

Plaintiffs, by and through undersigned counsel, individually and on behalf of a class of all those similarly situated, seeking treble damages and injunctive relief under the antitrust laws of the United States against Defendants, complain and allege as follows. This complaint supersedes all complaints on file in the cases that have been filed in or transferred to this Court as part of this multidistrict litigation.

NATURE OF THE ACTION

1. This antitrust class action charges that the Defendant companies – the nation’s leading less-than-truckload (“LTL”) carriers -- have fixed prices in violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

2. Plaintiffs bring this action on behalf of themselves and a class of entities (the “Class”) which purchased LTL freight transportation services from Defendant LTL carriers from July 31, 2003 to the present (the “Class Period”) and which were assessed a so-called “fuel surcharge” for the agreed-upon LTL freight transportation services (“LTL Fuel Surcharge”).

3. During and possibly before the Class Period, Defendants conspired to fix, raise, maintain, and/or stabilize prices of LTL fuel surcharges added to customers’ bills.

4. Defendants agreed with each other to charge LTL fuel surcharges to customers and to set and assess them in a common manner. Defendants portrayed

LTL fuel surcharges to customers as fees necessary to recoup unexpected fuel cost increases. However, pursuant to their agreement, Defendants employed LTL fuel surcharges so that they recouped much more than the increases in fuel costs and the fuel surcharges served as revenue generators and profit centers. Indeed, Defendants applied the fuel surcharges so that they bore no relationship to the cost of fuel for a particular trip. When Defendants' fuel costs increased, their profits increased much more than their increased fuel costs, and when Defendants' fuel costs decreased, their profits also decreased. Defendants' customers, the members of the proposed Class, were unable to negotiate lower fuel surcharges from Defendants even though, in a genuinely competitive market, it would have been in Defendants' economic self interest to do so in order to expand their market share.

5. Pursuant to their agreement, Defendants maintained an appearance of competing on LTL freight shipment rates, while using LTL fuel surcharges as revenue enhancement measures shielded from normal competitive forces.

6. Defendants agreed to – and did in fact – set their LTL fuel surcharges as a percentage of the base rates that they charged their customers, and they used common indices, timing, and trigger points for adjusting the percentages. In this manner, Defendants maintained the similarity of the LTL fuel surcharges they charged their customers during the Class Period. Defendants' conduct during the

Class Period—and the success of their conduct in raising the levels of LTL fuel surcharges—is in marked contrast to what occurred prior to the Class Period.

7. As a direct result of this conspiracy, Defendants restrained competition among LTL freight transportation services and injured Plaintiffs and the other members of the Class in their business and property. Plaintiffs and other members of the Class paid a higher price for LTL fuel surcharges than they would have paid absent the concerted unlawful conduct alleged herein.

PARTIES

Plaintiffs

8. Plaintiff Acushnet Rubber Company, Inc. d/b/a Precix (“Precix”) is a corporation with its principal place of business in New Bedford, Massachusetts. During the Class Period, Precix purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

9. Plaintiff Alum-A-Lift, Inc. (“Alum-A-Lift”) is a corporation with its principal place of business in Winston, Georgia. During the Class Period, Alum-A-Lift purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

10. Plaintiff Berle Manufacturing Co., Inc. (“Berle”) is a corporation with its principal place of business in Charleston, South Carolina. During the Class

Period, Berle purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

11. Plaintiff Brewton Enterprises, Inc. (“Brewton”) is a corporation with its principal place of business in Brewton, Alabama. During the Class Period, Brewton purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

12. Plaintiff Dad’s Products Company, Inc. (“Dad’s”) is a corporation with its principal place of business in Meadville, Pennsylvania. During the Class Period, Dad’s purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

13. Plaintiff Farm Water Technological Services, Inc. (“Farm Water”) is a corporation with its principal place of business in Brawley, California. During the Class Period, Farm Water, by itself and through its wholly-owned subsidiary C.B.J.T., purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

14. Plaintiff Global Wire, Inc. (“Global”) is a corporation with its principal place of business in Connecticut. During the Class Period, Global, by itself and through its wholly-owned subsidiaries Wyre Wynd Life Wire, Inc. and

Montgomery Wire Corporation, purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

15. Plaintiff NuTex Manufacturing Company, LLC (“NuTex”) is a corporation with its principal place of business in Brewton, Alabama. During the Class Period, NuTex purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

16. Plaintiff PCM Company (“PCM”) is a corporation with its principal place of business in Camden, New Jersey. During the Class Period, PCM purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

17. Plaintiff Rocket Motorcycles, Inc. (“Rocket”) is a corporation with its principal place of business in San Diego, California. During the Class Period, Rocket purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

18. Plaintiff Tex-Tech Industries, Inc. (“Tex-Tech”) is a corporation with its principal place of business in Portland, Maine. During the Class Period, Tex-Tech purchased LTL freight transportation services directly from one or more Defendants and was assessed an LTL fuel surcharge.

Defendants

19. Defendant Arkansas Best Corporation (“ABC”) is a holding company engaged, through its subsidiaries, in motor carrier transportation operations. ABC offers LTL freight transportation services through its wholly owned subsidiaries, including ABF Freight System, Inc., ABF Freight System Canada, ABF Cartage, Land-Marine Cargo, and FreightValue, Inc.

20. Defendant ABF Freight System, Inc. (“ABF”) is the largest subsidiary of ABC, accounting for 97.3% of ABC’s revenues for 2006. ABF is one of North America’s largest LTL motor carriers and provides direct service to over 97% of the cities in the United States having a population of 25,000 or more. ABC’s and ABF’s headquarters are at 3801 Old Greenwood Road, Fort Smith, Arkansas 72903.

21. Defendant Averitt Express, Inc. (“Averitt”) is a privately held LTL company with most of its operations concentrated in the southeastern United States. Averitt’s headquarters are located at Perimeter Place One, 1415 Neal Street, Cookeville, Tennessee 38502.

22. Defendant Con-Way Inc. and its subsidiaries and business segments provide transportation, logistics, and supply-chain management services for a range of manufacturing, industrial, and retail customers. In April 2006,

shareholders approved management's proposal to change the company's name from "CNF Inc." to "Con-way Inc." The company headquarters are at 2855 Campus Drive, Suite 300, San Mateo, California 94403.

