27/06	Do not endorse or write below this line.

Location	Acct #	Check #	Amount	Paid Date	Sequence	Customer Data
CD	480102722	6646513	\$28,610.00	11/29/2006	6400091689	
R/T Number	CD Valid/CIMS Key	CD Label	Payee Name			
5310798	06120440074401	06120440074401				

053000206
 10/12/2006
 6238688156

This is a LEGAL COPY of
 your check. You can use it
 the same way you would
 use the original check.

9002/TT/01
 9991006900
 000370011616
 012000007201

Bank of America
 801 West Trade Street
 Charlotte, NC 28233
 88-789311

"K" LINE AMERICA, INC.
 AS AGENTS FOR "K" LINE
 8730 Stony Point Parkway
 Suite 400
 Richmond, VA 23231

Check No. 6643344

Check Date
 10/09/2006

Check Amount
 \$ 23,447.00

PAY Twenty Three Thousand Four Hundred Forty Seven AND 00/100

TO THE ORDER OF
 GEMINI SHIPPERS ASSOCIATION
 350 5TH AVE
 SUITE 2030
 NEW YORK, NY 10118
 UNITED STATES

James A. Van...
 Cashier

⑆06643344⑆ ⑆053107989⑆ 0480102722⑆ ⑆0002344700⑆

⑆06643344⑆ ⑆053107989⑆ 0480102722⑆ ⑆0002344700⑆

0331273827
 10122006
 0530-0020-6
 ENT=1590 TR

BANK OF AMERICA NA CAR
 053000100 E1291 16 P02
 10/12/06

NON DEPOSIT ONLY
 FASHION ACCESSORIES SHIPPERS
 ASSOC. INC.
 DBA GEMINI SHIPPERS ASSOC.
 CASH/ATM

021000021
 006210276672
 053000206
 10/12/2006
 62386888156

Do not endorse or write below this line.

Location	Acct #	Check #	Amount	Paid Date	Sequence	Customer Data
CD	480102722	6643344	\$23,447.00	10/12/2006	6600284521	
R/T Number	CD VOID/CIMS Key	CD Label	Payee Name			
5310798	06110340073401	06110340073401				

ATTACHMENT D
TO THE COMPLAINT BEFORE THE
FEDERAL MARITIME COMMISSION

Welcome



- Gemini Shippers Group includes Gemini Shippers Association, Gemini FPD, and Fashion Accessories Shippers Association (FASA), not-for-profit associations offering membership to importers and exporters of various products.
- Our 200-plus member organization is composed of small and medium sized companies.
- With shipments in excess of 5000 forty-foot containers per month, Gemini has the volume to save you money on your international freight costs.

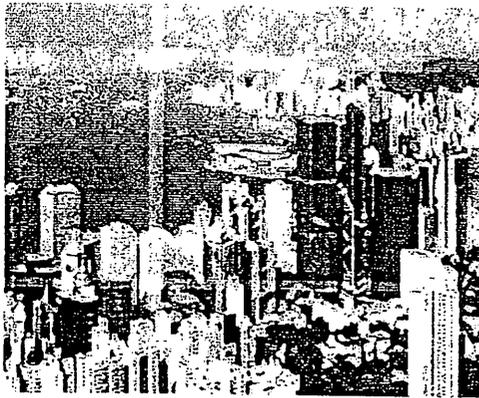
About Us



- ▲ We are a member driven, not-for profit association with a one hundred year history of serving our members.
- ▲ We combine the freight volume of our members and sign contracts directly with ocean shipping lines on behalf of our members.
- ▲ Our expert staff has many years of hands-on experience in shipping, importing and exporting, Customs, trade finance, etc.



About Us



Gemini evolved from FASA (Fashion Accessories Shippers Association), one of the first shippers associations formed following the U.S. Shipping Act of 1984. With our outstanding reputation, we began to receive requests for membership from companies outside the fashion accessory and travel goods industries. Several years ago, we opened the membership to shippers of all products. Today, we successfully serve companies in industries as diverse as accessories, apparel, luggage, furniture, footwear, household goods, and office supplies, toys and health

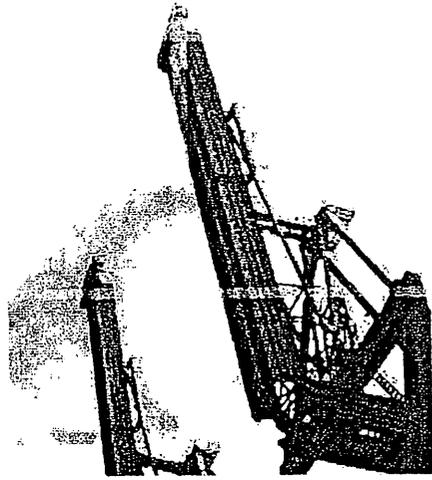


About Us



Shippers Association), one of the first shippers associations formed following the U.S. Shipping Act of 1984. With our outstanding reputation, we began to receive requests for membership from companies outside the fashion accessory and travel goods industries. Several years ago, we opened the membership to shippers of all products. Today, we successfully serve companies in industries as diverse as accessories, apparel, luggage, furniture, footwear, household goods, and office supplies, toys and health care.



