UNITED STATES MARITIME COMMISSION

No. 418

IN THE MATTER OF SERVICES, CHARGES, AND PRACTICES OF CARRIERS ENGAGED IN THE EAST-BOUND TRANSPORTATION OF LUMBER AND RELATED ARTICLES BY WAY OF THE PANAMA CANAL

Submitted August 10, 1938. Decided July 28, 1939

Provisions of bills of lading affecting transportation rate and value of service not effective unless incorporated in tariff.

Unloading of ship a common carrier duty, and when owner of goods performs such service, compensation therefor should be published in carrier's tariff as an allowance.

Tender of intercoastal lumber for delivery at end of ship's tackle under tackle-to-tackle rates not unreasonable, and carrier is under no legal obligation to publish charges for services beyond ship's tackle when not undertaking to perform such services.

When terminal assumes duty of delivering intercoastal lumber to consignee its charges, rules, and regulations should be published and posted, and changes should not be made except on adequate notice. Maintenance of rates in any other manner an unreasonable practice.

C. S. Belsterling, *Harry S. Brown*, *Oliver P. Caldwell*, *J. P. Cussen*, *William J. Dean*, *M. G. de Quevedo*, *Gerald A. Dundon*, *Joseph J. Geary*, *Roscoe H. Hupper*, *Mack G. Klosty*, *T. F. Lynch*, *E. F. McGrath*, *George B. Milnor*, *R. T. Mount*, *Otis N. Shepard*, *J. A. Stumpf*, *H. W. Warley*, *Burton H. White*, and *Saunders Wright*, for various carrier respondents.

E. W. Bishop, *Herbert Buckley*, *John P. Campbell*, *Paul T. Carey*, *Windsor F. Cousins*, *W. D. Dimmitt*, *Arthur W. Dover*, *M. Carter Hall*, *Thomas J. Heffernan*, *Thomas B. Hornbeck*, *L. T. Howell*, *Berwick B. Lanier*, *James H. Miskell, Jr.*, *James A. Moore*, *H. Merle Mulloy*, *M. A. Myers*, *S. Frank Nolan*, *L. L. Oliver*, *William C. Purnell*, *R. Bruce Robinson*, *Isaac E. Schine*, *M. J. Silva*, *Emmett P. Simmons*, *G. H. Simpson*, *Samuel G. Spear*, *Arthur V. Sullivan*, *Max Thaten*, *H. B. Thomas*, *Charles R. Webber*, *George W. Witney*, *J. M. Woodruff*, *C. C. Yates*, and *D. Lynch Younger*, for various terminal respondents.

L. B. Anderson, *K. C. Batchelder*, *W. Scott Blanchard*, *Hugh P. Brady*, *Frank S. Davis*, *Mayor James E. Dunne*, *R. J. Evans*, *Charles J. Fagg*, *G. Coe Farrier*, *W. B. Greeley*, *Harold E. Kimball*, *John F. Lent*, *W. W. McCoubrey*, *William C. McCulloch*, *Hugh Oberg*, *Richard Parkhurst*, *Charles R. Seal*, *Francis L. Sellew*, *R. T. Titus*, *H. V. C. Wade*, *H. J. Wagner*, *W. W. Weller*, and *S. H. Williams*, for shippers, receivers, and civic and commercial organizations.

Supplemental Report of the Commission

By the Commission:

Exceptions were filed by carrier and terminal respondents to the report proposed by the examiner, and the case was orally argued. Our conclusions differ somewhat from those recommended by the examiner.

This investigation concerns the lawfulness of services, charges, and practices of water carriers engaged in the east-bound intercoastal transportation of lumber and related articles, and of terminal operators at whose facilities such commodities are discharged. In addition to the intercoastal carriers and connecting transhipment carriers, operators of public terminal facilities in the North Atlantic range are named respondents. (See Appendix A.) Hearings were held in Seattle, Boston, New York, Philadelphia, and Norfolk. Additional information was obtained from respondents in answer to questionnaires.

One of the matters in issue, the lumber berth quantity allowance rule of Calmar Steamship Corporation, was disposed of in the prior report herein, 1 U. S. M. C. 646. Certain questions, incidentally involved, relating to charter parties will be disposed of in Docket No. 488, In the Matter of Intercoastal Charters. The questions remaining for consideration relate to demurrage rules, tariff publication of bill of lading provisions and allowances, and services, charges, and practices of carriers and terminals in connection with the receipt and delivery of intercoastal lumber and related articles.

Demurrage rules.—Intervener West Coast Lumbermen's Association objects to the carriers' rules exempting the carrier from responsibility for demurrage and other charges. The rule, with the additions proposed by intervener in parentheses, reads as follows:

Carriers party hereto shall not be held responsible (except for their disability, fault, or negligence) for demurrage or other charges accruing while any cargo or part thereof is on craft, wharf, rail equipment, or vehicle, nor shall vessel assume care, custody, control, or safety of, or be liable for any cargo or any part thereof until received in vessel's sling alongside, nor after delivery ex-ship's tackle (unless cargo has been specifically ordered by vessel or agents in which event charges referred to will be for account of the carrier).

Historically, demurrage has been an allowance or compensation for the delay or detention of a vessel. *The Appolon,* 22 U. S. 362. It has been customarily regarded only as a penalty against the shipper for detention of the carrier's equipment.

We are not prepared to say that carriers, as a part of their common carrier obligation, are under the duty to assume the responsibility sought to be placed upon them by this intervener. But carriers should not be permitted by a tariff rule to seek to exempt themselves in advance of such responsibility. However, apart from the question of liability for their negligence, carriers may state in their tariffs what charges they will not absorb when such a statement will aid the shipper or consignee in ascertaining the exact charges he must pay in connection with the transportation involved. Respondent carriers stated on brief that they were revising the rule in question. Therefore, no finding in regard thereto will be made at this time, but any revision made should reflect the views expressed herein.

Bills of lading.—It is apparent that in certain respects carriers have not attempted to make their tariffs consistent with their bills of lading. For example, Alternate Agent Joseph A. Wells publishes for a group of carriers, a tariff rule providing that each shipment shall be subject to the terms, conditions, and exceptions of the bill of lading of the carrier in use at the time of such shipment, and the shipper shall accept the same and be bound thereby. Such bills of lading are not reproduced in the tariff. Any provisions of a bill of lading which affect the charge for transportation or the value of the service, to be effective, must be incorporated in the tariff.

Allowances.—The Dutton Lumber Company, at Providence, R. I., a terminal operator, performs through the Providence Trucking & Stevedoring Company, a subsidiary, the stevedoring services for Luckenbach on all lumber received, most of which belongs to Dutton. Unloading vessels is a common carrier function and the compensation therefor, insofar as Dutton's lumber is concerned, should be made in the form of an allowance duly published in the carrier's tariff.

Carrier's duty in delivering lumber and publishing charges therefor.—Carriers state that their object in publishing tackle-to-tackle lumber rates is to relieve them of responsibility for the cargo after it leaves the ship's tackle or hook, regardless of the fact that in many instances actual delivery to consignee can be effected only through the intervention of the terminal operator. This raises the following questions: What is reasonable tender of delivery under a tackle-to-tackle rate? In order to obtain delivery, consignees must pay, in addition to such rate, handling charges assessed by terminal operators for services rendered by them. Query, should the carrier be required to publish such charges?

Carriers serving Atlantic ports publish rates on intercoastal lumber to apply from and to end of ship's tackle, that is, within reach of ship's hook. Their tariffs specifically exclude any service beyond ship's tackle at the ocean rate. Cargo is to be supplied to or removed from the vessel as rapidly as it can be received or delivered. Their bills of lading also provide that rates apply from and to ship's tackle only. Carriers' justification for this method of publication is that they have no control over the charges of independent public terminals, that such charges are changed without sufficient notice, and that in many instances terminal operators will not permit carriers to perform any terminal services on their piers. Certain terminal operators even reserve the right to perform the stevedore service aboard ship. However, where respondents have their own piers they publish charges for services beyond ship's tackle. And certain carriers reproduce in their tariffs the charges maintained by the terminals merely as information to the shipper, but expenses beyond ship's tackle are for account of the cargo. These schedules are not in all instances complete, do not always state charges separately, and often are not in accordance with the rates actually charged and collected by the terminal operators.

Lumber is discharged in sling loads onto the string-piece of the pier or into open-top rail cars or into lighters. When not loaded into open-top cars or lighters the lumber must be received at tackle and back-piled to place of rest on pier for subsequent delivery to trucks, rail cars, or, after the expiration of free time, to storage. The receiving terminals may be roughly divided into four classes: (1) Those that merely furnish space and facilities and perhaps limited service, (2) those that furnish complete terminal facilities and services, (3) terminals operated by the carriers, and (4) consignees' private terminals. At (1) and (3) the ship's stevedore performs the back-piling and the stevedore or employee of ship attends to the delivery of the lumber within the free-time period, collects the charges incident to delivery, and obtains a receipt for the cargo from the consignee. At railroad terminals the ship's stevedore performs the back-piling and the terminal makes delivery, giving a receipt for the cargo to the ship. Ordinarily, at (1) the terminal operator collects the charges accruing to the terminal, such as dockage, wharfage, and storage. At (2) the terminal reserves the right to and does perform all services beyond ship's tackle, usually receipts to the ship for the cargo, makes delivery to consignee, and collects the terminal charges.

