

UNITED STATES OF AMERICA
BEFORE FEDERAL TRADE COMMISSION

In the Matter of

KENTUCKY HOUSEHOLD
GOODS CARRIERS
ASSOCIATION, INC.,

a corporation.

Docket No. 9309

**RESPONDENT'S MOTION IN LIMINE TO EXCLUDE
EVIDENCE RELATING IN ANY WAY TO THE OREGON
DEPARTMENT OF TRANSPORTATION, THE
OREGON DRAYMEN & WAREHOUSEMEN'S
ASSOCIATION, OR ANY OTHER MATTERS PERTAINING
TO THE STATE OF OREGON OR MOTOR CARRIERS
IN THE STATE OF OREGON**

I. INTRODUCTORY STATEMENT

Pursuant to the Scheduling Order entered herein and the Commission's Rules of Practice, Respondent Kentucky Household Goods Carriers Association, Inc. ("Kentucky Association" or "Respondent") submits its Motion *in Limine* to Exclude Evidence Relating in any Way to the Oregon Department of Transportation, the Oregon Draymen

& Warehousemen's Association, or any other Matters Pertaining in any Way to the State of Oregon or Motor Carriers in the State of Oregon

I. ARGUMENT

In this proceeding, the Federal Trade Commission seeks to destroy a program of regulation of the Household Goods Moving Industry which has operated for the protection of consumers of household goods transportation services in the Commonwealth of Kentucky, created and administered by the Commonwealth, for half a century.

There has been no *actual* economic harm demonstrated by reason of the conduct alleged in the Complaint - - or even attempted to be demonstrated.

The only apparent basis for the proceeding, as the members of the Kentucky Association see it, appears to be the perception of the Commission that the Movers of Kentucky would likely not possess the economic resources or interest to defend themselves.

Apparently encouraged by its successes in similar proceedings against small Moving Industry intrastate rate bureaus in other States (i.e., Indiana, New Hampshire, Mississippi, Alabama, Iowa, and Minnesota) where it achieved Consent Decrees which are arguably worthless except for public relations purposes (i.e. the Respondents in those cases engaging in the allegedly offensive "price-fixing" activity incredibly *retain* the right to publish rates), the

Commission has now determined to introduce evidence regarding what happens in State of *OREGON* to overcome the State Action Defense in *this* case.

Respondent contends that Complaint Counsel should be precluded from offering any evidence regarding events in Oregon at the trial in this proceeding.

Respondent believes that documents and events in Oregon have no relevance to any issue in this proceeding where the issue is whether the Kentucky Transportation Cabinet has actively supervised the tariff filing activities of Respondent.

While Respondent believes that Complaint Counsel is to be congratulated for its resourcefulness in enlisting the consent of the Oregon Draymen & Warehousemen's Association to the release and use of documents generated in a "non-public investigation" against Respondent in this proceeding, Respondent submits that these documents have no place in this inquiry.

Complaint Counsel's Exhibit List, which is attached hereto, includes ten (10) Exhibits pertaining to Oregon matters (CX-118 through CX 127, inclusive).

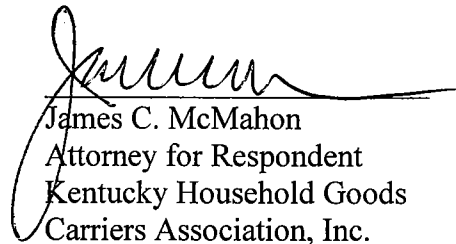
II. CONCLUSION

Based on the foregoing, Respondent respectfully requests that its Motion *in Limine* to Exclude Evidence in any Way Relating to the Oregon Department of Transportation, the Oregon Draymen & Warehousemen's Association, or any other Matters Pertaining to the State of Oregon or Motor Carriers in the State of Oregon, should be in all respects granted, and that the

Administrative Law Judge should grant such other and further relief as shall
be appropriate.

