

JUN 28 2016 in the Supreme Court of British Columbia

Between



Darren Ewert

Plaintiff

and

**Nippon Yusen Kabushiki Kaisha;
NYK Line (North America) Inc.; NYK Line (Canada), Inc.;
Mitsui O.S.K. Lines, Ltd.;
Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc.;
Kawasaki Kisen Kaisha, Ltd.; "K" Line America, Inc.;
EUKOR Vehicle Carriers, Inc.;
Wilh. Wilhelmsen Holding ASA; Wilh. Wilhelmsen ASA;
Wallenius Wilhelmsen Logistics Americas, LLC;
Wallenius Wilhelmsen Logistics AS;
Wallenius Lines AB; WWL Vehicle Services Canada Ltd.;
Toyofuji Shipping Co., Ltd.;
Compania Sud Americana De Vapores S.A.;
Nissan Motor Car Carrier Co., Ltd.;
World Logistics Service (USA) Inc.**

Defendants

BROUGHT UNDER THE *CLASS PROCEEDINGS ACT*, R.S.B.C. 1996, c. 50

NOTICE OF CIVIL CLAIM

This action has been started by the plaintiff for the relief set out in Part 2 below.

If you intend to respond to this action, you or your lawyer must

- (a) file a response to civil claim in Form 2 in the above-named registry of this court within the time for response to civil claim described below, and
- (b) serve a copy of the filed response to civil claim on the plaintiff.

If you intend to make a counterclaim, you or your lawyer must

- (c) file a response to civil claim in Form 2 and a counterclaim in Form 3 in the above-named registry of this court within the time for response to civil claim described below, and
- (d) serve a copy of the filed response to civil claim and counterclaim on the plaintiff and on any new parties named in the counterclaim.

JUDGMENT MAY BE PRONOUNCED AGAINST YOU IF YOU FAIL to file the response to civil claim within the time for response to civil claim described below.

Time for response to civil claim

A response to civil claim must be filed and served on the plaintiff,

- (a) if you were served with the notice of civil claim anywhere in Canada, within 21 days after that service,
- (b) if you were served the notice of civil claim anywhere in the United States of America, within 35 days after that service,
- (c) if you were served with the notice of civil claim anywhere else, within 49 days after that service, or
- (d) if the time for response to civil claim has been set by order of the court, within that time.

PART 1: STATEMENT OF FACTS

1. This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of vehicle carrier services in Canada including British Columbia.
2. Vehicle carriers transport large numbers of cars, trucks, or other automotive vehicles including agriculture and construction equipment (collectively, the "Vehicles") over oceans using specialized cargo ships known as Roll On/Roll Off

vessels ("RoRos"). A RoRo ship is a special type of ocean vessel that allows wheeled Vehicles to be driven and parked on its decks for long voyages. "Vehicle Carrier Services" are the paid ocean transportation of Vehicles by RoRo.

3. During the period commencing January 2008 up to December 31, 2012 (the "Class Period"), the defendants and their senior executives participated in illegal and secretive meetings and made unlawful agreements relating to the prices for Vehicle Carrier Services.
4. In 2008, the plaintiff, Darren Ewert, purchased a Lexus Rx400h, manufactured in Japan and shipped to Canada, for personal use.

Vehicle Carrier Services

5. The defendants provided Vehicle Carrier Services to original equipment manufacturers ("OEMs") in Asia and Europe for transportation of Vehicles manufactured elsewhere for export to and sale in Canada including in British Columbia.
6. The allegations in this Notice of Civil Claim resulted in unreasonable enhancement of the price of Vehicle Carrier Services.

The Defendants

7. The defendants and their unnamed co-conspirators provide Vehicle Carrier Services through their fleets of RoRo vessels around the world including to and from Canada and British Columbia. The defendants had market power in the market for Vehicle Carrier Services to Canada including British Columbia throughout the Class Period.
8. The defendants are jointly and severally liable for the actions of, and damages allocable to, their co-conspirators, including unnamed co-conspirators.
9. Where a particular entity within a corporate family of defendants engaged in anti-competitive conduct, it did so on behalf of all entities within that corporate family. The individual participants in the conspiratorial meetings and discussions entered

into agreements on behalf of, and reported these meetings and discussions to, their respective corporate families.