Witnesses for both carriers and terminals are virtually unanimous in stating that it is impracticable for consignees to accept delivery at end of ship's tackle, except where cargo is unloaded into open-top cars or lighters or where it is delivered to consignee at his own private pier. By far the greater portion of lumber received at North Atlantic ports is trucked from the terminals. Generally, terminal companies will not permit consignees on their piers for the purpose of receiving cargo direct from ship's tackle. Witness for Luckenbach stated that arrival notices are not sent to consignee until after placement of cargo at point of rest on pier, and that consignee is required to ascertain by telephone if property is so placed and the lots segregated and ready for delivery, before he may call for it. This, apparently, is the general practice.

As disclosed in the proposed report, the record abounds with instances illustrating how the system of tariff publication and method of effecting delivery of intercoastal lumber as described above has resulted in a lack of uniformity in charges and practices as between terminals within a port, and as between ports; opportunities for abuses; and a generally unsatisfactory situation with respect to the publication of terminal charges. Before attempting to define the carrier's duty or the shipper's rights under these circumstances, it must be recognized that under the established custom of discharging intercoastal lumber the carrier cannot make nor the consignee accept ship's tackle delivery at independent public terminals. Both must be aware of this when they enter into a contract of affreightment at tackle-to-tackle rates, and presumably the measure of the rate is determined with this limitation in view.

Section 2 of the Intercoastal Shipping Act, 1933, requires every common carrier by water in intercoastal commerce to file its tariffs showing all the rates and charges for or in connection with intercoastal transportation, and stating separately "each terminal or other charge, privilege, or facility, granted or allowed, and any rules or regulations which in any wise change, affect, or determine any part or the aggregate of such aforesaid rates, * * * or charges, or the value of the service rendered to the * * * consignor, or consignee." In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, 462, it was found that carriers' tariffs must show the specific terminals between which each rate applies, each service such as storage, handling, piling of lumber, wharfage, lighterage, rendered to the consignor or consignee, the charge for each service, and each absorption or allowance made, specifying the service for which it is made, entire amount for such service, and precise portion thereof absorbed or allowed. This finding was made upon a record dealing with practices of carriers in the intercoastal trade and dealt with the general situation and not with rates and practices in connection with individual commodities. The physical conditions of handling lumber and of handling general cargo are essentially different. Lumber is picked up by the vessels in small consignments at many loading berths on the Pacific coast and discharged at numerous berths on the Atlantic coast. For instance, Calmar lists a total of 261 berths at which it will either load or discharge lumber, and it does not own any docks or berths at any port. Moreover, much of the lumber is handled in large quantities at private docks. Because of this fact and because a great proportion of the lumber can be received from ship's tackle into open-top rail cars or lighters, tackle-to-tackle rates are a necessity in the trade. On the other hand, in the case of general cargo, the carrier must maintain or arrange for a loading dock on which cargo can be assembled awaiting loading, and a discharging dock on which the packages can be assorted by bill of lading lots for delivery to the consignee. As to such cargo, it would be impossible for the consignor to place the cargo at end of ship's hook or for the consignee to accept delivery at that point. The conditions under which lumber is handled, in our opinion, require and justify different treatment with respect to the publication of rates and services.

We conclude, therefore, that tender of delivery of intercoastal lumber at end of ship's tackle at independently operated terminals over which the carrier has no control is not an unreasonable practice, and that respondent carriers are under no legal obligation to publish rates and charges for services beyond ship's tackle at such terminals.

Terminal's duty in publishing rates for delivery of lumber.—This is the first major proceeding involving the services, charges, and practices of terminal operators. The terminals named respondents herein are operated by individuals, private companies, railroad companies, municipalities, and States. Jurisdiction over them is conferred upon us by section 1 of the Shipping Act, 1916, which reads:

> The term "other person subject to this act" means any person not included in the term "common carrier by water," carrying on the business of forwarding or furnishing wharfage, dock warehouse, or other terminal facilities in connection with a common carrier by water.

Section 15 of that act requires our approval of all agreements entered into by "other persons" between themselves or with common carriers by water concerning, among other things, rates, special privileges, competition, or in any manner providing for an exclusive, preferential, or cooperative working arrangement. Section 16 makes it unlawful for them unduly to prefer or unduly prejudice any particular person, locality, or description of traffic in any respect whatsoever. And section 17 requires them to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with the receiving, handling, storing, or delivering of property.

This investigation has revealed certain practices respecting the publication of charges by terminal operators which undoubtedly lead to confusion on the part of shippers and consignees who must consider terminal costs in marketing their lumber. Some fail to publish and post a schedule of rates, as, for example, Green and Wood, Inc., at New Bedford, which publishes no tariff but quotes rates upon request, and the State Pier, at Providence, and Beard's Erie Basin, at New York, which apparently publish no tariff; others do not give ample notice or give no notice whatever of rate changes; still others apply rates which are different from those published by the carriers for the same services; and finally there are those who fail to state separately the charges for each service performed, as, for instance, Wiggin and Cilco Terminals which publish one inclusive rate for back-piling and wharfage.

The failure of a public utility to publish and post a tariff of rates is indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable to the shipping public, because sudden rate changes often result in unexpected losses to, and unjust discriminations against, the shipper or consignee. This is a disruptive factor both in the transportation and marketing of the commodity involved. The question is whether the shipping acts which we administer contemplate the correction by us of these abuses.

Undoubtedly, the prime object of the Intercoastal Act is to insure the filing and posting of actual rates for intercoastal transportation upon reasonable notice to the public. Delivery, when accomplished by the carrier, is an integral part of such transportation—so much so that the carrier is specifically commanded by the act to file and post its charges in connection therewith. When the independent terminal operator displaces the carrier and undertakes the duty to deliver, it is obvious that Congress did not intend to relinquish or waive its requirement for publicity of the charges made for this service by the terminal operator. To relieve the terminal operator of the duty to give publicity to his charges for services performed by him in place of the carrier would defeat the purpose of the act. The power conferred upon us to prescribe reasonable regulations and practices in connection with the handling and delivery of property whether by carriers or terminal operators, and to prevent undue preference and prejudice in connection therewith, is broad enough to prevent the defeat of the purpose of the act by any such device or situation.

We conclude, therefore, that terminal respondents' practice of establishing or publishing their rates, to the extent that it fails to meet the above-mentioned requirements as to publicity of rates and adequate notice of rate changes, is unjust and unreasonable, and is conducive to undue preference and prejudice.

We will not at this time prescribe for terminal operators a detailed system of rules and regulations governing the publication of their tariffs. For the present we suggest that self-regulation through the medium of section 15 agreements approved by us is a much simpler and more satisfactory solution of the problem. A cooperative working arrangement among the terminals, designed to bring about a stable terminal rate structure for the handling of intercoastal lumber, would not only promote the orderly transportation and marketing of lumber, but would foster fair and regulated competition among the terminals themselves. Such an agreement should embody, among other things, the principles set forth in finding (5) hereinafter made.

There are other minor issues incidentally raised during the course of this investigation such as those relating to alleged agreements between carriers and terminals with respect to berthing space, and to leases by terminals of storage space to certain large dealers in lumber. However, the testimony on these points is fragmentary, and in the absence of complaint those issues will not be considered herein.

Upon this record we find:

1. That bill-of-lading provisions affecting transportation rates or the value of transportation service are not governing unless incorporated in carrier's published tariffs.

2. That compensation to owner of cargo for service of unloading ship should be published in carrier's tariff as an allowance.

3. That tender of intercoastal lumber for delivery at end of ship's tackle under tackle-to-tackle rates is not an unreasonable practice.

4. That when carriers do not hold themselves out to perform services beyond ship's tackle, their failure to publish charges therefor in connection with tackle-to-tackle rates on intercoastal lumber is not unlawful.

5. That when respondent terminals undertake the duty of delivering intercoastal lumber and establish the charges, rules, and regulations in connection therewith, said respondents should publish and post a tariff containing said charges, rules, and regulations, and should not make any changes in said tariff except upon thirty (30) days' notice.