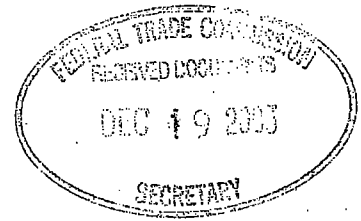
Dated: New York, NY
January 29, 2004

Respectfully submitted,



James C. McMahon
Attorney for Respondent
Kentucky Household Goods
Carriers Association, Inc.
60 East 42nd Street; Ste. 1540
New York, NY 10165-1540
212.973.4862

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**KENTUCKY HOUSEHOLD
GOODS CARRIERS
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a corporation.

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COMPLAINT COUNSEL'S EXHIBIT LIST

Complaint counsel hereby designates the exhibits it intends to introduce into evidence at the hearing in this matter. Complaint counsel reserves the right not to introduce the exhibits listed herein at the hearing, as circumstances may warrant. Complaint counsel further reserves the right to introduce any exhibit identified by Respondent, and to supplement this list should additional documents be produced by Respondent. Although this list includes all rebuttal exhibits currently anticipated to be utilized by complaint counsel, complaint counsel reserves the right to introduce additional rebuttal exhibits as needed depending upon issues raised by Respondents.

CX NUMBER	DOCUMENT DESCRIPTION	DATE
CX 1	Kentucky Household Goods Carriers Association - Tariff No. 5 Local and distance rates on household goods between from and within all points in Kentucky (KTC 1892 - KTC 2207)	03/01/88
CX 2	Kentucky Household Goods Carriers Association - Tariff No. 5 Local and distance rates on household goods between from and within all points in Kentucky (KHGCA 6931 - KHGCA 7054)	10/01/03
CX 3	Call of Meeting of Incorporators (KHGCA 6934 - KHGCA 6962)	12/09/57
CX 4	Example of a power of attorney (A & M Moving & Storage Services, Inc.) (KHGCA - 7825)	06/30/89
CX 5	Letter from Bill Debord to Tom Shetler with handwritten notes attached (KTC 1267 - KTC 1272)	04/24/01
CX 6	Letter from William Lally to Taylor enclosing March 30 th letter from Bruce Narrod and a Shetler Moving & Storage's bill estimate KTC 1274 - KTC 1277)	04/06/01
CX 7	Fax memo from Rudy Miller to Bill Lally attaching bid estimate (KTC 0476 - KTC 0477)	01/25/02
CX 8	Letter from William Lally to W.C. Debord re. Illegal Movers (KTC 1254 - 1259)	06/19/02
CX 9	General Membership Meeting Minutes (KHGCA 3681 - KHGCA 3682)	10/13/89
CX 10	Tariff Committee Annual Report (KTC 0624 - KTC 0625)	05/18/02
CX 11	Tariff Advisory Bulletin # 02-1 (KTC 0584 - KTC 0585)	02/07/02
CX 12	Tariff Bulletin - Advance Notice (KHGCA 0923 - KHGCA 0924)	01/10/02
CX 13	Tariff Bulletin - Supplement #41 (KHGCA 4734 - KHGCA 4735)	10/08/95
CX 14	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0342 - KHGCA 0343)	10/10/01
CX 15	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0330 - KHGCA 0332)	10/11/00
CX 16	Tariff Committee Annual Report (KHGCA 0306 - KHGCA 0307)	05/13/00
CX 17	Instruction Sheet Supplement #61 (KTC 1137)	11/29/99
CX 18	Tariff Bulletin Advance Notice of Special Supplement #61 (KTC 0727)	11/05/99
CX 19	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0295 - KHGCA 0296)	10/13/99
CX 20	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0268 - KHGCA 0269)	10/14/98
CX 21	Tariff Bulletin Advance Notice Special Supplement #56 (KHGCA 6417 - KHGCA 6418)	11/02/98