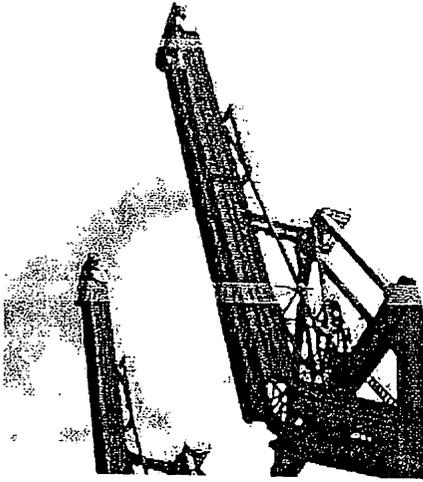


Benefits

- There is no charge to become a member.
- A true WIN-WIN!! Dues charged only on containers shipped under Gemini contracts.
- Member information is kept strictly confidential.
- We negotiate and maintain many active global contracts with major shipping lines.
- Members ship with their preferred carrier under our contracts.



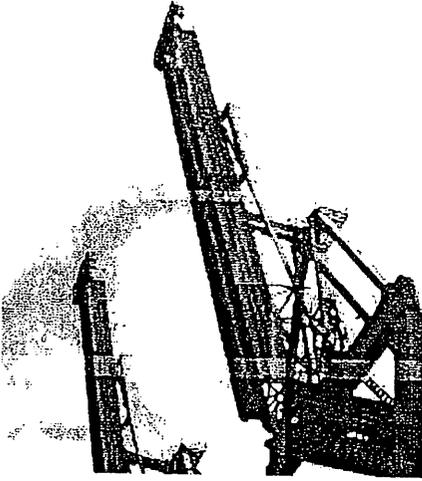
Benefits



- Our contracts have staggered expiration dates – giving our members great flexibility
- Members save on freight costs, while the risk of fulfilling service contract obligations is assumed by Gemini Shippers Association.
- Members can potentially save tens of thousands of dollars annually by shipping under the Gemini contracts due to our large negotiating volume and reduced rates.



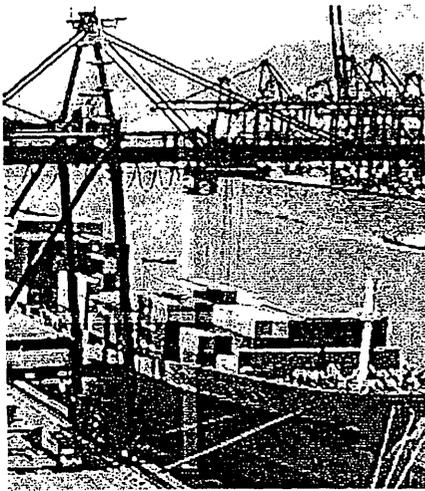
Benefits



- Members can potentially save tens of thousands of dollars annually by shipping under the Gemini contracts due to our large negotiating volume and reduced rates.
- We work very closely with our members to handle any special needs they may have (such as door delivery, free time, etc.)



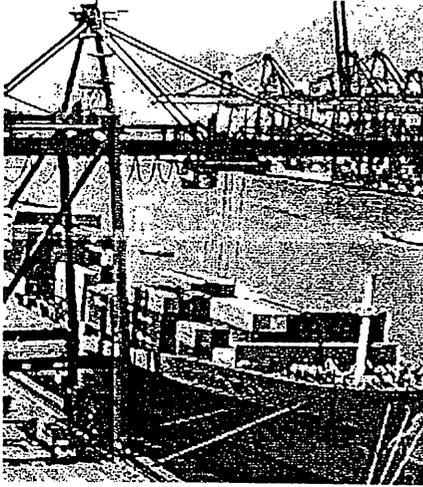
Services



-  Gemini maintains an extensive website and password-protected database for members only.
-  Our website provides updated Customs and trade information and useful links to necessary industry websites.
-  Our staff is always available to assist you with your shipping needs.
-  A prominent Customs attorney is available to Gemini members to answer difficult Customs questions.