No order will be issued at this time. Respondents will be allowed sixty (60) days from the date of this decision to amend their tariffs and conform their practices with the findings made and the views expressed herein.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

WASHINGTON, D. C., *July 28, 1939.*

Appendix A

CARRIER RESPONDENTS

Alameda Transportation Co., Inc.
American Foreign Steamship Corporation.
*American-Hawaiian Steamship Company.
American Tankers Corporation.
America Transportation Co., Inc.
*(Arrow Line) Sudden & Christenson.
Babbidge & Holt, Inc.
Bay Cities Transportation Company.
Border Line Transportation Company.
Bulk Carriers Corporation.
California Steamship Company.
The California Transportation Company.
*Calmar Steamship Corporation.
Chamberlin Steamship Co., Ltd.
Christenson-Hammond Line (Hammond Shipping Co., Ltd., Mang. Agents).
Crowley Launch & Tugboat Co.
*Dollar Steamship Lines, Inc., Ltd.
Erikson Navigation Company.
Fay Transportation Company (copartnership, Nahum Fay and Norvin Fay).
Freighters, Inc.
*(Grace Line) Panama Mail Steamship Company.
*Gulf Pacific Mail Line, Ltd.
Hammond Shipping Co., Ltd.
Sidney M. Hauptman, Trustee, Nelson Steamship Company.
Haviside Company.
Inland Waterways Corporation.
*Isthmian Steamship Company.
A. B. Johnson Lumber Company.
Jones Towboat Company.
Luckenbach Gulf Steamship Company.
*Luckenbach Steamship Company, Inc.
*McCormick Steamship Company.
Marine Service Corporation.
Mississippi Valley Barge Line Co.
Pacific Steamship Lines, Ltd. (The Admiral Line).
*(Panama Pacific Line) (American Line Steamship Corporation) (The Atlantic Transport Company of West Virginia).
Prudential Steamship Corporation.
Puget Sound Freight Lines.
Puget Sound Navigation Company.
*(Quaker Line) Pacific Atlantic Steamship Co.
Richmond Navigation and Improvement Co. (Partnership comprising H. P. Lauritzen, G. B. Lauritzen & N. P. Bush).
The River Lines.
Roamer Tug & Lighterage Company, C. Noom, Part Owner, and E. J. Noom, Part Owner.
Sacramento Navigation Company.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company.
San Diego-San Francisco Steamship Co.
Shepard Steamship Co.
Skagit River Navigation and Trading Company.
*States Steamship Company (California-Eastern Line).
Swayne & Hoyt, Ltd., Managing Owners (Gulf Pacific Line).
*Weyerhaeuser Steamship Company.
Williams Steamship Corporation (dissolved).

TERMINAL RESPONDENTS

Albany Port District Commission, Albany, N. Y.
American Dock & Pouch Terminals, New York, N. Y.
Archer Daniels Midland Company, Edgewater, N. J.
Atlantic Terminals, Inc., Newark, N. J.
Baldwin Locomotive Works, Eddystone, Pa.
Baldwin Southwark Corp., Eddystone, Pa.
Baltimore Copper Smelting and Rolling Co., Baltimore, Md.
Baltimore & Ohio Railroad Company.

* Intercoastal Steamship Freight Association lines.

Beard's Erie Basin, Inc., New York, N. Y.
Bethlehem Shipbuilding Corp., Ltd., Bethlehem, Pa.
Bethlehem Steel Corporation, Bethlehem, Pa.
Block Street Wharf and Warehouse Company, Baltimore, Md.
Boston & Albany Railroad.
Boston and Maine Railroad.
Boston Tidewater Terminals, Inc., Boston, Mass.
Brooklyn Dock and Storage, Inc., New York, N. Y.
Brooklyn Intercoastal Terminals, Inc., New York, N. Y.
Brooklyn Standard Bag Company, New York, N. Y.
Brooklyn Waterfront Terminal Corp., Brooklyn, N. Y.
Cameron Lumber Company, Newburgh, N. Y.
Canton Railroad Company.
The Central Railroad Company of New Jersey.
The Chesapeake and Ohio Railroad Company.
Cilco Terminal Co., Inc., Bridgeport, Conn.
Commonwealth of Massachusetts, Department of Public Works, Boston, Mass.
Connecticut Terminal Company, Inc., New London, Conn.
The Delaware, Lackawanna & Western Railroad Co.
E. I. Dupont de Nemours and Company, Wilmington, Del.
A. C. Dutton Lumber Corporation, Providence, R. I.
Erie Railroad.
Federal Shipbuilding & Dry Dock Co., Kearney, N. J.
H. Nelson Flanagan & Company, New York, N. Y.
Ford Motor Company, Dearborn, Mich.
Church E. Gates & Company, New York, N. Y.
Grand Trunk Railway System.
Green & Wood, Inc., New Bedford, Mass.
Greenpoint Terminal Corporation, Brooklyn, N. Y.
Harborside Warehouse Company, Inc., Jersey City, N. J.
Hoboken Dock Company, Hoboken, N. J.
Independent Pier Company, Philadelphia, Pa.
International Mercantile Marine Dock Company, New York, N. Y.
Lamberts Point Terminal Corporation, Norfolk, Va.
Lawson & McMurray Lumber Sales Co., Hoboken, N. J.
Lehigh Valley Railroad.
Lincoln Tidewater Terminals, Inc., New York, N. Y.
The Long Island Railroad Company.
Lumber Exchange Terminal, Inc., Brooklyn, N. Y.
Mahlstedt Lumber Company, Yonkers, N. Y.
Maryland Dock Company, Inc., Baltimore, Md.
The Mystic Terminal Company, Charlestown, Mass.
Nacirema Operating Company, Newark, N. J.
City of New Bedford, Mass.
New Bedford Gas & Edison Light Co., New Bedford, Mass.
City of Newark, Department of Public Affairs, Bureau of Docks, Newark, N. J.
Newark Tidewater Terminal, Newark, N. J.
Newport News Shipbuilding & Dry Dock Co., Newport News, Va.
City of New York, Department of Docks, New York, N. Y.
The New York Central Railroad Company.
The New York, New Haven & Hartford Railroad Co.
New York, Ontario & Western Railway.
Norfolk Tidewater Terminals, Inc., Norfolk, Va.
Norfolk & Western Railway.
North Atlantic Terminal Service, Inc., Hoboken, N. J.

Ontario Land Company, Pier 179, Philadelphia, Pa.

The Pennsylvania Railroad Company.

City of Philadelphia, Dept. of Docks, Wharves, and Ferries, Philadelphia, Pa.

Philadelphia Piers, Inc., Philadelphia, Pa.

Piers Operating Company, Boston, Mass.

Port of Portland Authority, Portland, Me.

Portland Terminal Company, Portland, Me.

City of Providence, R. I.

Reading Company.

State of Rhode Island, Department of Public Works, Providence, R. I.

Rukert Terminals Corporation, Baltimore, Md.

Sears, Roebuck & Company, Chicago, Ill.

2 U. S. M. C.

South Chester Terminal & Warehousing Co., Chester, Pa.

Southgate Terminal Corporation, Norfolk, Va.

South Jersey Port Commission, Camden, N. J.

Southern Railway System.

Sun Shipbuilding & Dry Dock Co., Chester, Pa.

Thaten Terminals, New York, N. Y.

Tisdale Lumber Company, Long Island City, N. Y.

City of Trenton, Department of Public Affairs, Trenton, N. J.

J. C. Turner Lumber Company, Irvington, N. Y.

Western Maryland Railway Company.

West Shore Railroad.

Wiggin Terminals, Inc., Boston, Mass.

Board of Harbor Commissioners, City of Wilmington, Del.

Yerkes Lumber Company, Yonkers, N. Y.

UNITED STATES MARITIME COMMISSION

No. 488

In the Matter of Intercoastal Charters

Submitted January 16, 1939. Decided July 28, 1939

Bareboat charters and time and voyage charters distinguished.

Status and tariff filing responsibilities of vessel operators chartering vessels to cargo owners for intercoastal carriage of their cargoes under various charters defined.

Proceeding discontinued, without prejudice.

F. Riker Clark for American Foreign Steamship Corporation; *Herbert M. Statt* for Bulk Carriers Corporation; *H. W. Warley*, *Edmund J. Karr*, and *Russell T. Mount* for Calmar Steamship Corporation; *D. E. Harris* for Continental Grain Company; *Wilbur LaRoe, Jr.* for Ford Motor Company; *James McDonald* for Kerr-Gifford & Company; *M. G. de Quevedo* for Luckenbach Gulf Steamship Company, Inc.; *Ira S. Lillick*, *Theodore M. Levy*, *Edward G. Dobrin*, and *Gerald A. Dundon* for McCormick Steamship Company; *Erskine Wood* for Pacific Atlantic Steamship Company; *Earle Farwell* for Prudential Steamship Corporation; *Otis N. Shepard*, *H. B. Shepard, 2nd*, and *E. J. Martin* for Shepard Steamship Company; *E. Holzborn* and *Neil S. Laidlaw* for Swayne & Hoyt, Ltd. and Gulf Pacific Mail Line, Ltd.; *George de Forest Lord*, *John D. Garrison*, and *Joseph W. Wyatt* for The Union Sulphur Company, respondents.

Herbert M. Statt and *Harold S. Deming* for Association of Shipbrokers and Agents; *W. Scott Blanchard* for Blanchard Lumber Company; *Wilbur LaRoe, Jr.*, *Frederick E. Brown*, *Arthur L. Winn, Jr.*, and *Herbert Buckley* for A. C. Dutton Lumber Corporation; *M. D. Moon* for Fisher Flouring Mills; *H. S. Brown*, *W. M. Carney*, and *M. G. de Quevedo* for Intercoastal Steamship Freight Association; *E. H. Thornton* and *W. W. Wolford* for New Orleans Joint Traffic Bureau; *R. D. Lytle* for North Pacific Millers' Association: *F. H. Reese* for Portland (Oregon) Port Traffic Development Bureau; *E. F. Brady* for himself, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the examiner's proposed report were filed and oral argument was had. The conclusions adopted herein differ in some respects from those recommended by the examiner.