23. Defendant Con-way Freight Inc. is a national LTL freight transportation company and subsidiary of Con-way Inc. On August 22, 2007, the company announced that it was consolidating its three regional LTL operating companies – Con-way Freight-Central, Con-way Freight Southern, and Con-way Freight-Western – into a single centralized operation headquartered at 110 Parkland Plaza, Ann Arbor, Michigan 48103. Con-way Inc. and Con-way Freight Inc. are collectively referred to herein as "Con-way."

24. Defendant Estes Express Lines ("Estes") is a privately held company and one of the nation's largest LTL trucking companies covering all regions of the United States. Estes has its principal place of business at 3901 West Broad Street, Richmond, Virginia 23230.

25. Defendant FedEx Freight Corporation ("FedEx Freight") provides packaging, shipping, and freight services, including LTL services. FedEx operates in the LTL segment in the United States primarily through FedEx Freight and FedEx National LTL. FedEx Freight has its headquarters at 1715 Aaron Brenner Drive, Memphis, Tennessee 38120.

26. Defendant FedEx National LTL, Inc. (“FedEx National”) provides packaging, shipping, and freight services, including LTL services and was created as a result of FedEx Corporation’s purchase in September of 2006 of the LTL operations of Watkins Motor Lines and certain affiliates. FedEx National has its principal place of business at 1144 Griffin Rd., Lakeland, Florida 33805. Unless otherwise indicated herein, FedEx Freight and FedEx National are referred to collectively as “FedEx.”

27. Defendant Old Dominion Freight Line, Inc. (“Old Dominion”) is a multi-regional LTL carrier that provides one to five-day service within five regions of the United States. Old Dominion’s headquarters are located at 500 Old Dominion Way, Thomasville, North Carolina 27360.

28. Defendant Saia, Inc. is a trucking transportation company. Saia, Inc. was organized in 2000 as a wholly owned subsidiary of Yellow Corporation, now known as YRC Worldwide, Inc., and was spun-off to become an independent public company on September 30, 2002. Saia, Inc. now operates as a single segment company with one operating subsidiary, Defendant Saia Motor Freight Line LLC.

29. Defendant Saia Motor Freight Line LLC (“Saia LLC”) offers national, interregional, and regional LTL services. The headquarters of Saia, Inc. and Saia

LLC are located at 11465 Johns Creek Parkway, Suite 400, Duluth, Georgia 30097. Saia, Inc. and Saia LLC are collectively referred to herein as “Saia.”

30. Defendant UPS Ground Freight, Inc. (“UPS”) is a freight, package delivery, and supply chain management company. UPS’s headquarters are located at 100 Semmes Avenue, Richmond, Virginia 23224.

31. Defendant YRC Worldwide, Inc. (“YRC”) is a Fortune 500 trucking company providing national LTL services and other freight services using its own name and several other brands, including those of its subsidiaries Yellow Transportation, Inc. and Roadway Express, Inc. YRC’s headquarters are located at 10990 Roe Avenue, Overland Park, Kansas 66211.

CO-CONSPIRATORS

32. Various others, presently unknown to Plaintiffs, participated as co-conspirators with the Defendants in the violations of law alleged in this Complaint and have engaged in conduct in furtherance thereof.

33. The acts charged in this Complaint occurred within this District and throughout the nation. The acts of Defendants and their co-conspirators were authorized, ordered, or done by their respective officers, agents, employees, or representatives while actively engaged in the management of the business or affairs of each respective Defendant or co-conspirator.

JURISDICTION AND VENUE

34. Plaintiffs bring this action pursuant to Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26) to recover treble damages, injunctive relief, and costs of suit, including reasonable attorneys' fees, as the result of Defendants' violation of Section 1 of the Sherman Act (15 U.S.C. § 1).

35. Subject-matter jurisdiction is proper pursuant to 28 U.S.C. § 1337 and Sections 4 and 16 of the Clayton Act (15 U.S.C. §§ 15 and 26).

36. Venue is proper in this District pursuant 28 U.S.C. § 1391(b) and (c) and Section 12 of the Clayton Act (15 U.S.C. § 22).

37. Defendants maintain offices, have agents, or transact business within this judicial District, a substantial part of the events giving rise to the claim for relief occurred in this District, and Defendants regularly and continuously conduct business in interstate commerce that is carried out in part in this District.

38. This Court has personal jurisdiction over Defendants because, *inter alia*, each Defendant: (a) transacted business in this District; (b) directly or indirectly sold and delivered LTL freight transportation services in this District; (c) has substantial aggregate contacts with this District; and (d) engaged in an illegal price-fixing conspiracy that was directed at, and had the intended effect of causing

injury to, persons and entities residing in, located in, or doing business in this District.

39. Plaintiffs hereby submit to the jurisdiction of this Court by the filing of this Consolidated Amended Complaint.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action on behalf of themselves and all others similarly situated (the “Class”) pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2) and (b)(3). The Class is defined as follows:

All direct purchasers of LTL freight transportation services from Defendants who paid an LTL fuel surcharge at any time from July 31, 2003 to the present. Excluded from the Class are Defendants, any subsidiaries or affiliates of Defendants, any of Defendants’ co-conspirators, whether or not named as a Defendant in this Complaint, and all governmental entities.

41. Plaintiffs are currently unaware of the exact size of the Class because such information is in the exclusive control of Defendants. Class members are identifiable from information and records in the possession of Defendants. Due to the nature of the trade and commerce involved, Plaintiffs believe that the Class is so numerous and geographically dispersed throughout the United States as to render joinder of all Class members impracticable.

42. Plaintiffs' claims are typical of the claims of the members of the Class. Plaintiffs and all members of the Class were injured by the same wrongful conduct by Defendants and suffered damages as a result.

43. Plaintiffs will fairly and adequately protect the interests of the members of the Class. Plaintiffs are represented by counsel experienced and competent in the prosecution of complex litigation, including class actions and antitrust litigation.

44. Questions of law or fact common to the Class include:

a. Whether Defendants conspired or combined for the purpose and with the effect of fixing, raising, maintaining, or stabilizing the price of LTL fuel surcharges applied to LTL freight transportation services purchased by members of the Class;

b. Whether Defendants' conduct violated the federal antitrust laws; and

c. Whether Defendants' conduct caused injury to the business and property of Plaintiffs and members of the Class and, if so, the proper measure of damages.

45. These and other questions of law and fact are common to the Class and predominate over any questions affecting only individual Class members.