CX NUMBER	DOCUMENT DESCRIPTION	DATE
CX 22	Tariff Bulletin Advance Notice General Rate Increase (KHGCA 5996)	10/06/97
CX 23	Supplement Worksheet # 51 (KHGCA 5860)	12/01/97
CX 24	Kentucky Household Goods Carriers Association Newsletter (KHGCA 6005)	09/16/97
CX 25	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0183 - KHGCA 0184)	10/15/97
CX 26	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0176 - KHGCA 0177)	07/09/97
CX 27	Kentucky Household Goods Carriers Association Newsletter (KHGCA 0132)	10/24/96
CX 28	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0110 - KHGCA 0111)	07/10/96
CX 29	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0127 - KHGCA 0129)	10/09/96
CX 30	Tariff Advisory Bulletin # 96-3 - Docket for Supplement #46 (KHGCA 5410)	08/08/96
CX 31	Instruction Sheet - Special Supplement # 45 (KHGCA 5190 - KHGCA 5199)	05/10/96
CX 32	Tariff Committee Annual Report - Issued Supplements 1995 - 2002 (KHGCA 7164 - KHGCA 7173)	
CX 33	General Membership Meeting Minutes (KHGCA 0023 - KHGCA 0024)	10/15/94
CX 34	Supplement Worksheet # 51 (KHGCA 9840)	09/01/94
CX 35	Tariff Advisory Bulletin # 94-3 - Docket for Supplement # 34 (KHGCA 9918 - KHGCA 9919)	08/06/94
CX 36	Tariff Bulletin Advisory Notice - Docket # 94-3 (KHGCA 9627)	05/16/94
CX 37	Tariff Committee Annual Report (KHGCA 3528)	05/15/93
CX 38	Supplement Worksheet # 21 (KHGCA 8907)	04/01/92
CX 39	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 3580 - KHGCA 3581)	02/19/92
CX 40	Tariff Special Bulletin (KHGCA 8924)	03/02/92
CX 41	Special Supplement Worksheet # 10 (KHGCA 8281 - KHGCA 8289)	06/05/90
CX 42	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 3725 - KHGCA 3727)	01/18/89
CX 43	Kentucky Household Goods Association Board Meeting Minutes (KHGCA 3780)	04/23/87
CX 44	Kentucky Household Goods Membership Meeting Minutes (KHGCA 3881 - KHGCA 3882)	04/26/85

CX NUMBER	DOCUMENT DESCRIPTION	DATE
CX 45	Memo from Bud Mirus to Bob Wagner re. Proposed "Peak-Time" Intrastate Rates with attachments (KHGCA 4979 - KHGCA 4986)	08/08/95
CX 46	Tariff Committee Annual Report (KHGCA 0107 - KHGCA 0108)	04/10/96
CX 47	Kentucky Household Goods Carriers Association Board of Directors Meeting Minutes (KHGCA 0081 - KHGCA 0083)	02/10/96
CX 48	Request for Tariff Change from Boyd Moving & Storage and D.L. Boyd Movers to the Chairman, Rate & Tariff Committee with handwritten notes (KHGCA 4969 - KHGCA 4970)	01/20/95
CX 49	Request for Tariff Change from Tri-State Moving & Storage, Inc. to the Chairman, Rate & Tariff Committee (KHGCA 9031)	04/16/92
CX 50	Request for Tariff Change from Hammond Moving Services, Inc. to the Chairman, Rate & Tariff Committee (KHGCA 9565)	12/10/93
CX 51	Statute 281.590 Declaration of policy	06/15/50
CX 52	Statute 281.695 Powers of Department of Vehicle Regulation to regulate rates and service	07/15/96
CX 53	Various Statutes (KTC 0716 - KTC 0718)	07/15/96
CX 54	State of Kentucky Regulation regarding rates and fares (KTC 0706)	04/16/01
CX 55	Background on KTC officials (KTC 0613)	
CX 56	Memo from Bud Mirus to Eileen Clark re. Gypsy Mover Article (KHGCA 8790 - KHGCA 8791)	10/31/91
CX 57	Request for Tariff Change from C & L Moving and Storage, Inc. (KHGCA 4107)	01/12/95
CX 58	Request for Tariff Change from J & J Canter & Son, Inc. (KHGCA 4108)	01/17/95
CX 59	Request for Tariff Change from Audubon Moving & Storage (KHGCA 4103)	01/12/95
CX 60	Request for Tariff Change from J & J Canter & Son of Lexington (KHGCA 4109)	01/17/95
CX 61	Request for Tariff Change from J.R. Nash Moving & Storage Company (KHGCA 4113)	01/24/95
CX 62	Requests for Tariff Change from Pennyryle Moving & Storage, Inc. (KHGCA 4114 - KHGCA 4115)	01/12/95
CX 63	Request for Tariff Change from Bunny's Moving & Storage (KHGCA 7559)	01/08/89
CX 64	Request for Tariff Change from Quality Moving & Storage (KHGCA 8090)	01/24/90
CX 65	Request for Tariff Change from Hammond Moving & Storage, Inc. (KHGCA 9386)	07/19/93
CX 66	Request for Tariff Change from Kentucky Moving & Storage Services, Inc. (KHGCA 8165)	03/08/90