Upon allegations by the Western Lumber & Shingle Company, of Seattle, Wash., Calmar Steamship Corporation, American-Hawaiian Steamship Company, and Weyerhaeuser Steamship Company, charging unfair competition, discriminatory rates, and pendency of demoralized conditions in the intercoastal trade due to chartering, we instituted this investigation upon our own motion by orders of May 24, 1938, and June 7, 1938, to determine the lawfulness under the Shipping Act, 1916, as amended, of the chartering of vessels and vessel space, charter terms and provisions, charter rates, and charter practices as respects transportation of freight between Pacific coast ports and Atlantic and Gulf ports of the United States through the Panama Canal. Carriers and others indicated at any time to have been involved in chartering in the trade, except as respects oil-tanker chartering, were named respondents.[1]

Carriers comprising the membership of the Intercoastal Steamship Freight Association, hereinafter called the Association, and other intercoastal common carriers frequently charter vessels to replace or supplement their vessel facilities in transporting general or parcel-lot cargo. No unlawfulness or detriment is attributed by witnesses to such chartering, nor to oil-tanker operations. Evidence presented shows that the eastbound carriage of full cargoes of lumber and grain in chartered vessels by others than such common carriers is the basis of the allegations made. Under these latter charters full vessel loads of lumber, and less frequently grain, have been carried at lower rates for transportation than the rates of the common carriers applicable to parcel-lot cargo.

Respondent Bulk Carriers Corporation first engaged in intercoastal charter transportation with cargo owners in October 1935. Its service was carried on intermittently with two vessels owned by it,

[1] American Foreign Steamship Corporation, American-Hawaiian Steamship Company, Bulk Carriers Corporation, California Eastern Line, Inc., Calmar Steamship Corporation, Continental Grain Company, Dollar Steamship Lines, Inc., Ltd., Ford Motor Company, Girdwood Shipping Company, Gulf Pacific Mail Line, Ltd., Isthmian Steamship Company, Kerr-Gifford Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., Matson Navigation Company, McCormick Steamship Company, Northland Transportation Company, Pacific American Fisheries, Inc., Pacific Atlantic Steamship Company (Quaker Line), Pacific Coast Direct Line (Weyerhaeuser Line), Panama Mail Steamship Company (Grace Line), Prudential Steamship Corporation, Puget Sound Associated Mills, Shepard Steamship Company, States Steamship Company (California Eastern Line), Sudden & Christenson (Arrow Line), Swayne & Hoyt, Ltd. (Gulf Pacific Line), Tacoma Oriental Steamship Company, Twin Harbors Lumber Company, The Union Sulphur Company, Weyerhaeuser Steamship Company.

and with chartered vessels. It had on file with us eastbound and westbound tariffs publishing rates and rules applicable as for a common-carrier service. Its published eastbound lumber rate was $12.50 per 1,000 feet. The tariff specified a minimum quantity requirement of 12,000 feet for a single shipment, but the evidence is that respondent declined to carry less than full cargo lots. The nature of its service as indicated by testimony of its witness was that when "a shipper comes to us and asks us to take a full cargo of lumber, we go out and see if we can charter a ship on advantageous terms." Holding out service to the public by tariff beyond that actually performed, or refusing to perform service in accordance with the provisions of such tariff, is in violation of section 2 of the Intercoastal Shipping Act, 1933.

On February 21, 1938, this respondent chartered the *Emergency Aid* from McCormick Steamship Company. McCormick's published and filed rate on lumber, as well as that of the other Association lines, was $14 per 1,000 feet. Immediately following the charter of this ship, Bulk Carriers transported therein, under freighting agreement with Blanchard Lumber Company constituting a charter, a full cargo of 5,016,130 feet of the latter's lumber at its $12.50 rate. The vessel loaded at six or seven berths on the Pacific coast and discharged at four berths on the Atlantic coast, the entire transportation transaction consuming 45 days. On April 16, 1938, Bulk Carriers chartered the *San Felipe* from Pacific Atlantic Steamship Company, another Association line, and on the same date it entered into a freighting agreement constituting a charter with Blanchard for the transportation of 5,000,000 feet of lumber at its $12.50 rate. Bulk Carriers later chartered the *Helen Whittier* from Matson Navigation Company and substituted it for the *San Felipe* in the charter carriage of the Blanchard lumber cargo, aggregating 5,175,640 feet. The vessel loaded at six Pacific coast berths and was booked to discharge at four Atlantic coast berths. At the time of hearing her discharge had not been completed.

The testimony is that these two transactions had the effect of stopping the buying of parcel-lot lumber on the Atlantic coast and depriving lumber shippers and dealers who patronize the regular carriers of Atlantic coast sales. About the time of the charter of the *Emergency Aid* to Bulk Carriers, a booking at the $14 rate by Blanchard for transportation of 909,000 feet of lumber via Calmar Steamship Corporation, an Association line, was broken by Blanchard. No facts are of record which in any manner indicate that the McCormick and Pacific-Atlantic charters to Bulk Carriers were for the purpose of according any shipper of McCormick or Pacific Atlantic a lower rate than such Association carriers' rates on file. It is clear that any such chartering used by an association or other carrier as a subterfuge to give a shipper a lower rate than its rate on file would be in violation of the shipping acts.

Subsequent to the hearing in this case Bulk Carriers Corporation duly canceled its schedules on file with us and discontinued all intercoastal operation.

Respondent Prudential Steamship Corporation had on file with us "Prudential Steamship Corporation" east-bound tariff providing a rate of $12 per 1,000 feet of lumber, minimum 4,500,000 feet. As agent for the Postal Steamship Corporation, owner of the *Eastern Glade*, this respondent since early 1935 has time chartered such vessel on seven occasions for intercoastal transportation as follows: One charter to Luckenbach Steamship Company, Inc., three charters to McCormick Steamship Company, two charters to Bulk Carriers Corporation, and one charter to Twin Harbors Lumber Company. The charter of the ship to Twin Harbors was for five cargoes of lumber from Pacific to Atlantic ports at the $12 rate. This charter was entered into on March 6, 1935, and the last voyage was on October 29, 1937. The average voyage time for the last four of the five voyages referred to was approximately 50 days, and the average amount of lumber carried on each of such voyages was 4,984,500 feet. Postal Steamship Corporation at no time had a tariff on file with us. The transportation therefore was performed without tariff authority in violation of section 2 of the Intercoastal Shipping Act. Since the hearing Prudential Steamship Corporation has, under schedule duly filed, inaugurated intercoastal contract service with a vessel owned by it.

American Foreign Steamship Corporation, respondent, owns four vessels, in which are transported full cargoes of lumber of the Puget Sound Associated Mills from Pacific coast to Atlantic ports under gross form voyage charters. West-bound, the ships are generally chartered to McCormick Steamship Company. Notwithstanding respondent's tariff on file at time of hearing specified a rate for east-bound carriage of lumber of $12 per 1,000 feet, on all of the east-bound voyages of its vessels except one, the rate charged was the higher current rate of the Association lines. Moreover, although its tariff designated Puget Sound ports as loading ports of its vessels for lumber cargoes, at the time of hearing its vessel *American Oriole* was loading at Columbia River ports. These tariff departures constituted violations of section 2 of the Intercoastal Shipping Act, 1933. Following the hearing, tariff was filed by this respondent stating its rate as $14 and including Columbia River ports.

Since October 1931, the vessel *Mary D*, owned by respondent Pacific American Fisheries, Inc., salmon packer located at Bellingham, Wash., has made six round-trip voyages between Pacific and Atlantic ports. Two of the east-bound voyages were with canned salmon of the owner of the vessel. All of the other voyages, east-bound and west-bound, were under time charters to cargo owners. They included one east-bound cargo of lumber, two of grain for Continental Grain Company, and one west-bound voyage with cargo of Kieckhefer Container Company. The last of the charter voyages was in early 1937. Under our findings herein, as to the time-charter transportation engaged in by it on and after June 2, 1933, Pacific American Fisheries was a contract carrier operating without tariff authority in violation of section 2 of the Intercoastal Shipping Act, 1933.

Respondent Continental Grain Company is engaged in trading in grain and is a stockholder in respondent Bulk Carriers Corporation. Prior to 1936 this respondent and its subsidiary, Pacific Continental Grain Company, since dissolved, experienced difficulty in obtaining intercoastal common carrier vessel space. In 1934 and 1935 approximately 19 cargoes of wheat and other grain moved from Pacific to Atlantic and Gulf ports in vessels time chartered by these companies from Nelson Steamship Company, American Foreign Steamship Corporation, Northland Transportation Company, and others. Respondent's intercoastal consignments in 1936, 1937, and 1938 have been parcel lots only, all of which have moved via common carriers at such carriers' tariff rates.

Respondent Kerr-Gifford & Company, grain exporters and dealers, time chartered the *Tenana* from Alaska Steamship Company, Inc., on February 19, 1937, for an east-bound intercoastal carriage of a full vessel load of lumber and grain and return to Pacific coast. West-bound the vessel was subchartered on February 26, 1937, to Shepard Steamship Company, and carried general cargo under that common carrier's published tariff. Under our findings herein, Alaska Steamship Company was a contract carrier operating without tariff authority in violation of section 2 of the Intercoastal Shipping Act, 1933. No subsequent intercoastal charters have been entered into by Kerr-Gifford & Company, whose witness testifies that in his belief intercoastal chartering for vessel-load transportation is more expensive to the cargo owner than shipping via common carrier lines at their parcel-lot rates.

Vessels of respondent Ford Motor Company have in the past been chartered to A. C. Dutton Lumber Corporation for intercoastal transportation of cargo lots of that corporation's lumber to Poughkeepsie, N. Y., and other North Atlantic ports. The last Ford vessel so chartered was in March 1937. Time charters were used in this transportation prior to July 1935, and bareboat charters thereafter. Under our findings herein, as to all such transportation engaged in by it under time charter on and after June 2, 1933, respondent Ford was a contract carrier operating without tariff authority in violation of section 2 of the Intercoastal Shipping Act, 1933.