10. Various persons, partnerships, sole proprietors, firms, corporations and individuals not named as defendants in this lawsuit, the identities of which are presently unknown, have participated as co-conspirators with the defendants in the unlawful behaviour alleged in this Notice of Civil Claim, and have performed acts and made statements in furtherance of the conspiracy or in furtherance of the anti-competitive conduct.

NYK Line

11. The defendant Nippon Yusen Kabushiki Kaisha ("NYK Line") is a Japanese shipping company with its principal place of business at 3-2, Marunouchi 2 Chome, Chiyoda-Ku, Tokyo, Japan 100-0005. During the Class Period, NYK Line, through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. NYK Line conducts business in British Columbia through its shipping agent NYK Line (Canada), Inc., which has an office at #520 - 900 West Hastings Street, Vancouver, British Columbia, V6C 1E5.
12. The defendant NYK Line (North America) Inc. ("NYK America") is an American shipping company with its principal place of business at 19001 Harbortate Wat, Torrance, CA 90501-1314. It is affiliated with and controlled by NYK Line. During the Class Period, NYK America provided Vehicle Carrier Services in Canada including in British Columbia.
13. The defendant NYK Line (Canada), Inc. ("NYK Canada") is a Canadian shipping company with headquarters at 1 Yonge Street, Suite 1101 Toronto, Ontario M5E 1E5, and #520 - 900 West Hastings Street, Vancouver, British Columbia, V6C 1E5. NYK Canada is affiliated with and controlled by NYK Line. During the Class Period, NYK Canada provided Vehicle Carrier Services in Canada including in British Columbia.

14. The businesses of each of NYK Line, NYK America and NYK Canada are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Vehicle Carrier Services.

Mitsui O.S.K. Lines, Ltd.

15. The defendant Mitsui O.S.K. Lines, Ltd. is a Japanese shipping company with its principal place of business at 105-8688 MOL Building, 1-1 Toranomon 2-chome, Minato-ku, Tokyo, Japan. During the Class Period, Mitsui O.S.K. Lines, Ltd., through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. Mitsui O.S.K. Lines, Ltd. conducts business in British Columbia through its shipping agent Montship Inc. which has an office at #800 - 1111 West Hastings St., Vancouver, British Columbia V6E 2J3.
16. The defendant Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc. is an American shipping company with an office at Harborside Financial Centre, Plaza Five, Suite 1710 Jersey City, NJ 07311. It is affiliated and controlled by Mitsui O.S.K. Lines, Ltd. During the Class Period, Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc. provided Vehicle Carrier Services in Canada including in British Columbia.
17. The businesses of each of Mitsui O.S.K. Lines, Ltd. and Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Vehicle Carrier Services.

K Line

18. The defendant Kawasaki Kisen Kaisha, Ltd. ("K" Line) is a Japanese shipping company with its principal place of business at Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku, Tokyo 100-8540, Japan. During the Class Period, "K" Line, through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. "K" Line conducts business in British Columbia through its shipping agent Valles

Steamship (Canada) Ltd. which has an office at #1160 – 1055 West Hasting Street, Vancouver, British Columbia V6E 2E9.

19. The defendant "K" Line America, Inc. is an American shipping company with its principal place of business located at 8730 Stony Point Parkway, Suite 400, Richmond, VA 23235. It is affiliated with and controlled by "K" Line. During the Class period, "K" Line America, Inc. provided Vehicle Carrier Services in Canada including in British Columbia.
20. The business of each of "K" Line and "K" Line America, Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Vehicle Carrier Services.

EUKOR Vehicle Carriers, Inc.

21. The defendant EUKOR Vehicle Carriers, Inc. is a South Korean company with its principal place of business at 735-1 Yeoksam-dong, Gangnam-gu, Seoul, 135-983, Korea. It is a joint venture between Wilh. Wilhelmsen ASA, Wallenius Lines AB, Hyundai Motor Company and Kia Motors Corporation. During the Class Period, EUKOR Vehicle Carriers, Inc., through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. EUKOR Vehicle Carriers, Inc. conducts business in British Columbia through its shipping agent Wilhelmsen Ships Service, Inc. which has an office at 8978 Fraserton Court, Burnaby, British Columbia V5J 5H8.

Wilh. Wilhelmsen Holding ASA and Wallenius Lines AB

22. The defendant Wilh. Wilhelmsen Holding ASA is a Norwegian shipping company with its principal place of business at Strandveien 20, Lysaker, Norway, 1324. During the Class Period, Wilh. Wilhelmsen Holding ASA, through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. Wilh. Wilhelmsen Holding ASA conducts business in British Columbia through its shipping agent Wilhelmsen Ships

Service which has an office at 8978 Fraserton Court, Burnaby, British Columbia V5J 5H8.