46. Class action treatment is the superior method for the fair and efficient adjudication of this controversy because, among other things, such treatment will permit a large number of similarly situated entities to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of evidence, effort, and expense that numerous individual actions would engender. The benefits of proceeding through the class mechanism, including providing injured persons or entities with a method for obtaining redress on claims that might not be practicable to pursue individually, substantially outweigh the difficulties, if any, that may arise in management of this class action.

FACTUAL ALLEGATIONS

LTL Transportation Services

47. The trucking system hauls approximately 69% of the nation's freight by volume and 84% by revenue. Trucks provide transportation services to virtually every other industry operating in the United States. Even freight carried by other transportation modes depends on trucking to provide access to air cargo, railroad, and seaport terminals.

48. Within the for-hire trucking industry, there are two major segments: truckload ("TL") and LTL shipping. TL carriers move shipments – a full truckload of goods or close to it – directly from origin to destination. LTL carriers

consolidate, haul, and distribute goods through a network of terminals in LTL lots. TL carriers generally transport shipments greater than 10,000 pounds, while LTL carriers transport shipments less than 10,000 pounds. Typically, an LTL operation collects small shipments from local pick-ups, moves them over the road between terminals in truckloads, and breaks them up at the destination terminal, where it makes local deliveries.

49. The LTL market segment contrasts with the TL market segment both in mode of operation and degree of concentration. There are approximately 53,000 TL firms, and a substantial share of total TL revenue is with small and middle-sized TL firms. In the LTL market sector, which has become increasingly concentrated, the Defendants, during the Class Period, had a collective market share of 75% or more. The following table lists the Defendants' revenues in 2007.

ABF	Averitt	Con-way	Estes	FedEx Freight	Old Dominion	Saia	UPS	YRC (Nationals & Regionals)
\$1.77 billion	\$580 million	\$2.904 billion	\$1.476 billion	\$4.144 billion	\$1.401 billion	\$908 million	\$2.108 billion	\$9.027 billion

These carriers collectively accounted for \$24.318 billion (82%) of the \$29.595 billion in revenues earned in 2007 by the top 25 LTL carriers.

50. To operate its business, an LTL firm requires a set of terminals. Each terminal must have a force of pick-up and delivery drivers. Typically, the drivers depart in the morning with loaded trucks, make deliveries, spend the afternoon picking up loads, and return to the terminal at the end of the day with outbound loads.

Structural Characteristics of the LTL Industry Conducive To Collusion

51. A number of structural characteristics of the LTL industry facilitated the implementation and maintenance of the conspiracy alleged herein.

a. LTL services are interchangeable and fungible in the sense that any such services provided by any Defendant are substitutable for the LTL services provided by any other Defendant.

b. LTL services are homogeneous services sold by Defendants and purchased by Plaintiffs and members of the Class primarily on the basis of price.

c. Demand for LTL services is inelastic, so the gains to be obtained from collusion are substantial.

d. The LTL service industry in the United States is highly concentrated, a factor that facilitates coordination of prices. By at least 2003, the LTL industry had consolidated to the point where collusion on fuel

surcharges presented to the major players an attractive means by which to boost revenue. For example, in 2003, Defendant YRC, then operating under the names Yellow Freight System and Yellow Transportation, merged with Roadway Express, then one of the largest LTL companies. Subsequently, in 2005, the combined Yellow/Roadway entity merged with USF, another major LTL company, further increasing LTL market concentration. No new entrant of note has entered the LTL market since 1990. The only new entities that entered the market did so by purchasing existing companies.

e. There are substantial barriers to viable entry into the LTL industry. In addition to industry expertise and substantial investments of time and financial resources, any entity seeking entry into the LTL industry would require the purchase or lease of hundreds of trucks and dozens of truck depots. The tight labor market for truck drivers further restricts entry into the LTL market, where even the most established industry participants often face significant driver shortages. Thus, any attempted entry into this industry is both expensive and risky.

f. When package shipping leaders FedEx and UPS entered the LTL market, they purchased and rebranded existing LTL companies rather than attempting to enter the market directly.

g. Unlike some industries, most shippers cannot economically “stock up” on LTL services when prices are low and use this stockpile when shipping prices are high. This factor facilitates the maintenance of cartel prices.

h. Defendants compete horizontally for the business of LTL shippers. This similarity of interest also facilitates formation of an agreement to fix and maintain cartel prices.

i. The LTL industry has a high ratio of fixed to variable costs. Capital equipment, software, advertising, depot purchase or lease, driver recruitment and training, and other capital costs are high relative to variable costs.

j. All Defendants have similar cost structures. None of the Defendants are significantly more efficient than the industry average.

k. The LTL industry is mature, and like many other mature industries, it is characterized by slim profit margins, which creates a motivation to collude.

l. The level of cooperation within the LTL trucking industry is higher than in other industries, and it has created a level of trust and personal familiarity among industry members that has facilitated Defendants’

collusion. This has enabled Defendants to form anti-competitive agreements, monitor “cheating” on such agreements, and enforce the terms of their collusive undertakings.

m. Defendants communicated with each other, among other ways, through publication on their websites and in other places of both current fuel surcharge levels and potential indexed future surcharge levels. There is no economic reason for Defendants to list on their websites potential future surcharge levels. Defendants also use identical pricing software such as CzarLite, which is licensed to each Defendant. These measures allow Defendants to monitor compliance with the agreed-upon fuel surcharges.

n. Discussions of mergers and sales of assets from one Defendant to another, have given Defendants opportunities to exchange non-public, competitively sensitive financial information, periodically allowing them to audit and gauge their co-conspirators’ compliance in imposing supra-competitive fuel surcharges.

Federal Deregulation of the Trucking Industry

52. Before 1980, almost all LTL carriers belonged to a regional motor carrier rate bureau, through which rates were set for various classes of LTL freight. Most shippers paid the class rates the bureaus set and published for their member

carriers. All rates were subject to regulatory challenge by application to the Interstate Commerce Commission (“ICC”), and later the Surface Transportation Board (“STB”), which replaced the ICC.

53. As the interstate highway system was built and trucks, rather than railroads, came to dominate the carriage of manufactured goods, the motor carrier industry achieved financial stability. The original rationale for restrictive motor carrier regulation thus ceased to exist. In the 1980 Motor Carrier Act (the “1980 Act”) (Pub. L. No. 96-296, 94 Stat. 293 (1980)), Congress largely repealed interstate motor carrier regulation to promote competition. The 1980 Act curtailed the permissible activities of rate bureaus. Among other things, the 1980 Act prohibited bureaus and their members from interfering with any carrier’s right to publish its own rates.

