

**Notation 11-75:  
Consolidated Chassis Management Pool Agreement Amendment, No. 011962-007**

**Statement of Chairman Richard A. Lidinsky, Jr.**

**December 28, 2011**

I support Commission Staff's recommendation and vote at this time to take no action to prevent the Amendment from becoming effective under the Shipping Act, while instructing Staff to monitor the implementation of the amended agreement through reporting requirements pursuant to the Commission's authority set forth in 46 C.F.R. § 535.702(d).

My position today is premised on several modifications to the Amendment and assurances from Agreement Counsel to Staff. Based on those modifications and assurances, I understand that the Consolidated Chassis Management Pool Agreement (CCM Agreement) is not seeking authority to lease chassis directly to entities who do not contribute to the pool, and does not intend to do so under this Amendment. Following concerns raised by Staff and in comments from the International Longshoremen's Association, Institute of International Container Lessors, and the National Industrial Transportation League, CCM modified the Amendment to drop authority (which pre-existed the Amendment) to set terms or charges governing the "lease" of chassis. *See* Agreement Section 5.2(A). It also withdrew proposed new authority to provide chassis directly to non-contributing parties. *See* Amendment Section 6.7 (withdrawn). If, despite these assurances and modifications, CCM were to move to a direct-leasing model, I would have serious concerns that such activity may exceed the scope of the limited exemption that the Shipping Act provides from the Sherman Act, Clayton Act, and related general antitrust statutes.

Similarly, my vote today is based on the clarification that the Amendment does not seek to extend the Shipping Act's exemption from other antitrust laws, in any form whatsoever, to entities, such as equipment leasing companies, that are not ocean carriers. Under the Shipping Act, the exemption from other antitrust laws is premised on a party being subject to Commission jurisdiction and oversight to protect competition and customers. Equipment leasing companies play a crucial but overlooked role in our nation's supply chain. So long as they remain in the shadows, outside the Commission's jurisdiction and oversight, they cannot use agreements with ocean carriers to don the cloak of immunity from other general antitrust laws.

My position is also based on the repeated representations that the chassis pools will be operated on an at-cost basis, and that CCM will not impose pool charges or other charges that result in profits collected by CCM or distributed to its members. So long as CCM's management fees and costs are reasonable, this "at-cost" model tends to mitigate concern that the Amendment may produce "an unreasonable increase in transportation cost." 46 U.S.C. § 41307.

Finally, my vote follows assurances by CCM that the Amendment will not result in changes or disturbances to existing arrangements and agreements for chassis maintenance and repair. Such disturbances could cause disruptions in the flow of commerce during this critical time in our economic recovery.

In crafting reporting requirements for Agreement, Staff should focus on these concerns:

- Is CCM making any moves to a direct-leasing model?
- Are management fees and other costs and charges reasonably low?
- Are there any changes or increases in pool charges or other charges that could increase transportation costs?
- Is CCM collecting or distributing any profits or excess charges?
- Is CCM in any way restricting chassis supply in a way that creates shortages, cost increases, or drives utilization rates higher than is reasonable?
- Is CCM making any changes that will affect, directly or indirectly, where chassis are maintained and repaired, or how many chassis are maintained and repaired pursuant to their current collective bargaining arrangements?

In sum, I support the concept of chassis pools and the efficiency enhancements they bring. But the Amended CCM Agreement should receive close scrutiny to ensure that it does not result in an improper extension of the Shipping Act's exemptions from general competition requirements, a reduction in competition, an increase in transportation costs, a reduction in transportation services, or labor disputes that disrupt the flow of commerce at this critical time for our economy.