23. The defendant Wilh. Wilhelmsen ASA is a Norwegian shipping company with its principal place of business Strandveien 20, Lysaker, Norway, 1366. It is affiliated with and controlled by Wilh. Wilhelmsen Holding ASA. During the Class period, Wilh. Wilhelmsen ASA provided Vehicle Carrier Services in Canada including in British Columbia.
24. The defendant Wallenius Lines AB is a Swedish shipping company with its principal place of business at Swedenborgsgatan 19, Stockholm, Sweden. During the Class period, Wallenius Lines AB, through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia.
25. The defendant Wallenius Wilhelmsen Logistics Americas, LLC is an American shipping company with its principal place of business at 188 Broadway, Woodcliff Lake, NJ 07677. Until January 2006, Wallenius Wilhelmsen Logistics Americas, LLC was known as Wallenius Wilhelmsen Lines. Wallenius Wilhelmsen Logistics Americas, LLC is affiliated with and controlled by Wilh. Wilhelmsen Holding ASA and Wallenius Lines AB. During the Class period, Wallenius Wilhelmsen Logistics Americas, LLC provided Vehicle Carrier Services in Canada including in British Columbia.
26. The defendant Wallenius Wilhelmsen Logistics AS is a Norwegian shipping company with its principal place of business at Strandveien 12, Lysaker 1324, Norway. It is affiliated with and controlled by Wilh. Wilhelmsen Holding ASA and Wallenius Lines AB. During the Class Period, Wallenius Wilhelmsen Logistics AS provided Vehicle Carrier Services in Canada including in British Columbia.
27. The defendant WWL Vehicle Services Canada Ltd. is a Canadian company with its principal place of business at 820 Dock Rd., Annacis Island, BC V3M 6A3. It is affiliated with and controlled by Wallenius Wilhelmsen Logistics AS. During the

Class Period, WWL Vehicle Services Canada Ltd. provided Vehicle Carrier Services in Canada including in British Columbia.

28. The businesses of each of Wilh. Wilhelmsen Holding ASA, Wilh. Wilhelmsen ASA, Wallenius Lines AB, Wallenius Wilhelmsen Logistics Americas, LLC, Wallenius Wilhelmsen Logistics AS and WWL Vehicle Services Canada Ltd. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Vehicle Carrier Services.

Compania Sud Americana De Vapores S.A.

29. The defendant Compania Sud Americana De Vapores S.A. is a Chilean shipping company with a principal place of business at Plaza Sotomayor 50, Valparaíso, Chile. During the Class Period, Compania Sud Americana De Vapores S.A., through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. Compania Sud Americana De Vapores S.A. conducts business in North America through its shipping agent CSAV Agency North America which has an office on the 9th floor of 99 Wood Avenue South, Iselin, New Jersey, USA 08830.

Toyofuji Shipping Co., Ltd.

30. The defendant Toyofuji Shipping Co., Ltd. is a Japanese shipping company with its principal place of business at 33-3 Shinpo-cho, Tokai city, Aichi 476-8522, Japan. During the Class Period, Toyofuji Shipping Co., Ltd., through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. Toyofuji Shipping Co., Ltd. conducts business in British Columbia through its shipping agent ACGI Shipping Inc. which has an office at 710-900 West Hastings St., Vancouver, BC V6C 1E5.

Nissan Motor Car Carrier Co., Ltd.

31. The defendant Nissan Motor Car Carrier Co., Ltd. is a Japanese shipping company with its principal place of business at Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku, Tokyo 100-0011, Japan. During the Class Period,

Nissan Motor Car Carrier Co., Ltd., through its own RoRo fleet or through its subsidiaries or affiliates, provided Vehicle Carrier Services in Canada including in British Columbia. Nissan Motor Car Carrier Co., Ltd. conducts business in British Columbia through its shipping agent Montship Inc. which has an office at #800 - 1111 West Hastings St., Vancouver, British Columbia V6E 2J3.