54. In the Trucking Industry Regulatory Reform Act (Pub. L. No. 103-311, 108 Stat. 1683 (1994)), Congress relieved motor carriers of their obligation to file general freight tariffs.

55. In the ICC Termination Act of 1995 (“ICCTA”) (Pub. L. No. 104-88, 109 Stat. 803 (1995)), Congress also removed most of the remaining framework of regulation in favor of encouraging competition. Congress also mandated a

periodic review of existing motor carrier bureau agreements by the successor to the ICC, the STB, under a “public interest” standard.

56. Following the ICCTA, several motor carrier bureaus with STB-approved agreements continued to exist. One of these bureaus, the National Classification Committee (“NCC”), comprised of motor carrier members, established freight commodity classifications. The NCC assigned to each commodity a numerical “rating” based on four transportation characteristics – density, stowability, ease of handling, and liability for breakage or loss. Other bureaus, called “rate bureaus,” acting independently of NCC, then developed collective rates (referred to as “class rates”) based on the classification ratings developed by the NCC and other movement characteristics.

57. In two decisions dated May 7, 2007, the STB terminated its approval of the NCC and the regional motor carrier rate bureaus, finding that they were not in the public interest.

58. The limited antitrust immunity given until 2007 to the NCC and the regional rate bureaus did not and does not apply to the conduct challenged in this case. Following passage of the ICCTA, many trucking companies – particularly the large carriers such as the Defendants here – purported to set their rates individually, according to their own costs and market conditions. Thus, no

antitrust immunity attaches to this conduct. Likewise, the LTL fuel surcharges imposed by the Defendants were not the result of any STB-approved collective rate-making activities. Instead, they were the result of fuel surcharge programs instituted by the Defendants, which were purportedly individual cost-recoupment measures, but were actually the result of concerted conduct to which no antitrust immunity applies.

**The LTL Fuel Surcharges Imposed During The Class Period
Differed From Previous LTL Fuel Surcharges**

59. Fuel surcharges had been imposed intermittently by members of the LTL industry for decades. However, the fuel surcharges imposed by Defendants during the Class Period differ markedly from those utilized in earlier periods and represent a sharp break in industry practice.

60. First, the surcharges imposed in these earlier periods, unlike those imposed during the Class Period, varied significantly from carrier to carrier.

61. Second, during the Class Period, LTL carriers imposed customer surcharges that significantly exceeded actual increases in fuel costs.

62. Third, during the Class Period, LTL carriers were successful in setting fuel charges as a percentage of the cost of the base freight rate.

63. Fourth, LTL carriers were significantly more successful in imposing fuel surcharges during the Class Period than in prior periods. While some LTL

carriers attempted to impose fuel surcharges in July and August 1999, such as ABF, Roadway Express, Inc., YRC, FedEx Freight's then LTL subsidiary, and Old Dominion, shippers often refused to pay them or found alternate carriers who agreed not to impose them. After mid-2003, however, Defendant LTL carriers presented a unified front on fuel surcharges, with the result that shippers were far less successful in avoiding having to pay LTL fuel surcharges to Defendants.

**Defendants' Conspiracy To Impose LTL Fuel Surcharges
During The Class Period**

64. Beginning at least as of July 31, 2003, Defendants conspiratorially implemented LTL fuel surcharge programs which, although presented as individual cost-recoupment measures, allowed Defendants to boost revenues by generating profits shielded from competition.

65. Defendants implemented their agreement by exchanging information both in private and by publicly announcing agreed-upon surcharge levels and posting present and possible future fuel surcharge percentages on their respective websites. This allowed Defendants to monitor and enforce the agreed-upon LTL fuel surcharge levels.

66. Defendants' choice of a common index, common trigger points for adjustment, and a common methodology are all evidence of the fact that Defendants' LTL fuel surcharge programs were the result of concerted, rather than

legitimate independent conduct. As one industry analyst observed, “despite different LTL carriers having very different operational characteristics and economies, they invariably set nearly identical fuel surcharge levels.”

67. Defendants agreed to impose identical or nearly identical fuel surcharges by agreeing to tie their fuel surcharges to a publicly available index of diesel fuel prices (“Fuel Index”) published by the United States Department of Energy (“DOE”). To communicate movements in pricing and to police the cartel, each Defendant listed its current fuel surcharge and possible future surcharges on its website. As a result, Defendants’ fuel surcharges moved in lockstep or near lockstep, as illustrated in the following chart showing the fuel surcharges of Defendants in May 2007 (or, with respect to Estes, April 18, 2007) at different Fuel Index levels:

Diesel Fuel \$/Gallon	ABF	Averitt	Con-way	Estes	FedEx Freight	Old Dom.	Saia	UPS	YRC
1.80	8.9%	8.9%	9.0%	8.5%	8.9%	8.5%	8.9%	8.9%	8.9%
2.00	10.9%	10.8%	10.9%	10.5%	10.9%	10.5%	10.9%	10.9%	10.9%
2.20	12.9%	12.9%	12.9%	12.5%	12.9%	12.5%	12.9%	12.9%	12.9%
2.40	14.9%	14.9%	14.9%	14.5%	14.9%	14.5%	14.9%	14.9%	14.9%
2.60	16.9%	16.9%	16.9%	16.5%	16.9%	16.5%	16.9%	16.9%	16.9%
2.80	18.9%	18.9%	18.9%	18.5%	18.9%	18.5%	18.9%	18.9%	18.9%
3.00	20.9%	20.9%	20.9%	20.5%	20.9%	20.5%	20.9%	20.9%	20.9%

68. In May of 2007, the Fuel Index was at \$2.80 per gallon range. At that Fuel Index level, Defendants imposed fuel surcharges of 18.9%, 18.9%, 18.9%, 18.5%, 18.9%, 18.5%, 18.9%, 18.9% and 18.9%, respectively.

69. Absent the benefit of a conspiracy, it would not have been in the independent economic self-interest of each Defendant to use a common form, index, trigger points and computation methodology for LTL fuel surcharges, or to use the same timing for adjusting LTL fuel surcharges instead of seeking to increase its business and market share by implementing a different or lower LTL fuel surcharge or methodology than its competitors.