The Union Sulphur Company, respondent, owns four vessels, with three of which it transports, as a contract carrier pursuant to tariff duly filed with us, bulk sulphur from Gulf to Pacific coast ports under net voyage charters to the Texas Sulphur Company and Freeport Sulphur Company. After discharge of these vessels on the Pacific coast, they are consecutively chartered under a bareboat charter for each voyage to A. C. Dutton Lumber Corporation for transportation of that corporation's lumber to the Atlantic coast. Upon Atlantic coast discharge of the lumber, the vessels ordinarily sail in ballast to the Gulf. Prior to July 1935, time charters rather than bareboat charters were used by Union Sulphur and Dutton for the lumber carriage referred to. Under our findings herein, all such transportation by Union Sulphur under time charters without tariffs on file was in violation of section 2 of the Intercoastal Shipping Act, 1933. The lumber is used to supply Dutton's concentration yards, and intercoastal common carriers are generally used for the transportation of its lumber sold upon direct order. The east-bound charter voyages have varied in time from 39 to 56 days, and usually loadings are at four Puget Sound berths and discharges at two North Atlantic berths. The out-of-pocket cost per 1,000 feet to Dutton of getting its lumber from Pacific to Atlantic coast in vessels under bareboat charter has averaged $13.21. This average is calculated upon all completed charter voyages, 12 in number, since April 15, 1937, the date on which the Association carriers' lumber rate was increased to $14 per 1,000 feet.

Western Lumber & Shingle Company, Lewis & Dalin Lumber Company, and others, ascribe to intercoastal lumber charters an undue preference to a few large lumber interests and an undue prejudice to them, in violation of law. Lumber moving in cargo lots in chartered vessels at "wholesale" rate for transportation is testified to deprive them and other small dealers of Atlantic coast sales because their "parcel-lot" shipments must be made in common carrier "berth" vessels at the $14 rate. North Pacific Millers' Association states that chartering of vessels for grain is likely to occur when the market price of wheat in the Pacific Northwest is lower than in Chicago and St. Louis. At such times, Pacific coast wheat may be purchased, transported in vessel load and stored at Atlantic and Gulf ports until milled, with the result that intervener and others may be deprived of the manufacture of such wheat into flour at their mills in the Pacific Northwest, as well as of the sale of flour in competition with eastern and southern millers. This intervener compares vessel-load carriage under charters with cargo owners to "train-load" transportation by railway, and alleges that chartering to cargo owners at rates less than parcel-lot rates via common carriers is unduly prejudicial. Calmar Steamship Corporation compares its greater number of loading and discharging berths, longer voyage time, greater overhead, and other incidents of its common carrier transportation of lumber with vessel-load transportation of lumber in chartered vessels. Due to lumber charter competition, its 11 vessels are stated to have been laid up during the first half of 1938 for periods of from 6 to 86 days, and frequency of its sailings has been reduced from 10 days and weekly to two sailings a month. This carrier alleges that charter transportation of lumber at a lower rate than for transportation by itself and other common carriers constituted an unfair and unjustly discriminatory contract with a shipper based on the volume of freight offered, in violation of section 14 of the Shipping Act, 1916, and an undue and unreasonable preference and advantage to those particular cargo owners whose cargoes move in full cargo lots, in violation of section 16 of that act. As respects these allegations and the allegations of unlawfulness made by the lumber companies and flour millers referred to above, there is no showing that any of the charter carriers concerned have also transported competitive cargo in parcel lots.

Luckenbach Gulf Steamship Company testifies that sporadic charter operations in the Gulf intercoastal trade are conducted without solicitation or overhead expenses similar to those incurred by itself and other Gulf Intercoastal Conference common carriers. The effect of such operations at a lower rate to the cargo owner than is available via conference lines for parcel lots is asserted to be injurious to the latters' rate structure and revenues. Objection is made by the Association to chartering which results in rates to the charterer lower than those of its member lines. Except as to oil tanker operations and charters of vessels to common carriers for transportation at Association rates, this intervener urges that we specify the status of parties to charters which obtain in intercoastal trade, that is, whether they are subject or not to the regulatory shipping statute. It points out that, as common carriers, its member lines are by statute under rigid rate filing responsibility, and that by the same statute such responsibility is applicable with equal force to intercoastal contract carriers.

The charters involved in this proceeding may be classified generally as bareboat, time, and gross and net voyage charters.

A bareboat charter transfers for the time being the vessel and control over her navigation and working to the charterer. This charter is a contract for letting the ship, and the relation between the owner and charterer is determined by the law governing the hiring of chattels. Ownership of a vessel may be acquired by purchase or by bareboat charter, and acquirement under the latter method is as complete ownership, during the occasion of the charter, as under the former. It follows that in the case of a bona fide bareboat charter there is no carrier-shipper relationship as respects cargo of the charterer transported in the vessel, and that as to such cargo the bareboat charterer is a private carrier. Extended examination of the charters entitled "Bareboat" entered into between Union Sulphur and Dutton referred to above, and of the affidavits and supporting data and records filed by both of these parties, fails to disclose any ground for determining such charters to be other than as entitled.

Except for the bareboat charters between respondent Union Sulphur and Dutton Lumber Corporation referred to, all intercoastal chartering to cargo owners here involved has been accomplished by charters generally described as time charters and gross and net voyage charters. All these charters are definitely distinguishable from bareboat charters, in that under them the control and management of the vessel or vessel space remains in its owner or other person from whom it is chartered, the charterer using the vessel's service as maintained by the owner or such other person.[2] Under each of these charters the record is that the relationship between the owner or other person from whom chartered and the charterer is without question that of contract carrier and shipper.

We are asked by the carriers regularly engaged in the trade to rigidly enforce tariff provisions of the statute against such charterers as are found to be contract carriers, and to declare unlawful such of their rates for full cargoes as are lower than those of the regular carriers for parcel-lot cargo.

Disposing of the second point first, obviously we cannot attempt to fix minimum rates on this record, because the evidence is insufficient for that purpose. That issue was not contemplated inasmuch as this proceeding was instituted before such authority was granted. As stated, Calmar contends that the lower rates of contract carriers, being based on volume, are in violation of section 14, paragraph Fourth, and section 16 of the Shipping Act, 1916. So far as the record shows, the carriers under charters limit their holding out to carry to shippers of cargo lots. There being no duty to carry, and in fact no carriage of, parcel lots, there can be no discrimination against shippers thereof.

[2] Illustrative are provisions that owners shall pay wages of captain, officers, engineers, firemen, and crew; pay for all provisions, captain, deck, engineroom, and other necessary stores; provide gear, and maintenance thereof; cargo to be stowed under master's supervision and direction; stevedores to be appointed by owners; owners to victual pilots and customs officers, charterer paying at agreed meal rate therefor; charterer's liability to cease and determine as soon as cargo aboard; nothing stated in charter to be construed as a demise of vessel.

Under the statute contract carriers must file and observe their rates. The question here is which, if any, of the parties to the various forms of charter contracts is the contract carrier.

In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B., 400, 458, a contract carrier in intercoastal commerce was defined to include "every carrier by water which under a charter, contract, agreement, arrangement, or understanding, operates an entire ship, or some principal part thereof, for the specified purposes of the charterer during a specified term, or for a specified voyage, in consideration of a certain sum of money, generally per unit of time, or weight, or both, or for the whole period or adventure described." In this definition a distinction should be made between a charterer who is a shipper and a charterer who is a carrier. It should not be understood to apply to the latter because a carrier must either own or be the charterer of a vessel to conduct its business, and the provisions of the statute are met when such carrier files and observes its published rates. However, in order to discourage possible abuses of this practice the charter party should be filed with the Commission.

The authorities clearly support the proposition that unless there is a demise of the vessel—a parting with all possession and control by the owner, the latter is a contractor for service and is therefore a contract carrier.

It is true that there are other cases from which it may be inferred that although the owner remains in control of the vessel for the purposes of navigation and the maintenance of the ship in seaworthy condition, for all the purposes of carriage of cargo the charterer is in full possession and control and it is the charterer and not the owner who is the carrier. This doctrine would permit an owner to charter his vessel under a time or voyage charter to a shipper who would then become the carrier—a private carrier of his own cargo. Thus both would escape the regulatory provisions of the statute. These are the customary charters used in the intercoastal trade, and under the doctrine just announced, practically no form of chartering in the trade would be subject to regulation. It is inconceivable that Congress, in subjecting contract carriers to regulation in order to protect the regular lines, meant to exempt from regulation practically all of the carriers which offer the real competition in the trade. The doctrine cannot be accepted, for a carrier is such by virtue of its occupation and not by virtue of the responsibilities it assumes.

We conclude therefore that the owner need not file under the statute if he has divested himself of complete control and possession of the vessel, as for instance under a bareboat charter. But the bareboat charterer must file if he carries cargo of others. We further conclude that under a time or voyage charter to a carrier who has filed its regularly established rates, the owner should file only the charter party with the Commission as a matter of information; but that under a time or voyage charter to a shipper, the owner, if he retains any control or possession of the ship, must file. This last requirement presents obvious difficulties which readily come to mind, as for instance the translation of the time charter hire into commodity rates. But the difficulties are not insurmountable. This is demonstrated by the fact that there are acceptable tariffs based on time and voyage charters on file with the Commission.