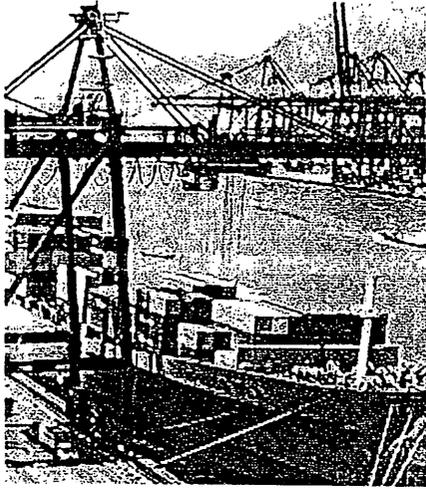
Services



We offer an LCL (loose freight) program from Hong Kong and Yantian to Los Angeles, New York and Canada at very low rates. We work with a freight forwarder to handle other origins and destinations with discounted rates for Gemini members.



Services



and Yantian to Los Angeles, New York and Canada at very low rates. We work with a freight forwarder to handle other origins and destinations with discounted rates for Gemini members.



BEFORE THE
FEDERAL MARITIME COMMISSION



KAWASAKI KISEN KAISHA, LTD.,
("K" Line) A Corporation
Complainant

V

DOCKET NO. 07- 10

-----X
FASHION ACCESSORIES SHIPPERS ASSOCIATION, INC.
A Corporation
GEMINI SHIPPERS ASSOCIATION, Inc., A Corporation
Sara Mayes
Harold Sachs
Respondents



-----X

COMPLAINANT'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS

PLEASE TAKE NOTICE that respondents are required to produce the documents referred to hereinafter and permit complainant, "K" Line, and its attorneys to inspect and copy said documents at the offices of Manelli, Denison & Selter, PLLC, at 2000 M Street, NW, Suite 700, Washington, DC 20036 in accordance with the Commission's Rules of Practice and Procedure.

CONTINUING REQUESTS

This request shall be deemed continuing so as to require prompt further and supplemental production if respondents locate or obtain possession, custody or control of additional responsive documents at any time prior to the hearing herein.

INSTRUCTIONS

Any party who produces documents shall produce them as they are kept in the usual course of business or shall organize and label them to correspond with the categories in this request. In this regard, and for purposes of illustration, it is requested that all documents be produced in the file folders and file cartons in which they have been maintained or stored, clipped, stapled or otherwise arranged in the same form and manner as they were found. If you choose to produce the documents requested to correspond to the categories in the requests, also identify the file folders, drawer or cartons in which the documents were originally maintained and the person or persons in whose custody or control such files are or were maintained.

Any response to these requests shall set forth the request in full before each response. Separate responses shall be provided with respect to each request before each response. Separate responses shall be provided with respect to each request. If, after a good faith search, you conclude that there are no documents responsive to a particular request, so state.

DEFINITIONS

A. As used herein, the terms “you,” or “your” shall mean the respondents “Fashion Accessories Shippers Association, Inc.” and “Gemini Shippers Association, Inc.” and all other persons or entities acting, or purporting to act, on behalf of them, as well as any partnership or association acting in concert with either of those entities, and the individual respondents insofar as related to either of the corporate respondents.

B. The term “document” or “documents” shall mean all writings of any kind, including the originals and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including, without limitation,

correspondence, memoranda, notes, diaries, statistics, letters, telegrams, minutes, contracts, reports, studies, surveys, checks, statements, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intraoffice communications, offers, notations of any sort regarding conversations, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, telefaxes, invoices, purchase orders, quotations, bids, bills of lading, statements, bills, worksheets, ledgers, books of account, accounting records, bank records and statements, tax returns or tax filings, and all drafts, alterations, modifications, changes and amendments of any of the foregoing), graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical or electric records or representations of any kind (including, without limitation, tapes, cassettes, discs, emails and recordings), to which any party has or has had access and/or control.

C. The term “person” shall mean any natural person, corporation, partnership, proprietorship, association, organization, or group of natural persons.

D. The term “identify” when used in reference to a natural person, shall require the party(ies) to state, to the fullest extent possible, his or her full name, present or last known address, positions at the time in question, and present position.

E. The term “identify,” when used in reference to any person other than a natural person, shall require the party(ies) to state, to the fullest extent possible, the full name and present or last known address of the principle place of business of the corporation, partnership, proprietorship, association, or other organization to be identified.

F. The term “identify,” when used in reference to a place, shall require the party(ies) to state, to the fullest extent possible, the street address, city, and state in which the place is situated, or if such identification is not possible, otherwise to describe its location.