70. Having both the incentive and opportunity to conspire, Defendants agreed among themselves to: (1) charge LTL fuel surcharges to customers; (2) compute and apply them in a common manner; (3) set and compute them as percentages of their customers' base freight rates using a common index so that any increases were not reflective of actual fuel cost increases; (4) use common trigger points; (5) maintain near uniformity of the percentages charged; (6) portray the surcharges to customers as necessary to recoup unexpected fuel cost increases when they were not; (7) use the surcharges as revenue generators; and (8) maintain an appearance of competing on LTL freight shipment rates, while using LTL fuel

surcharges as revenue-enhancement measures shielded from normal competitive forces.

71. The amount of the fuel surcharge imposed by the LTL carriers has at times exceeded the entire cost of fuel for delivering the freight of most customers, and since mid-2003, Defendants' fuel surcharges have consistently and significantly exceeded actual fuel price increases. For example, FedEx Freight noted that "[w]hile fuel costs increased substantially in 2006, fuel surcharges more than offset the effect of higher fuel costs." Similarly, Con-Way stated: "[a]s fuel prices have risen, the fuel surcharge has increased Con-way Freight's yields and revenue, and Con-way Freight has more than recovered higher fuel costs and fuel-related increases in purchased transportation."

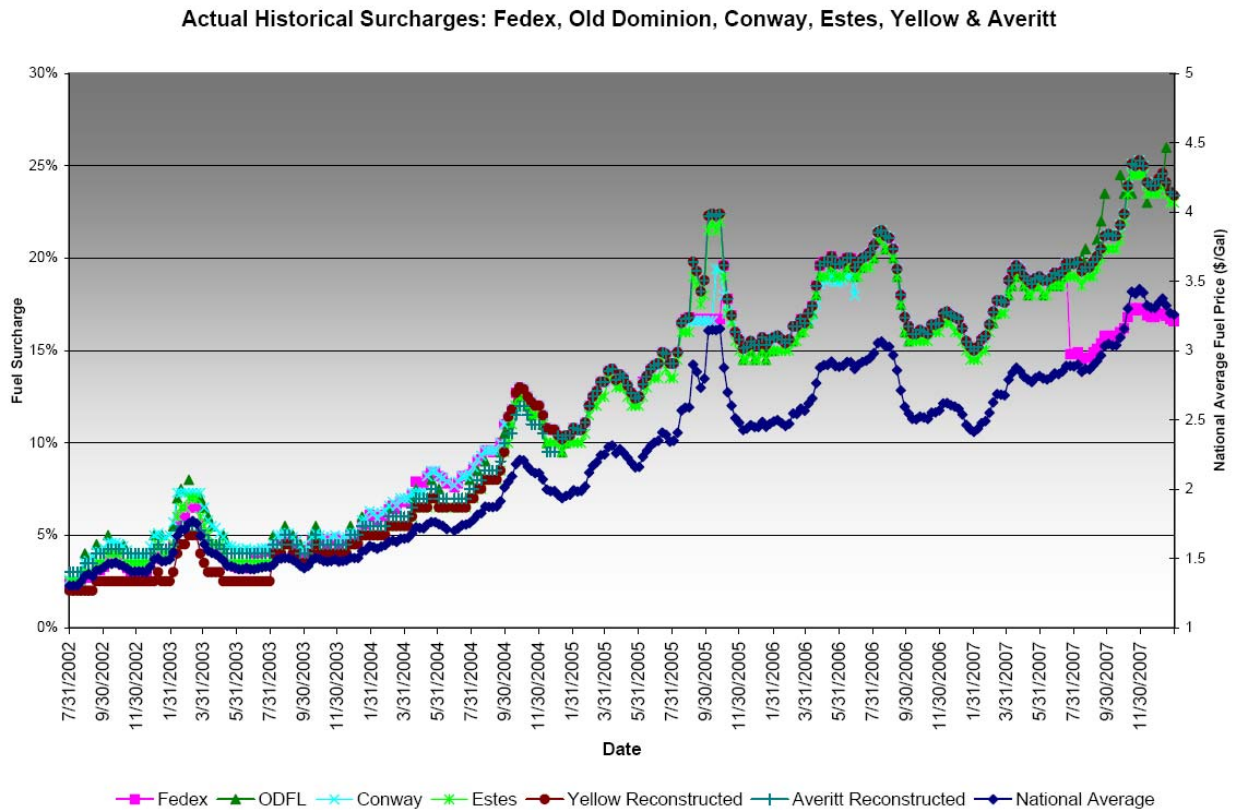
72. The increases in Defendants' LTL fuel surcharges as fuel prices increased has exceeded the amount by which fuel costs actually increased by ever more significant amounts. As is shown in the table set forth above, as fuel charges increased by 50% from \$2.00 to \$3.00, fuel surcharges nearly doubled from 10.9% to 20.9%.

73. Moreover, Defendants' actual fuel costs were often limited by hedging contracts. Surcharges that significantly and increasingly exceeded fuel

costs are not consistent with independent profit maximization in a competitive industry with interchangeable services, but are instead consistent with collusion.

74. The differences between the fuel surcharges imposed by Defendants during and before the Class Period are illustrated by the following chart, which shows historical surcharge levels for FedEx Freight, Old Dominion, Conway, Estes, Yellow and Averitt from July 31, 2002 through January 31, 2008. These were the only Defendants for which Plaintiffs had information for that entire period. The LTL fuel surcharges for the first four companies have been listed on their respective websites; the surcharges for the latter two are reconstructed from the surcharge schedules from their websites applied to the price for U.S. On-Highway Diesel Fuel Prices, published by the DOE and also depicted on the chart as the National Average. The chart demonstrates that there was a greater degree of disparity among the Defendants' surcharges before July 31, 2003, than after July 31, 2003 (until FedEx's reduction of its fuel surcharges on July 23, 2007). During the Class Period, Defendants' surcharges moved upward in nearly identical fashion (except for a brief period in 2005 due to Hurricanes Katrina and Rita) and there was an increasing disparity favoring Defendants between those surcharge levels and the national average price of diesel fuel. In July 2007, FedEx Freight and FedEx National unilaterally reduced their fuel surcharge levels by 25%. While the

other Defendants depicted in the chart continued to raise their fuel surcharges, they no longer acted completely in unison.



LTL Fuel Surcharge Levels Imposed By Defendants During The Class Period Were Not Justified By Actual Fuel Costs

75. The structure of the LTL fuel surcharges imposed by Defendants during the Class Period does not relate to changes in fuel costs, as one would expect if they resulted from independent behavior in a competitive market with interchangeable services. In particular, Defendants’ surcharges are a flat

percentage of the base shipping rate and do not vary across contracts, even though the percentage of costs that is attributable to fuel for a particular trip does vary. Moreover, if an LTL trucking company provides the loading and unloading services (as opposed to the shipper or consignee), a fuel surcharge is applied to those services even though not a single gallon of diesel fuel is used for them. Likewise, the surcharges apply to warehousing charges even though warehousing involves no fuel.