32. The defendant World Logistics Services (USA) Inc. is an American company with its principal place of business at #1040 - 111 West Ocean Boulevard, Long Beach, California, USA 90802-4622. It is affiliated with and controlled by Nissan Motor Car Carrier Co., Ltd. During the Class Period, World Logistics Services (USA) Inc. provided Vehicle Carrier Services in Canada including in British Columbia. World Logistics Services (USA) Inc. conducts business in British Columbia through its shipping agent Montship Inc. which has an office at #800 - 1111 West Hastings St., Vancouver, British Columbia V6E 2J3.
33. The businesses of each of Nissan Motor Car Carrier Co., Ltd. and World Logistics Services (USA) Inc. are inextricably interwoven with that of the other and each is the agent of the other for the purposes of the provision of Vehicle Carrier Services.

The Classes and the Class Periods

34. This action is brought on behalf of members of a class (the "Class Members") consisting of the plaintiff and all British Columbia resident persons who, during the Class Period commencing January 2008 up to December 31, 2012, purchased Vehicle Carrier Services, or purchased or leased a new Vehicle imported to Canada by sea.

The Vehicle Carrier Services Industry

35. The structure and characteristics of the market for Vehicle Carrier Services to Canada are conducive to the conspiracy alleged in this Notice of Civil Claim.
36. There are substantial barriers that preclude, reduce, or make more difficult entry into the Vehicle Carrier Services market. Highly specialized and sophisticated

RoRo vessels are required, and the design and building of the RoRo vessels is a lengthy process which requires specialized expertise. The industry also requires the establishment of a network of routes to serve a particular set of customers with which the defendants establish long-term relationships.

37. There are no close substitutes for Vehicle Carrier Services to Canada. Vehicles are not easily shipped on non-RoRo vessels because Vehicles do not fit easily in containers, and transport of Vehicles by air is too costly. There is no alternative to the transoceanic transportation of Vehicles to Canada. Vehicle Carrier Services are a commodity-like service, which is interchangeable among the defendants.
38. The price of Vehicle Carrier Services provided to OEMs and their subsidiaries is reflected, in whole or in part, in the price of new Vehicles purchased in Canada including British Columbia.
39. The defendants dominate the global Vehicle Carrier Services market including shipping to Canada.

The Conspiracy to Fix the Price of Vehicle Carrier Services

40. The acts alleged under this heading are, collectively, the "Conspiracy Acts".
41. During the Class Period, the defendants and unnamed co-conspirators conspired and/or agreed with each other to fix, maintain, increase, or control the price for Vehicle Carrier Services and/or to enhance unreasonably the prices of Vehicle Carrier Services and/or to lessen unduly competition in the sale of Vehicle Carrier Services in Canada, including British Columbia, and elsewhere.
42. During the Class Period, senior executives and employees of the defendants, acting in their capacities as agents for the defendants, engaged in communications, conversations, and attended meetings with each other at times and places, some of which are unknown to the plaintiff. As a result of the

communications and meetings the defendants and unnamed co-conspirators unlawfully conspired and/or agreed to:

- (a) unreasonably enhance the prices of Vehicle Carrier Services in Canada, including in British Columbia, and elsewhere;
 - (b) fix, maintain, increase, or control the prices of Vehicle Carrier Services in Canada, including in British Columbia, and elsewhere;
 - (c) monitor and enforce adherence to an agreed-upon pricing scheme; and
 - (d) lessen unduly competition in the sale and of Vehicle Carrier Services in Canada, including in British Columbia, and elsewhere.
43. In furtherance of the conspiracy, during the Class Period the defendants and/or their servants and agents:
- (a) fixed, maintained, increased, controlled, and/or enhanced unreasonably the prices of Vehicle Carrier Services in Canada, including in British Columbia, and elsewhere;
 - (b) communicated secretly, in person and by telephone, to discuss and fix prices of Vehicle Carrier Services;
 - (c) made formal agreements with respect to the prices of Vehicle Carrier Services;
 - (d) exchanged information regarding the prices of Vehicle Carrier Services for the purposes of monitoring and enforcing adherence to the agreed-upon prices;
 - (e) rigged bids for the sale of Vehicle Carrier Services to OEMs and their subsidiaries;
 - (f) allocated sales, territories, customers or markets for supply of Vehicle Carrier Services;