As noted in this report, the record shows instances in the past of violations of law by certain respondent contract carriers engaged in charter transportation. These violations, not inherent in vessel-load charter transportation as such, consisted of failures to file schedules, or to conform rates or service strictly to schedules filed. Schedule cancellations and new filings since this proceeding was begun indicate that such respondents now have a clear understanding of their status and responsibilities under the statute.

We do not feel called upon to pass on the question of whether the chartering of vessels in the intercoastal trade has resulted in unfair competition to the carriers regularly engaged therein as alleged. But we cannot fail to recognize the demoralizing effects of the practice, and the possible necessity of exercising our minimum rate powers, should a proper case be presented, to prevent a general deterioration of service in the intercoastal trade.

Inasmuch as this investigation is, in many respects, an advisory proceeding no order will be issued except to discontinue the proceeding without prejudice to any subsequent proceeding upon complaint or otherwise involving the same or related issues.

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ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of July A. D. 1939.

No. 488

IN THE MATTER OF INTERCOASTAL CHARTERS

It appearing, That pursuant to orders of May 24, 1938, and June 7, 1938, this Commission entered upon hearing concerning the lawfulness under the Shipping Act, 1916, as amended, of the intercoastal chartering of vessels and vessel space, charter terms and provisions, charter rates, and charter practices;

It further appearing, That a full investigation of the matters and things involved has been made and that the Commission on the date hereof has made and filed a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That this proceeding be, and it is hereby, discontinued, without prejudice to any subsequent proceeding upon complaint or otherwise involving the same or related issues.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 506

INTERCOASTAL TIME-CHARTER RATE OF MALLORY TRANSPORT LINES, INC.

Submitted May 18, 1939. Decided July 28, 1939

Tariff containing time charter rates found not to be in compliance with tariff reguations and ordered canceled. Proceeding discontinued.

Harold S. Deming and *Herbert M. Statt* for respondent.

Harry S. Brown and *M. G. de Quevedo* for Intercoastal Steamship Freight Association.

H. W. Warley and *Russell T. Mount* for Calmar Steamship Corporation.

Herbert Buckley for A. C. Dutton Lumber Corporation.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Respondent filed exceptions to the examiner's proposed report and oral argument was had. Our conclusions differ from those of the examiner.

By schedules filed to become effective November 26, 1938, respondent Mallory Transport Lines, Inc., proposed to establish a time-charter rate of $1.60 per dead weight ton per month for the steamship *Malantic* from Atlantic to Pacific coast ports by way of the Panama Canal. Intercoastal Steamship Freight Association requested rejection of such schedules as not being in compliance with the Intercoastal Shipping Act, 1933, and our Tariff Circular No. 2, or, in the alternative, that the schedules be suspended if accepted for filing. The schedules were placed on file but were suspended until March 26, 1939.

At the hearing it was shown that respondent had time-chartered the *Malantic* from her owner, C. D. Mallory Corporation, and that the schedules concerned were filed pursuant to a subcharter between respondent and Kieckhefer Container Company, a manufacturer of paperboard products, for the purpose of transporting a westbound intercoastal cargo of the latter. It was also shown that both of the foregoing charters were terminated by mutual agreement of the parties shortly after our suspension order was issued.

The examiner's proposed report recommended a finding that Mallory Transport Lines, Inc., is not a common carrier, that C. D. Mallory Corporation, the owner of the *Malantic*, was the common carrier, and that the tariff be stricken from our files. Upon brief and oral argument our attention is called to the fact that C. D. Mallory Corporation is not a party respondent, and it was argued that no finding with respect to that corporation can be made. The question before us is the lawfulness of the tariff under investigation in this proceeding. Our finding herein will make it unnecessary to consider the status of the respondent or the owner. The status of owners and charterers of vessels under the regulatory provisions of the shipping acts is determined in our report *In The Matter of Intercoastal Charters*, decided concurrently herewith. Owners and charterers operating ships in the intercoastal trade will be subject hereafter to the views expressed in that report.

The suspended tariff publishes a time-charter rate on a vessel named, based on the dead weight tonnage of the vessel. It does not publish rates on a commodity or commodities and is in no sense a tariff which is authorized by our rules contained in Tariff Circular No. 2. An order will be entered requiring respondent to cancel the tariff and discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 28th day of July A. D. 1939.

No. 506

INTERCOASTAL TIME-CHARTER RATE OF MALLORY TRANSPORT LINES, INC.

It appearing, That by order dated November 25, 1938, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until March 26, 1939;

It further appearing, That a full investigation of the matters and things involved has been made, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That respondent Mallory Transport Lines, Inc., be, and it is hereby, notified and required to cancel its tariff described above, effective on or before September 1, 1939, upon not less than one day's filing and posting in the manner required by law; and

It is further ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 484

IN THE MATTER OF AGREEMENTS 6210, 6210-A, 6210-B, 6210-C, AND 6105

Submitted January 18, 1939. Decided August 3, 1939

Basic conference agreement designed to promote stabilization of rates and uniformity of practices approved.

Company transporting cargo in chartered space of vessels of others found to be a common carrier. Agreement approved.

Operating a common and a contract carrier service on the same vessel on the same voyage, and granting to particular shippers by contract rates lower than those charged the general public, found to result in undue preference and prejudice. Agreements permitting such arrangements disapproved, and preference and prejudice ordered removed.

Agreement between common carrier and terminal company whereby a particular shipper is accorded more free time and assessed lower charges than the general public, found to be unduly preferential and prejudicial. Agreement disapproved, and preference and prejudice ordered removed.

Theodore M. Levy for members of Pacific Coastwise Conference.
Alfred A. Hampson for Coastwise Line.
R. R. Morris for Columbia Basin Terminals, Inc.
Stanley Griffiths for James Griffiths & Sons, Inc.
J. C. Strittmatter for Consolidated Olympic Line.
George Herrington for Crown Zellerbach Corporation.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by Coastwise Line and James Griffiths & Sons, Inc., to the report proposed by the examiner, and oral argument was had. Crown Zellerbach Corporation was permitted to intervene at the oral argument. The findings recommended by the examiner are adopted herein.

By order dated May 10, 1938, we instituted this investigation on our own motion to determine the lawfulness and propriety of the following agreements submitted for approval pursuant to section 15 of the Shipping Act, 1916. No protests against approval were received, and no one appeared in opposition at the hearing.

Agreement 6210, hereinafter referred to as the basic conference agreement, provides for the functioning of the parties in a cooperative working arrangement under the name Pacific Coastwise Conference. Agreements 6210–A, 6210–B, and 6210–C are supplements to the basic conference agreement. Agreement 6105 is a separate agreement between Coastwise Line, one of the members of the conference, and Columbia Basin Terminals, Inc., which operates dock properties at Portland, Oregon.

Agreement 6210 is designed to promote commerce and to insure the stabilization of rates and uniformity of practices between ports of California, Oregon, and Washington. The provisions of the agreement indicate the intention of the parties to carry out the provisions of the Shipping Act, 1916, as amended, and the record contains no evidence that its provisions are unfair, detrimental to the commerce of the United States, or unlawful. No. 6210 will be approved.

Agreement 6210–A permits Consolidated Olympic Line, a member of the conference, to use the vessels of James Griffiths & Sons, Inc., a nonconference carrier, for the transportation of the former's cargo within the scope of the basic agreement, such cargo to "move under bills of lading of said Consolidated Olympic Line," and to be booked, handled, and transported strictly in accordance with the agreed rates, divisions, charges, rules, and regulations of the conference. Consolidated owns no vessels. It contracts with different vessel owners, of which Griffiths is one, for the use of vessel space. Some of the salient provisions of the contract are as follows: Consolidated acts as agent for the vessel, solicits and receives the cargo, collects freight, takes care of all handling details, receives a specified commission from the vessel owner for the different types of cargo, obtains the benefits of the owner's protection and indemnity insurance, assumes and pays all claims for cargo damage, except where the damage is caused by extraordinary hazards, and does the contracting for stevedoring. Consolidated ascertains from the owner how much space there will be on a particular vessel after the owner's commitments have been cared for, and then goes into the market and solicits against the space. There is no assurance that the desired amount of cargo will be secured.

At the top of the first page of the bill of lading form used under this arrangement appear the words: "CONSOLIDATED-OLYMPIC LINE"; three lines below: "Received by Consolidated-Olympic Line, as Carrier's Agents"; and signed at the bottom: "Consolidated-Olympic Line, as Agents for Carrier." Consolidated's witness testified that his company handles the cargo from start to finish; assumes all the rights and obligations of a common carrier; and considers itself a common carrier. Griffiths' witness testified that under the arrangement its vessels do the physical carrying but that the company is not a common carrier.

The contract between Consolidated and the various vessel owners, and also the bill of lading form used by Consolidated, are confusing. They also are inconsistent with the contentions of the parties that Consolidated is a common carrier. We conclude from all the facts that Consolidated is a common carrier. No. 6210–A will be approved, but in order to remove the conflict outlined herein, Consolidated should eliminate from the bill of lading and from the vessel-space contract all reference to itself as agent.