76. By agreeing to compute LTL fuel surcharges as a percentage of a customer's base rate, Defendants ensured that LTL fuel surcharges would not correlate to any actual increase in the cost of fuel, but would instead serve as revenue generators and profit centers. Freight rates consist of fixed and variable costs, as well as profit. Setting a fuel surcharge as a percentage of these different variables allowed Defendants to collect a fuel surcharge that exceeded their cost of fuel for particular shipments.

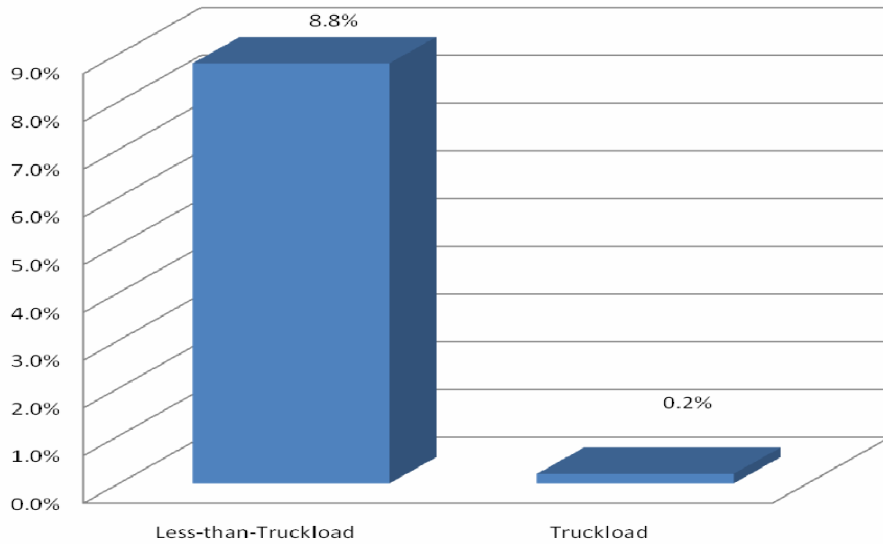
77. Defendants' conspiratorial practices in this regard were undertaken for purpose of maximizing revenue and profit and without true regard to fuel prices as an element of their costs.

76. Defendants were more successful during the Class Period in imposing fuel surcharges than were their TL counterparts. TL carriers are generally more

affected than LTL carriers by increases in the price of diesel fuel. Total fuel costs are a significantly higher percentage of the costs for TL carriers than for LTL carriers, and thus TL operators would be expected to have a greater need for fuel surcharges than LTL operators.

77. TL carriers saw only a 0.2% compound annual operating income growth rate increase between 2003 and 2008. The high level of competition in the unconcentrated TL industry diminished opportunities to increase profit margins and made it nearly impossible to enter into a collusive agreement. In contrast, the collusion in the heavily concentrated LTL industry permitted the fixed fuel surcharges to push the compounded annual operating income growth rate to 8.8% between 2003 and 2008. The following graph illustrates how TL industry operating income stagnated during the Class Period while LTL operating income grew much faster than inflation or the U.S. economy.

**Operating Income:
Compound Annual Growth Rate 2003-2008E**



Source: Company reports; Bear, Stearns & Co. Inc. estimates; FactSet Research Systems Inc.; First Call. *Third-Quarter 2007 Shipper Survey Results, The Supply Chain Indicator*. Bear, Stearns & Co. Inc. 2007

78. As another example of the disparity between LTL fuel costs and the levels of LTL fuel surcharges imposed by Defendants, diesel fuel prices peaked in 2006, but then rapidly subsided. By July 2007, the DOE reported that the national average price for on-highway diesel fuel was 6.9 cents per gallon less than it had been during the comparable period in 2006. Yet prior to its July 23, 2007 decision

to cut LTL fuel surcharges by 25%, FedEx's LTL Fuel Surcharge, like those of its rivals, hovered near 20%. Defendants knew they were setting LTL fuel surcharges without regard to their actual fuel costs.

79. A report published in 2008 stated that the United States Department of Justice is investigating whether fuel surcharge practices in the LTL industry violated the federal antitrust laws.

Defendants' Conspiracy Was Highly Profitable

80. After the start of their collusion, Defendants' profits began to rise dramatically. By 2005, Defendants' concerted LTL fuel surcharge programs enabled them to obtain record profits and profit margins. For example, despite Hurricane Katrina in August of 2005 and Hurricane Rita in early September of 2005, which diminished freight demand along the Gulf Coast and led to temporary high fuel prices nationwide, certain Defendants had record third quarters in 2005. Defendant Old Dominion experienced substantial growth in revenue, and new records in net income and earnings per share, and it achieved the lowest operating ratio and highest profit margins in its 14 years as a public company. Defendant YRC also reported soaring earnings and revenues. Defendant Con-Way reported gains in income and revenue, although it noted that its yields would have dropped if not buoyed by its fuel surcharge program. Even Defendant Saia (whose service

territory was devastated by Hurricanes Katrina and Rita, causing Saia to shut down its service temporarily) reported significant growth in its operating income and revenues.

81. These facts demonstrate that Defendants were able to charge more than the increased costs of fuel and to make a profit from the increased fuel costs. This is further evidence that the LTL fuel surcharge programs were the product of concerted action because in a genuinely competitive environment, carriers and shippers alike would share the effects of fuel cost increases.

82. Defendants themselves have admitted that their LTL fuel surcharge programs have served as profit generators and not cost-recoupment measures. For example, Defendant Con-Way noted in its 2005 annual report that “Con-Way’s operating income would likely be adversely affected by a rapid and significant decline in fuel prices as lower fuel surcharges would reduce Con-Way’s yield and revenue.”

83. Defendant Old Dominion stated in its 2006 annual report: “[a] rapid and significant decrease in diesel fuel prices would likely reduce our revenue and operating income until we revised our pricing strategy to reflect these changes.”

84. Defendant YRC stated: “[i]n general, under our present fuel surcharge program, we believe rising fuel costs are beneficial to us in the short term.”