- (g) fixed, maintained, controlled, prevented or lessened the supply of Vehicle Carrier Services; and
 - (h) disciplined any conspirator which failed to comply with the conspiracy.
44. During the Class Period and continuing to the present, the defendants and/or their servants and agents, took active steps to, and did, conceal the unlawful conspiracy from the Class Members.
45. The defendants were motivated to conspire and their predominant purposes and predominant concerns were to harm the plaintiff and other persons in British Columbia who purchased Vehicle Carrier Services and purchased or leased new Vehicles by requiring them to pay unlawfully high prices for Vehicle Carrier Services and new Vehicles.
46. The Canadian subsidiaries of the foreign defendants participated in and furthered the objectives of the conspiracy by knowingly modifying their competitive behaviour in accordance with instructions received from their respective parent companies, and thereby acted as their agents in carrying out the conspiracy and are liable for such acts.
47. The Conspiracy Acts alleged in this claim to have been done by each defendant were authorized, ordered, and done by each defendants' officers, directors, agents, employees, or representatives while engaged in the management, direction, control, or transaction of its business affairs.

Damages

48. As a result of the Conspiracy Acts:
- (a) the prices of Vehicle Carrier Services and new Vehicles imported to Canada by sea have been enhanced unreasonably and/or fixed at artificially high and non-competitive levels; and

- (b) competition in the sale of Vehicle Carrier Services has been unduly restrained.
49. During the Class Period, the plaintiff and the other Class Members purchased Vehicle Carrier Services and purchased or leased new Vehicles imported to Canada by sea. By reason of the alleged violations of the *Competition Act* and the common law, the plaintiff and the other Class Members have been overcharged for those Vehicle Carrier Services and new Vehicles imported to Canada by sea by paying more than they would have paid in the absence of the illegal conspiracy and, as a result, the plaintiff and the other Class Members have suffered damages (the "Overcharge").
50. The plaintiff asserts that the Overcharge is capable of being quantified on an aggregate basis as the difference between the prices actually paid by the Class Members and the prices which would have been paid in the absence of the unlawful conspiracy.

PART 2: RELIEF SOUGHT

51. The plaintiff, on his own behalf, and on behalf of the Class Members, claims against the defendants:
- (a) a declaration that the defendants, and each of them, conspired each with the other to raise, maintain, fix, and stabilize the price of Vehicle Carrier Services during the Class Period, in violation of statutory, common law, and equitable laws as alleged in this claim;
 - (b) a declaration that the defendants, and each of them, conspired, combined, agreed or arranged to prevent or lessen, unduly, competition in the manufacture or production of Vehicle Carrier Services or to enhance unreasonably the price thereof;

- (c) an order certifying this action as a class proceeding against the defendants and appointing the plaintiff as representative plaintiff in respect of the Class Members;
- (d) general damages for conspiracy and unlawful interference with economic interests;
- (e) general damages for conduct that is contrary to Part VI of the *Competition Act*;
- (f) a declaration that the defendants account for and make restitution to the plaintiff and the other Class Members in an amount equal to the Overcharge;
- (g) a declaration that the defendants hold the Overcharge in a constructive trust for the benefit of the plaintiff and the other Class Members;
- (h) judgment in the amount of the Overcharge;
- (i) punitive damages;
- (j) an injunction enjoining the defendants from conspiring or agreeing with each other, or others, to raise, maintain, fix, or stabilize the price of Vehicle Carrier Services;
- (k) costs of investigation and prosecution of this proceeding pursuant to section 36 of the *Competition Act*, R.S.C. 1985, c. 19 (2nd Suppl.) (the "*Competition Act*");
- (l) pre-judgment and post-judgment interest pursuant to the *Court Order Interest Act*, R.S.B.C. 1996, c. 78, s. 128; and
- (m) such further and other relief as to this Honourable Court may seem just.

PART 3: LEGAL BASIS

52. The plaintiff pleads and relies upon the *Class Proceedings Act*, R.S.B.C., 1996 c. 50, the *Competition Act*, and the *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c. 28 (the "CJPTA").

Causes of Action

Breach of the *Competition Act*

53. The Conspiracy Acts are in breach of section 45 of Part VI of the *Competition Act*, caused injury to the plaintiff and the other Class Members and render the defendants jointly and severally liable to pay damages and costs of investigation pursuant to section 36 of the *Competition Act*. Further, the Canadian subsidiaries of the foreign defendants are liable to the plaintiff and the other Class Members pursuant to s. 36 of the *Competition Act* for acts in contravention of s. 46(1) of the *Competition Act*.