CX NUMBER	DOCUMENT DESCRIPTION	DATE
CX 67	Request for Tariff Change from Kentucky Moving & Storage Services, Inc. (KHGCA 1155)	08/13/02
CX 68	Request for Tariff Change from T. Peavlec Moving Systems, LLC (KHGCA 1161)	07/30/02
CX 69	Request for Tariff Change from Odle Moving (KHGCA 1162)	04/29/02
CX 70	Request for Tariff Change from Sadler (KHGCA 1163)	04/29/02
CX 71	Request for Tariff Change from Sadler & Odle Moving (KHGCA 1165)	04/29/02
CX 72	Request for Tariff Change from Lynn Moving & Storage, Inc. (KHGCA 8556)	02/02/91
CX 73	Request for Tariff Change from T. Peavler Moving Systems, LLC (KHGCA 1284)	01/25/03
CX 74	Handwritten request for increase from J.J. Carter & Son Moving & Storage, Inc. of Indiana (KHGCA 2552)	03/01/86
CX 75	Letter from John Carter of J.J. Carter & Son, Inc. to O.B. Arnold re. rate increase request (KHGCA 2554)	02/03/86
CX 76	Letter from John A. Jasper of Great Midwest Moving & Storage, Inc. to Bud Muris (KHGCA 2559)	01/28/86
CX 77	Letter from William Johnson to O.B. Arnold request rate change for William H.H. Johnson Moving & Storage (KHGCA 2561)	01/17/86
CX 78	Handwritten request for rate change from Luther Transfer, Inc. (KHGCA 2563)	11/25/85
CX 79	Letter from Dan Gorczyca of Boweil Storage and Transit Company request rate change (KHGCA 2654 - KHGCA 2655)	03/20/86
CX 80	Request for Tariff Change from Fallon Moving & Warehousing, Inc. (KHGCA 3968)	11/07/94
CX 81	Request for Tariff Change from Dana J. Curl (KHGCA 3971)	10/14/94
CX 82	Request for Tariff Change from Belmont Moving & Storage (KHGCA 4471)	07/24/95
CX 83	Request for Tariff Change from Shadowens Moving & Storage (KHGCA 4472)	07/12/95
CX 84	Request for Tariff Change from Belmont Moving & Storage (KHGCA 4776)	10/20/95
CX 85	Request for Tariff Change from Bunny's Moving & Storage, Inc. (KHGCA 5095)	04/11/96
CX 86	Request for Tariff Change from Garbe Moving & Storage, Inc. (A Moore Moving Services) (KHGCA 5100)	03/22/96
CX 87	Request for Tariff Change from Odle Movers (KHGCA 5719)	04/07/97
CX 88	Request for Tariff Change from Don Peck's Moving & Storage (KHGCA 7862)	07/13/89