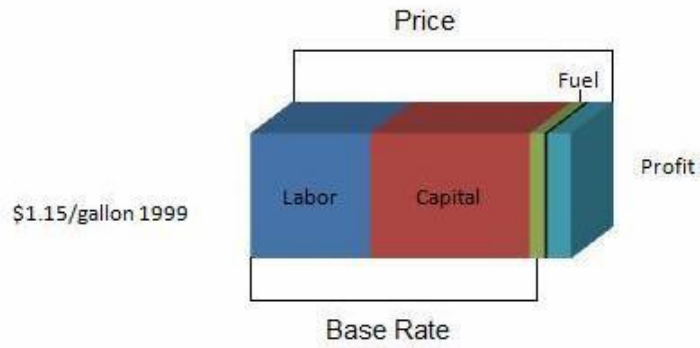
85. Defendant ABF stated: “[a]s diesel fuel prices decline, the fuel surcharge and associated direct diesel fuel costs also decline by different degrees. Depending upon the rates of these declines and the impact on costs in other fuel and energy-related areas, operating margins could be negatively impacted.”

86. Defendant FedEx noted that, for its FedEx Freight LTL service, “in 2006, fuel surcharges more than offset the effect of higher costs.”

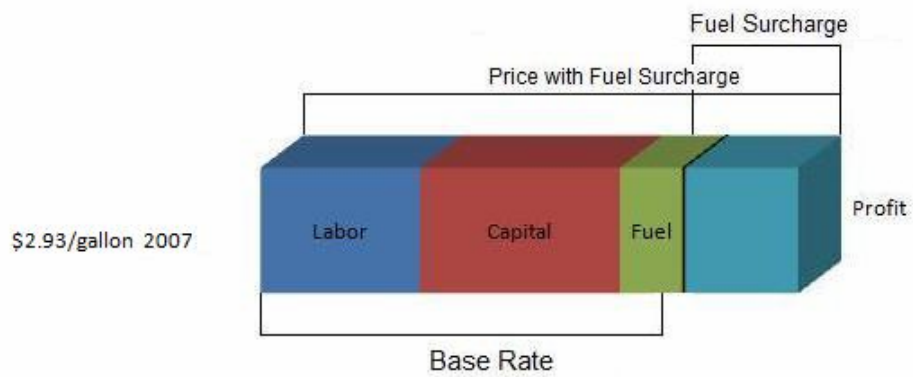
87. In its 2004 annual report, SCS Transportation (“SCS”), then the parent of Saia, disclosed that in 2003 higher fuel prices (exclusive of taxes), in conjunction with volume changes, caused a \$10.6 million increase in its operating expenses and supplies. However, that same year, SCS obtained nearly \$30 million from its customers in “fuel surcharge” revenue, which was \$14.7 million higher than the previous year.

88. The following graph illustrates how the Defendants’ collusive fuel surcharge scheme dramatically overcompensated them for relatively less significant increases in the price of fuel.

Presurcharge Pricing



Surcharge Pricing



Fuel Surcharge of 18.9% applies to the entire base rate, including non-fuel costs.

89. These facts further evince the absence of competition in the LTL trucking sector. In a genuinely competitive market, a LTL trucking company would have pursued greater market share by offering a more competitive fuel surcharge program to its customers.

90. Despite repeated customer complaints, no Defendant attempted to offer a more competitive LTL fuel surcharge program until July 2007, when growing public concern about Defendants' fuel surcharge programs may have caused one Defendant to reevaluate its role in the conspiracy.

91. On July 23, 2007, FedEx Freight reduced its standard LTL fuel surcharge by 25%. Additionally, FedEx National LTL reduced its standard LTL fuel surcharge to levels commensurate with FedEx Freight. Douglas G. Duncan, president and CEO of FedEx Freight was quoted at the time as saying that "FedEx Freight and FedEx National LTL are taking a leadership position in the industry by making changes to benefit our customers and the market as a whole. By significantly reducing our fuel surcharges, we offer immediate and long-term assistance to shippers who are facing both a challenging economy and volatile fuel prices." Mr. Duncan was further quoted as saying that this move was intended to "drive a little more market share." He elaborated that "this is a complete reduction that goes up and down the scale and higher.... The trucking economy has not been

all that stellar in the last few months, and the imposition of fuel surcharges – as high as they have gotten – have become a real problem for customers trying to run their business and budget to anticipate what is going to happen in the future. As we looked to see where we could have the most impact and offer the most help to our customers, we clearly thought the fuel surcharge was the place to do it.”

92. Of equal significance, FedEx subsequently began to use its unilateral surcharge reduction to affirmatively compete against its rivals, a pronounced departure from its past practice of conspiring with competitors to enhance industry-wide profits at the expense of their customers. On its website, FedEx Freight trumpeted its sudden change of corporate philosophy, boasting that “[o]ur major competitors' published LTL fuel surcharge percentage rates are at least 45% higher on average than ours.”

93. Through the foregoing actions, FedEx appears to have discontinued its active participation in the conspiracy, although it did not affirmatively withdraw from the conspiracy in a manner that might have absolved it of liability for the ongoing unlawful conduct of its co-conspirators.

94. Although there is anecdotal evidence that some shippers have paid lower LTL fuel surcharges than in the period preceding July 23, 2007, no other Defendant has publicly matched FedEx’s LTL fuel surcharge reductions. Nor has

any other Defendant sought to compete with its rivals by using reduced fuel surcharge levels to gain a marketing advantage over its competitors, as FedEx has now finally begun to do.

95. Based on the information currently available, Plaintiffs therefore allege that the Class Period extends to the present because, even if FedEx withdrew from active participation in the conspiracy on July 23, 2007, class members continue to suffer the deleterious effects of collusion in the LTL shipping industry before that date.

96. The failure of FedEx and other Defendants to offer competitive fuel surcharges to their customers before July 23, 2007, when no legitimate economic factors prevented them from doing so, bespeaks the collusion that has existed in the LTL trucking sector. This long-standing anomaly in the LTL marketplace was recognized by industry analysts, who observed that FedEx's July 2007 fuel surcharge reduction was "the most overt sign of price competition in the LTL market since the mid 1990s."

Use of Trade Associations To Facilitate The Conspiracy

97. In addition to communicating through their websites about possible future surcharges, Defendants had other means and opportunity to establish, implement and enforce their agreement to use LTL fuel surcharges in the anti-

competitive manner detailed above. Upon information and belief, this occurred through industry meetings held under the auspices of the National Motor Freight Traffic Association, Inc. (“NMFTA”). The following Defendants and related entities were members of the NMFTA at the same time: ABF, Averitt, Con-Way, Estes, FedEx, Old Dominion, UPS and YRC. The NMFTA is the parent entity of the NCC – the motor bureau that classifies freight for use with LTL rate schedules.