Agreement 6210–B is an agreement between James Griffiths & Sons, Inc., and the members of the conference, whereby Griffiths agrees that all cargo handled on its vessels, except bulk salt, lumber and lumber products, barley in sacks, millfeed in lots of 100 tons or more and flour booked and carried in connection therewith, and all cargo transported to or from Tacoma Smelter or Selby Smelter, shall be booked through a member line of the conference and transported strictly in accordance with the rates, divisions, charges, rules, and regulations of such line. On the excepted commodities Griffiths is permitted to charge its own rates, except that its rates on barley in sacks shall in no case be less by more than 25 cents per 2,000 pounds than the corresponding rates of the conference, and that in the event the present conference rates on millfeed and flour are increased during the life of the agreement, Griffiths shall simultaneously make identical increases in its rates on those commodities.

Notwithstanding Griffiths' witness testified that his company has never operated as a common carrier in the coastwise trade, it has filed tariffs with us covering various commodities. Furthermore, Griffiths' witness stated that "it has been largely or almost entirely a contract proposition." The examiner recommended that we find that Griffiths is a common carrier. Such recommendation is accepted by Griffiths in its exceptions. The terms of the agreement under which Griffiths may transport certain commodities at its own rates would permit those commodities to be transported at different rates. This would result in undue preference and prejudice. In its exceptions Griffiths states that effective September 21, 1938, as required by the amendments to the Intercoastal Shipping Act, 1933, it filed actual tariff rates in place of maximum rates, and expresses willingness to amend the agreement. No. 6210-B as now before us will not be approved. A new agreement showing that the rates on file with us will be assessed on all shipments transported by it, if submitted for approval, will be given consideration.

No. 6210-C is a supplemental agreement between Coastwise Line, a member of the conference, and the other members of the conference, under which all of Coastwise Line's operation in the performance of its contract with Crown Zellerbach Corporation and the handling by Columbia Basin Terminals, Inc., of the cargo transported under such contract, which is more fully described hereinafter, are excepted from the provisions of the basic conference agreement. Crown Zellerbach, a large manufacturer of paper and paper products with plants in Washington and Oregon, ships approximately 225,000 tons annually to California, which is its largest individual market. In 1920 Pacific Steamship Company, a coastwise carrier, contracted to transport all of Crown Zellerbach's products to California, but the cessation of that carrier's operations in October 1936 left Crown Zellerbach without adequate transportation service. Thereupon Crown Zellerbach was instrumental in establishing Coastwise Line to take care of its transportation needs.

The contract between Crown Zellerbach and Coastwise states that the "primary object and purpose of this agreement is to provide for contract carriage by the carrier as a contract carrier of the shipper's cargo." Coastwise is permitted to offer unlimited common-carrier service north-bound, and to transport at least 250 tons per vessel of common-carrier cargo south-bound. Coastwise pays all charges and expenses with some exceptions. Crown Zellerbach pays $4.75 per net ton on all its south-bound cargo and the "regular traffic rates" on north-bound cargo. If the basic conference agreement is approved, Coastwise would assess on newsprint paper transported for the general public the conference carload rates ranging from 28 to 50 cents per 100 pounds. Though Crown Zellerbach has no stock interest in Coastwise, it guarantees the latter against all losses, and receives one-half the profits. The contract also provides for loans from Crown Zellerbach to Coastwise for working capital and for the purchase of vessels.

Coastwise's managing director testified that no other paper shippers have sought a service similar to that given Crown Zellerbach; that there are current shipments by other such concerns amounting to about 15 to 25 tons several times a month; that there is always sufficient space for general cargo south-bound; and that the public is satisfied. There is no evidence that Coastwise, if requested, would make the same type of contract with other shippers of paper and paper products, although at the oral argument counsel for Coastwise stated that "if there were a competitor of Crown Zellerbach manufacturing paper in the Oregon area—and there is—and having a comparable transportation problem and willing to make the same arrangement with Coastwise Line with respect to furnishing capital and guaranteeing against loss, Coastwise Line would be very happy to enter into that arrangement."

Assuming the correctness of the foregoing statement, it would thus appear that only one competitor is in a position to contract with Coastwise on the same basis as Crown Zellerbach. The same principle should apply in this case as in *Intercoastal Rates of American-Hawaiian Steamship Company et al.*, 1 U. S. S. B. B. 349, 351, where our predecessor said:

> Rates based on a minimum weight so large as to be available only to one shipper are not in consonance with section 16 of the Shipping Act, 1916, which makes it unlawful for common carriers by water to make or give any undue or unreasonable preference or advantage to any particular person or description of traffic in any respect whatsoever.

The examiner recommended that we find that the dual operation as a common and as a contract carrier resulted in undue preference and prejudice. It is now urged that the question of preference and prejudice is not properly in issue, and that the parties did not know such phase of the matter was to be investigated. Necessarily, however, the contract between Coastwise and Crown Zellerbach is the basis of the dual operation. Without a review of that contract the questions here involved cannot be determined. Furthermore, it should be pointed out that counsel for Crown Zellerbach was in attendance at the hearing but did not see fit to participate therein, and the traffic manager of Crown Zellerbach was one of the principal witnesses. Every opportunity was given to present whatever testimony the parties thought advisable.

It is contended that no provision of the law permits us to condemn dual operation as a common and as a contract carrier on the same vessel on the same voyage, and that even if such power does exist, this case is not one where it should be exercised. Suffice it to say that although section 16 of the Shipping Act, 1916, does not apply to contract carriers in the coastwise trade, nevertheless, where a carrier subject to our jurisdiction attempts to operate in the above-described manner, we may order the removal of any violation of that section resulting from the operation of the contract portion. Compare *West-Bound Intercoastal Rates to Vancouver*, 1 U. S. M. C. 770, 773, 774. We find that the facts of this case do result in undue preference and prejudice, and consequently, agreement 6210–C will not be approved. See *Southern Pacific Terminal Co.* v. *I. C. C.*, 219 U. S. 498. Coastwise will be required to remove the violation thus found to exist.

Agreement 6105, between Coastwise and Columbia Basin Terminals, Inc., referred to above, requires the latter to acquire, maintain, and operate necessary wharf and terminal facilities for the former's use at Portland, Oreg., Coastwise to use such properties for all cargo moved by it to and from Portland, with certain exceptions. The agreement provides, among other things, that Columbia shall not be restricted in its right to handle other available business, subject, however, to its obligations to Coastwise; that the charges to others may be more or less than those to Coastwise, that with the exception of Crown Zellerbach's shipments, which are allowed eight days, five days free time are allowed on all cargo after unloading from northbound vessels or after delivery to the dock properties for loading on southbound vessels; that general cargo, except that of Crown Zellerbach, is assessed 2 cents a ton per day after free time; that against Crown Zellerbach there is assessed 25 cents a ton for 30 days on newsprint, "wrappings and bags," and 40 cents a ton for 30 days on "toilet and towels."

It was explained that the difference in free time arises from the nature and quantity of cargo handled by Coastwise; that general cargo moves in comparatively small quantities, which makes the five-day free time sufficient to meet the reasonable requirements of those shippers; that Crown Zellerbach's products move in large quantities, as much as 8,000 tons being stored at a time; and that a longer period is required for such accumulation. Although the agreement embraces "storage charges" on all cargo transported by Coastwise, it was testified that the 2-cent charge against general cargo is really for demurrage while the charge against Crown Zellerbach is for storage; that the latter's cargo not moved within the free time is usually stored with Columbia; and that limited facilities do not permit to others a service as extensive as that given Crown Zellerbach.

The record does not justify the difference in free time accorded nor the difference in the type of charges assessed. We find that Agreement 6105 results in undue preference and prejudice. It will not be approved.

An appropriate order will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3rd day of August A. D. 1939

No. 484

IN THE MATTER OF AGREEMENTS 6210, 6210-A, 6210-B, 6210-C, and 6105

It appearing, That by its order herein dated May 10, 1938, the Commission entered upon a hearing concerning the lawfulness and propriety of agreements 6210, 6210-A, 6210-B, 6210-C, and 6105;

It further appearing, That full investigation of the matters and things involved has been had and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That agreements 6210 and 6210-A be, and they are hereby, approved;

It is further ordered, That agreements 6210-B, 6210-C, and 6105 be, and they are hereby, disapproved, without prejudice to the right of the parties under agreement 6210-B to submit for approval a new agreement not inconsistent with the findings herein; and

It is further ordered, That Coastwise Line and Columbia Basin Terminals, Inc., be, and they are hereby, notified and required to cease and desist on or before September 18, 1939, from practices herein found to be unduly preferential and prejudicial.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 487

F. A. SMITH & Co., LTD.

v.

MATSON NAVIGATION COMPANY

Submitted February 24, 1939. Decided August 3, 1939

Contract rates and minimum quantity provisions on lumber from the Pacific Coast of the United States to the Hawaiian Islands found unduly prejudicial but not otherwise unlawful. Contract rates ordered canceled, and prejudicial minimum quantity provisions ordered removed.

F. A. Smith, for complainant.

Frank E. Thompson, *Herman Phleger*, and *James S. Moore* for defendant.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed by complainant and defendant to the report proposed by the examiner, and each replied. The findings recommended by the examiner, with certain exceptions, are adopted herein.