Civil Conspiracy

54. Further, and in the alternative, the Conspiracy Acts were unlawful acts directed towards the plaintiff and the other Class Members, which unlawful acts the defendants knew in the circumstances would likely cause injury to the plaintiff and other Class Members and, as such, the defendants are jointly and severally liable for the tort of civil conspiracy. Further, or alternatively, the predominant purpose of the Conspiracy Acts was to injure the plaintiff and other Class Members, and the defendants are jointly and severally liable for the tort of conspiracy to injure.
55. The plaintiff and other Class Members suffered damages as a result of the defendants' conspiracy.

Unlawful Interference with Economic Interests

56. Further, and in the alternative, the Conspiracy Acts were unlawful acts intended to cause the plaintiff and the other Class Members economic loss and, as such,

the defendants are jointly and severally liable for the tort of intentional interference with economic interests.

57. The plaintiff and the other Class Members suffered damages as a result of the defendants' unlawful interference with their economic interests and each of the defendants is jointly and severally liable to pay the resulting damages.

Punitive Damages

58. The plaintiff asserts that the defendants' conduct was high-handed, outrageous, reckless, wanton, entirely without care, deliberate, callous, disgraceful, wilful, in contumelious disregard of the plaintiff's rights and the rights of the Class Members, and as such renders the defendants liable to pay aggravated, exemplary and punitive damages.

Unjust Enrichment, Constructive Trust, and Waiver of Tort

59. Further, and in the alternative, the plaintiff and the other Class Members are entitled to claim and recover based on equitable and restitutionary principles.
60. The defendants have each been unjustly enriched by the receipt of the Overcharge. The plaintiff and the other Class Members have suffered a deprivation in the amount of such Overcharge.
61. Since the Overcharge that was received by the defendants from the plaintiff and the Class Members resulted from the defendants' wrongful or unlawful acts, there is and can be no juridical reason justifying the defendants retaining any part of it.
62. The defendants are constituted as constructive trustees in favour of the plaintiff and the Class Members for the entire Overcharge because, among other reasons:
- (a) the defendants were unjustly enriched by receipt of the Overcharge;
 - (b) the Class Members suffered a deprivation by paying the Overcharge;

- (c) the defendants engaged in inappropriate conduct and committed wrongful acts by engaging in the conspiracies alleged in this claim;
 - (d) the Overcharge was acquired in such circumstances that the defendants may not in good conscience retain it;
 - (e) justice and good conscience require the imposition of a constructive trust;
 - (f) the integrity of the marketplace would be undermined if the court did not impose a constructive trust; and
 - (g) there are no factors that would, in respect of the artificially induced Overcharge, render the imposition of a constructive trust unjust.
63. The plaintiff pleads that equity and good conscience requires the defendants to hold the Overcharge in trust for the plaintiff and the other Class Members and to disgorge that amount to the plaintiff and the other Class Members.
64. Further, or alternatively, the plaintiff waives the tort and elects to pursue restitutionary remedies against the defendants as set out above.

Jurisdiction

65. There is a real and substantial connection between British Columbia and the facts alleged in this proceeding. The plaintiff and other Class Members plead and rely upon the *CJPTA* in respect of the defendants. Without limiting the foregoing, a real and substantial connection between British Columbia and the facts alleged in this proceeding exists pursuant to sections 10 (f) – (i) of the *CJPTA* because this proceeding:
- (a) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia;
 - (b) concerns a tort committed in British Columbia;
 - (c) concerns a business carried on in British Columbia; and
 - (d) is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Plaintiff's address for service:

CAMP FIORANTE MATTHEWS MOGERMAN

#400 – 856 Homer Street
Vancouver, BC V6B 2W5

Tel: (604) 689-7555

Fax: (604) 689-7554

Email: service@cfmlawyers.ca

Defendants' addresses for service:

TO: Nippon Yusen Kabushiki Kaisha
3-2, Marunouchi 2 Chome, Chiyoda-Ku
Tokyo, Japan 100-0005

AND TO: NYK Line (North America) Inc.
19001 Harborage Wat
Torrance, CA 90501-1314

AND TO: NYK Line (Canada), Inc.
1 Yonge Street, Suite 1101
Toronto, ON M5E 1E5

AND TO: Mitsui O.S.K. Lines, Ltd.
105-8688 MOL Building, 1-1 Toranomom 2-chome
Minato-ku, Tokyo, Japan

AND TO: Mitsui O.S.K. Bulk Shipping (U.S.A.), Inc.
Harborside Financial Centre, Plaza Five, Suite 1710
Jersey City, NJ 07311