98. During the 2003 calendar year, the NMFTA and NCC held meetings on the following dates:

- a. Monday, May 5, 2003 (Radisson Hotel Old Town – Alexandria, VA);
- b. (NCC) Tuesday, August 5, 2003 (Rancho Bernardo Inn – San Diego, CA);
- c. (NMFTA) Wednesday, August 6, 2003 (Rancho Bernardo Inn – San Diego, CA); and
- d. Monday, November 3, 2003 (Radisson Hotel Old Town – Alexandria, VA).

99. During the 2004 calendar year, the NMFTA and NCC held meetings on the following dates:

- a. Monday, February 2, 2004 (Lago Mar Resort and Club – Fort Lauderdale, FL);
- b. Monday, May 3, 2004 (Holiday Inn Hotel and Suites – Alexandria, VA);
- c. Monday, August 2, 2004 (Rancho Bernardo Inn – San Diego, CA); and
- d. Monday, November 1, 2004 (Holiday Inn Hotel and Suites – Alexandria, VA).

100. During the 2005 calendar year, the NMFTA and NCC held meetings on the following dates:

- a. Monday, May 2, 2005 (Hilton Crystal City – Arlington, VA);
- b. (NCC) Tuesday, August 9, 2005 (The Sir Francis Drake Hotel – San Francisco, CA);
- c. (NMFTA) Wednesday, August 10, 2005 (The Sir Francis Drake Hotel – San Francisco, CA); and
- d. Monday, November 7, 2005 (Hilton Crystal City – Arlington, VA).

101. During the 2006 calendar year, the NMFTA and NCC held meetings during the following timeframes:

- a. February 5-8, 2006 (Saddlebrook Resort – Tampa, FL);
 - b. (NCC) Monday, February 6, 2006;
 - c. April 30 - May 2, 2006 (Sheraton Crystal City – Arlington, VA);
 - d. August 6-9, 2006 (The Fairmont Chateau – Whistler, Canada);
 - e. November 5-7, 2006 (Sheraton Crystal City – Arlington, VA);
- and
- f. (NCC) Tuesday, November 7, 2006.

102. During the 2007 calendar year, the NMFTA and NCC held a meeting on June 2-5, 2007 at the Doubletree in Arlington, VA

103. Another forum that provided Defendants the means and opportunity to conspire was the American Trucking Association (“ATA”). The ATA is “a federation made up of three unique and separate entities, all working toward one common goal. The federation consists of: ATA, representing the national interests; the 50 affiliated state trucking associations, representing the state and local interests; and the affiliated councils and conferences, representing specialized areas of the trucking industry.” The ATA holds regular meetings, including its annual Executive Meeting, its annual Management Council & Exhibition, and its Diesel Fuel Strategies Workshop. This organization has identified diesel fuel costs

as a “priority issue.” Its current Treasurer is a Vice-President of UPS and its current Secretary is the Chairman, President and Chief Executive Officer of YRC.

INTERSTATE TRADE AND COMMERCE

104. The activities of Defendants and their co-conspirators were within the flow of, and substantially affected, interstate commerce. During the Class Period, Defendants and their co-conspirators sold and carried LTL freight shipments in a continuous and uninterrupted flow of interstate commerce to shippers and customers throughout the United States. Each Defendant and their co-conspirators used instrumentalities of interstate commerce to sell and market LTL freight transportation services.

105. The unlawful activities of Defendants and the unnamed co-conspirators have had a direct, substantial, and reasonably foreseeable effect on interstate commerce.

ANTITRUST INJURY TO PLAINTIFFS AND THE CLASS

106. The unlawful conduct, combination or conspiracy alleged herein had and is having the following effects, among others:

- a. The LTL fuel surcharges paid by Plaintiffs and members of the Class were fixed, inflated, or stabilized at supra-competitive levels; and

b. Plaintiffs and the Class have been deprived of the benefits of free, open, and unrestricted competition in the market for LTL freight transportation.

107. By reason of the violations of Section 1 of the Sherman Act and Section 4 of the Clayton Act, Plaintiffs and the members of the Class have sustained injury to their business or property. The injury sustained by the Plaintiffs and the Class is the payment of supra-competitive prices for LTL fuel surcharges as a result of Defendants' illegal contract, combination, and conspiracy to restrain trade. This is an antitrust injury of the type that the federal laws were designed to punish and prevent.

COUNT I – VIOLATIONS OF THE SHERMAN AND CLAYTON ACTS

108. Defendants entered into and engaged in a contract, combination, or conspiracy in unreasonable restraint of trade in violation of Section 1 of the Sherman Act and Section 4 of the Clayton Act.

109. The contract, combination, or conspiracy resulted in an agreement, understanding, or concert of action between and among Defendants in furtherance of which Defendants fixed, maintained, and standardized prices for fuel surcharges for LTL freight transportation.

110. As a proximate result of Defendants' unlawful conduct, Plaintiffs and the Class have suffered injury in that they have paid supra-competitive prices during the Class Period.

WHEREFORE, Plaintiffs pray for relief as follows:

- A. That the Court certify this case as a class action under Rules 23(a) and (b)(2) and/or (b)(3) of the Federal Rules of Civil Procedure, that Plaintiffs be appointed class representative, and that Interim Co-Lead Counsel be appointed as counsel for the Class;
- B. That the unlawful contract, combination and conspiracy alleged in Count I be adjudged and decreed to be an unreasonable restraint of trade or commerce in violation of Section 1 of the Sherman Act;
- C. That the Court enter judgment against Defendants, jointly and severally, in an amount equal to three times the amount of damages Plaintiffs and the Class have sustained because of Defendants' actions;
- D. That Plaintiffs be awarded all costs incurred, including reasonable attorneys' fees, as well as pre-judgment and post-judgment interest;
- E. That a trial by jury be held on all issues; and

F. That Plaintiffs receive any other relief, at law and/or equity, the Court deems appropriate.

DEMAND FOR JURY TRIAL

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

Dated: May 23, 2008

Respectfully submitted,

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I, Gregory K. Arenson, declare that, on May 23, 2008, I caused true and correct copies of Consolidated Amended Class Action Complaint For Violation of The Sherman Act to be delivered via the Court's ECF system to all counsel of record.

/s/ Gregory K. Arenson
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