G. The term “identify,” when used in reference to a document, shall require the party(ies) to state the date, author and type of document (e.g., letter, memorandum, telegram, chart, etc.), or to provide some other means of identifying it, and to disclose its present location and custodian. If the document was, but no longer is, in the party(ies) possession or subject to its control, state what disposition was made of it.

H. The term “identify,” when used in reference to an oral communication, shall require the party(ies) to identify all persons participating in the communication, the place of the communication and to set forth the date and substance of the communication.

PRIVILEGED OR PROPRIETARY MATTER

If any request for documents is deemed to call for the production of privileged or work product material and such privilege or work product is asserted, identify in writing each document so withheld and provide the following information:

- (a) the reason for withholding the document;
- (b) a statement of the basis for the claim of privilege, work product or other ground of non-disclosure; and
- (c) a brief description of the document including:
 - (i) the date of the document;
 - (ii) the number of pages and a description of any attachments and appendices;
 - (iii) the names of its author, authors and preparers and an identification by employment and title of each such person;
 - (iv) the name of each person who was sent or shown, a blind or carbon copy of the document, or who has had access to or custody of the document, together with an identification of each such person;
 - (v) the present custodian; and

- (vi) the subject matter of the document, and in the case of any document relating or referring to a meeting or conversation, identification of such meeting or conversation.

If any document request is deemed to call for disclosure of proprietary data, Complainants are prepared to receive such data pursuant to an appropriate order with respect to confidentiality.

LOST OR DESTROYED DOCUMENTS

If any document requested herein was at one time in existence, but has been lost, discarded or destroyed, identify each such document as completely as possible, providing as much of the following information as possible:

- (a) the type of document;
- (b) its date;
- (c) the date or approximate date it was lost, discarded or destroyed;
- (d) the circumstances and manner in which it was lost, discarded or destroyed;
- (e) the reason(s) for disposing of the document (if discarded or destroyed);
- (f) the identity of all persons authorizing or having knowledge of the circumstances surrounding the disposal of the document;
- (g) the identity of the person(s) who lost, discarded or destroyed the document; and
- (h) the identity of all persons having knowledge of the contents thereof.

DOCUMENTS REQUESTED

All the following documents which were created, maintained, copied, retained, sent or received by you at any time during the period of January 1, 2001 to the present date.

1. Your organizational documentation and all agreements or arrangements with shippers of cargo, including but not limited to so-called "members" or "non-members" of either corporate respondent or any other entity purporting to operate as a shippers' association, and any other materials you claim support your status (or that of any related entity) as a shippers' association entitled to enter into service contracts with ocean carriers under the

provisions of the Shipping Act of 1984, as amended, and the regulations issued by the Federal Maritime Commission.

2. All documents which may support your status as an entity which can bring any legal actions (including arbitration) in its own name as a personality separate from its "members", without participation of its "members" as complaining parties;
3. Your service contracts with carriers other than "K" Line during the years 2001 to the present, to be produced in accordance with confidentiality arrangements;
4. All communications concerning alleged violations of the so-called "No Back Solicitation" provision of the "K" Line service contracts, including authorization from any "members" to make a claim against "K" Line and/or pursue an arbitration claim for its breach, or any other legal remedies;
5. All documents containing references to the so-called "No Back Soliciting clause," including but not limited to discussions of rates of other carriers to be charged in case permission were given by FASA for contracting with a member or former member by any ocean carrier, and admonitions, claims, demand for penalties and/or damages for violations of the "No Back Soliciting clause," or similar restrictive clauses, in service contracts;
6. All documents related to your income, expenses, and all payments by you, including identification of all persons having any ownership or other interest in any person who received payments of money from you;
7. All documents which may or could support the status of persons as your "members," including but not limited to minutes of membership meetings, meeting minutes, communications regarding your activities as a "shippers' association," and any documents related to "shippers' association" activities;

8. All documents which identify your "members" and "former members;"
9. All documents related to the process by which persons have become your "members," or members of any shippers association.

Dated: 7 NOV 2007



J. P. Meade
"K" Line America, Inc.
6009 Bethlehem Road
Preston, MD 21655
410-673-1010
John.Meade@us.kline.com
Attorney for Kawasaki Kisen Kaisha, Ltd.

Of Counsel:
Manelli Denison & Selter PLLC
2000 M Street, N.W., Suite 700
Washington, D.C. 20036
Eliot J. Halperin
Deana E. Rose
202-261-1012, ehalperin@mdslaw.com
202-261-1016, drose@mdslaw.com

To: Kane Kessler, P.C.
1350 Avenue of the Americas
New York, New York 10019-4896
Tel.: (212) 541-6222
Fax: (212) 245-3009
Attention: Jeffrey H. Daichman, Esq.