CX NUMBER	DOCUMENT DESCRIPTION	DATE
CX 89	Request for Tariff Change from A. Arnold & Son Trf & Storage Co., Inc. (KHGCA 8310)	08/01/90
CX 90	Request for Tariff Change from A. Arnold & Son Trf & Storage Co., Inc. (KHGCA 8337)	08/01/90
CX 91	Request for Tariff Change from Ellis Moving & Storage (KHGCA 8343)	07/24/90
CX 92	Request for Tariff Change from Vincent Fister Moving and Storage (KHGCA 8346)	08/07/90
CX 93	Request for Tariff Change from Vincent Fister Moving and Storage (KHGCA 8347)	08/07/90
CX 94	Requests for Tariff Change from Kentucky Moving and Storage (KHGCA 8552 - KHGCA 8553)	01/21/91 01/31/91
CX 95	Request for Tariff Change from Don Peck's Moving & Storage (KHGCA 8560)	01/31/91
CX 96	Request for Tariff Change from William H H Johnson Moving & Storage (KHGCA 9319)	04/26/93
CX 97	Request for Tariff Change from Gillum Transfer & Storage, Inc. (KHGCA 9384)	08/12/93
CX 98	Request for Tariff Change from Odhes Movers (KHGCA 9456)	10/25/93
CX 99	Request for Tariff Change from Sadlers Movers (KHGCA 9457)	10/25/93
CX 100	Request for Tariff Change from H. Johnson Moving Co., Inc. (KHGCA 9604)	02/01/94
CX 101	Request for Tariff Change from Miller Moving and Storage, Inc. (KHGCA 9824)	06/24/94
CX 102	Request for Tariff Change from Paducah Moving and Storage (KHGCA 9825)	06/24/94
CX 103	Requests for Tariff Change from Wagner Moving and Storage, Inc. (KHGCA 9826 - KHGCA 9828)	06/24/94
CX 104	Kentucky Household Goods Carriers Association Board Annual Membership Meeting Minutes (KHGCA 3833 - KHGCA 3835)	04/11/86
CX 105	Kentucky Household Goods Carriers Association Board Meeting Minutes (KHGCA 10187)	05/19/71
CX 106	Letter from George Catlett to C.L. Pangburn enclosing files re. Gilbert J. Parr Associates (KHGCA 7106 - KHGCA 7111)	04/23/66
CX 107	Kentucky Household Goods Carriers Association Board of Directors Meeting (KHGCA 7114 - KHGCA 7115)	04/15/66
CX 108	Instruction Sheet Supplement #51 (KHGCA 5861 - KHGCA 5905)	12/01/97
CX 109	Letter from Dana Abrahamsen to William Lally	07/03/02
CX 110	Letter from Kyle Thompson to Dana Abrahamsen	07/25/02

CERTIFICATE OF SERVICE

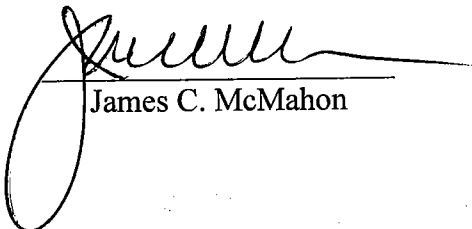
This is to certify that on January 29, 2004, I caused a copy of the attached **Respondent's Motion in Limine to Exclude Evidence Relating in any Way to the Oregon Department of Transportation** and for other relief to be served upon the following persons by fax and U.S. Express Mail:

Hon. D. Michael Chappell
Administrative Law Judge
Federal Trade Commission
600 Pennsylvania Avenue, N.W.
Washington, DC 20580

Hon. Richard Dagen
Associate Director
Federal Trade Commission
601 New Jersey Ave., N.W.
Room 6223
Washington, DC 20580

Dana Abrahamsen, Esq.
Bureau of Competition
Room 5229
Federal Trade Commission
601 New Jersey Avenue, N.W.
Washington, D.C. 20580

Dated: New York, NY
January 29, 2004


James C. McMahon