AND TO: Kawasaki Kisen Kaisha, Ltd.
Iino Building, 1-1, Uchisaiwaicho 2-Chome, Chiyoda-ku
Tokyo 100-8540 Japan

AND TO: "K" Line America, Inc.
8730 Stony Point Parkway, Suite 400
Richmond, VA 23235

AND TO: EUKOR Vehicle Carriers, Inc.
735-1 Yeoksam-dong, Gangnam-gu
Seoul, 135-983 Korea

AND TO: WWL Vehicle Services Canada Ltd.
820 Dock Rd.
Annacis Island, BC V3M 6A3

AND TO: Wilh. Wilhelmsen
Strandveien 20
Lysaker, Norway 1324

AND TO: Wilh. Wilhelmsen Holding ASA
Strandveien 20
Lysaker, Norway 1366

AND TO: Wallenius Wilhelmsen Logistics Americas, LLC
188 Broadway
Woodcliff Lake, NJ 07677

AND TO: Wallenius Wilhelmsen Logistics AS
Strandveien 12
Lysaker 1324, Norway

AND TO: Wallenius Lines AB
Swedenborgsgatan 19
Stockholm, Sweden

AND TO: Toyofuji Shipping Co., Ltd.
33-3 Shinpo-cho
Tokai city, Aichi 476-8522 Japan

AND TO: Compania Sud Americana De Vapores S.A.
Plaza Sotomayor 50
Valparaíso, Chile

AND TO: Nissan Motor Car Carrier Co., Ltd.
Hibiya Daibiru Bldg., 1-2-2 Uchisaiwai-cho, Chiyoda-ku
Tokyo 100-0011, Japan

AND TO: World Logistics Service (USA) Inc.
#1040 - 111 West Ocean Boulevard, Long Beach, California, 90802-
4622 USA

Date: June 28, 2013



Signature of lawyer for the plaintiff

Sharon Matthews, Q.C.

**ENDORSEMENT ON ORIGINATING PLEADING OR PETITION FOR SERVICE
OUTSIDE BRITISH COLUMBIA**

The plaintiff, Darren Ewert, claims the right to serve this pleading on the defendants outside British Columbia on the grounds of s. 10(f)-(i) of the Court Jurisdiction and Proceedings Transfer Act in that it concerns restitutionary obligations that, to a substantial extent, arose in British Columbia; concerns a tort committed in British Columbia; concerns a business carried on in British Columbia; and is a claim for an injunction ordering a party to do or refrain from doing anything in British Columbia.

Rule 7-1 (1) of the Supreme Court Civil Rules states:

- (1) Unless all parties of record consent or the court otherwise orders, each party of record to an action must, within 35 days after the end of the pleading period,
 - (a) prepare a list of documents in Form 22 that lists
 - (i) all documents that are or have been in the party's possession or control and that could, if available, be used by any party at trial to prove or disprove a material fact, and
 - (ii) all other documents to which the party intends to refer at trial, and
 - (b) serve the list on all parties of record.

APPENDIX

CONCISE SUMMARY OF NATURE OF CLAIM:

This action arises from a conspiracy to fix, raise, maintain, or stabilize prices of Vehicle Carrier Services sold in North America and worldwide. During the Class Period, the defendants and their senior executives participated in illegal and secretive meetings and made agreements relating to the prices for Vehicle Carrier Services. The plaintiff and the Class Members suffered damages as a result.

THIS CLAIM ARISES FROM THE FOLLOWING:

A personal injury arising out of:

- ☐ a motor vehicle accident
- ☐ medical malpractice
- ☐ another cause

A dispute concerning:

- ☐ contaminated sites
- ☐ construction defects
- ☐ real property (real estate)
- ☐ personal property
- ☐ the provision of goods or services or other general commercial matters
- ☐ investment losses
- ☐ the lending of money
- ☐ an employment relationship
- ☐ a will or other issues concerning the probate of an estate
- ☒ a matter not listed here

THIS CLAIM INVOLVES:

- ☒ a class action
- ☐ maritime law
- ☐ aboriginal law
- ☐ constitutional law
- ☐ conflict of laws
- ☐ none of the above
- ☐ do not know

PART 4: ENACTMENTS RELIED UPON

1. *Class Proceedings Act*, R.S.B.C., 1996 c. 50;
2. *Competition Act*, R.S.C. 1985, c. 19 (2nd Suppl.); and
3. *Court Jurisdiction and Proceedings Transfer Act*, R.S.B.C. 2003, c. 28.