By complaint filed May 21, 1938, complainant, a lumber dealer at Honolulu, T. H., alleges that defendant's rates on lumber shipped from the United States Pacific coast to the Hawaiian Islands since 1922 were, and are, unduly or unreasonably preferential, prejudicial, or disadvantageous in violation of section 16 of the Shipping Act, 1916, and that they are "too high," and "disproportionate" with rates charged by other lines on lumber moving from the Pacific coast to the Atlantic coast and to foreign ports.

Defendant's practice of computing quantities shipped on the basis of gross measurement rather than the net measurement of manufactured lumber is also assailed. Lawful rates for the future and reparation are sought. Rates will be stated in amounts per 1,000 feet gross board measure. The case was heard in Honolulu, T. H., and San Francisco, Calif.

Defendant has served the Hawaiian Islands from the Pacific northwest for more than 30 years. Its lumber-carrying operations embrace a merchandising service and a lumber-carrying service. The merchandise vessels are large, move on a three-week schedule from San Francisco, pick up cargo, including lumber, at Portland, Seattle, and Tacoma, and proceed to the Hawaiian Islands where the cargo is discharged at four or five ports where Hawaiian products, such as sugar and pineapple, are loaded for the return trip to San Francisco. The lumber vessels are smaller, move only when cargo offerings justify sailing, call at numerous Pacific coast ports and lumber mills for lumber, discharge at about 14 Hawaiian ports, most of which cannot be served by the large vessels, and take on Hawaiian products for delivery at San Francisco. It is testified that the distance from San Francisco to the Hawaiian Islands via the Pacific northwest ports is about 3,000 miles, and that there is an additional 200 miles steaming distance in making deliveries at Island outports.

Prior to August 1, 1928, defendant maintained an any-quantity rate of $10.00 applicable on lumber from the Pacific coast to the Hawaiian Islands. Between August 1, 1928, and September 20, 1938, it maintained tariff rates and unpublished contract rates. On August 1, 1928, the contract rates were $9.50, minimum 500,000 feet, and $11.00 for quantities less than 500,000 feet. The tariff rates were $11.00, minimum 500,000 feet, and $12.50 for quantities less than the minimum. Effective August 1, 1937, each of the foregoing rates was increased $1.00. The complaint attacks all of the latter rates, but the issues center mainly on the contract rates which, it is alleged, prefer large lumber dealers to the injury of complainant, a small dealer. Since the hearing defendant's contract and noncontract rates were filed and became effective September 21, 1938.

The pertinent provisions of the contract are: (1) shipper agrees to ship all lumber to Hawaii by vessels of defendant and not less than 1,500,000 feet of lumber each year; (2) shipper shall, within 30 days after the commencement of each year, notify defendant of the estimated amount of lumber to be shipped during that year; (3) defendant undertakes to transport all lumber required by shipper and shall, upon reasonable notice, furnish the space required therefor; (4) defendant shall charge the rates named in the contract which are subject to the provisions of the tariff filed with this Commission; and (5) if the shipper fails to ship at least 1,500,000 board feet during any single calendar year, the noncontract rate applies on the amount shipped. It is testified that defendant's contract system is well known in the lumber trade, and is open to all shippers, including complainant, if they can comply with the terms. There were only six contract shippers in this trade at the time of hearing. Among those not shipping under contracts are five or six dealers which maintain plants and equipment, and perhaps 12 firms or individuals who do not carry lumber in stock. During the year 1937, 91 percent of the lumber transported to the Hawaiian Islands by defendant moved under contract. During the past several years, contract shippers have been required to file bonds for the difference between the contract and tariff charges.

In support of its allegations of undue preference and prejudice, complainant points out that the small lumber shipper is precluded from obtaining defendant's lower rates enjoyed by large shippers by virtue of the 1,500,000-foot annual quantity requirement, and by the 500,000-foot minimum, stating it can comply with neither requirement. Complainant asserts that the difference of $1.50 between the contract and noncontract rates on quantities less than the 500,000 minimum is excessive. For example, on a representative shipment of 100,000 feet, the contract shipper pays a rate of $12.00 amounting to a freight charge of $1,200.00, whereas complainant is charged a rate of $13.50 or $1,350.00, making a difference in charges of $150 for transportation of the same quantity of lumber. During the years 1936 and 1937, complainant shipped 475,375 and 320,789 feet, respectively, averaging about 34,615 feet per shipment. In 1929 complainant shipped 2,884,064 feet at which time it was a contract shipper. Complainant states that it lost competitive bids to the large shippers due to the difference between the contract and tariff rates, but no specific instance of such loss is shown. Complainant also points to the fact that defendant has practically no competition in the trade under consideration. The record shows there is an occasional shipment by an industrial or tramp carrier owned or controlled by lumber companies. One such vessel carried lumber to the Hawaiian Islands in 1937.

Defendant contends that the contract-rate system is necessary to maintain adequate service and stable rates on lumber to Hawaii. Prior to the inauguration of contract rates in 1928, it operated only three small lumber carriers of 3,700 tons deadweight cargo capacity. Increase of volume led to the necessity of acquiring additional vessels. At the same time industrial carriers were bidding on lumber at cut rates. Defendant held numerous conferences with lumber shippers both in California and in the Hawaiian Islands in an endeavor to perfect a plan whereby it could be assured of sufficient lumber to warrant the purchase of new ships and at the same time maintain a rate satisfactory to the trade as well as productive of adequate revenue. Complainant participated in these conferences and originally approved the contract-rate system and the quantity requirements which grew out of these conferences. Relying upon the contracts, defendant invested about $800,000 in new equipment and retired about $275,000 of existing equipment.

Defendant points to the fact that there are essential differences in the transportation services performed under the contract and non-contract rates, and to the differences in costs of service under the two systems. Parcel lots of lumber such as complainant ships move on merchandise ships sailing on schedule. It is not clear from the record whether shipments under contract rates move partly via merchandise vessels or are confined strictly to the lumber carriers. Witness for defendant stated that the contract lumber cargo "moves on the lumber carriers almost without exception." Where a lumber vessel loads 500,000 feet or more it is generally taken on at one mill in stock sizes and does not involve sorting at destination. On the other hand, small parcels are brought to the merchandise dock in drays or cars, have a tendency to congest the facilities, and must be handled by sizes and by marks both at origin and destination. While exact cost figures are not produced, there is no doubt that the merchandise operations are more costly to the carrier. A typical shipment made by complainant consisted of 57,556 feet covered by six bills of lading and involved 33 lumber items of less than 2,000 feet each, and had to be segregated and delivered separately. This necessitated sorting and clerical work not required as to contract quantities moving on lumber carriers.

Defendant urges that since complainant is unable to show any specific instance where the lower contract rates have injured its business and inasmuch as the difference in rates reflects the difference in the cost and value of the services rendered, there is no ground upon which to condemn the assailed rates as being unduly prejudicial. This does not necessarily follow. Quantity provisions which can be met by only a few shippers have been declared to be in violation of section 16 of the act. *Intercoastal Rates of American-Hawaiian S. S. Co.*, 1 U. S. S. B. B. 349, 351; *Intercoastal Rate on Silica Sand from Balto.*, 1 U. S. S. B. B. 373, 375; and *Transportation of Lumber through Panama Canal*, 1 U. S. M. C. 646. It is also apparent that defendant contract system tends to create a monopoly. In *Intercoastal Rate on Silica Sand from Baltimore, Md.*, *supra*, it was pointed out that although contract rates may have served a useful purpose in the past when intercoastal carriers freely engaged in rate wars, their need for intercoastal transportation is no longer apparent in the light of the Intercoastal Shipping Act, 1933. The same reasoning applies here because the provisions of the Intercoastal Shipping Act now apply to this traffic. Furthermore our control of rates has been increased by the minimum-rate power which should lend a stabilizing influence to the rate structure of the common carriers engaged in the trade. Upon exceptions, however, defendant points out that its only competition comes from unregulated carriers. The record shows that the actual competition from that source is negligible. As to a possible threat from that quarter, it is noteworthy that witness for defendant admitted that its competitors got "very little" return cargo from the Islands, which fact, of course, operates to discourage competition. We therefore fail to see the necessity for contract rates on lumber in this trade.

There remains for consideration the propriety of the 500,000 feet minimum per shipment. Minimum weights or quantities should be fixed at a figure that will best serve the general public as a whole and at the same time insure economic handling and carriage of cargo by the carriers. Prior to 1928 defendant's rates were on an any-quantity basis. Complainant testified that he could find no instance in coastwise trades where a rate differential applied on lumber based on quantity. In the intercoastal lumber trade the rate is 50 cents higher for quantities less than 12,000 feet, but that minimum is fixed with reference to railroad competition. As heretofore stated, the evidence indicates that complainant, a representative noncontract shipper, averaged about 34,615 feet per shipment during 1936 and 1937; there is no showing of the average quantities shipped by all shippers. Complainant would be satisfied with a minimum of 50,000 feet. Defendant stresses the fact that the minimum of 500,000 feet was determined in 1928 after consultation with the trade, and contends that since one-half of the regular dealers can meet this minimum it is adapted to the trade. It is significant, however, that this one-half ships 91 percent of the lumber carried by defendant. The fact remains that out of approximately 24 firms or individuals engaged in the lumber business in Hawaii, only six can meet the minimum provision. What may have been suitable to the trade ten years ago does not necessarily remain so today. One development since then, which should not be overlooked, is the fact that complainant, one of the original contract shippers, cannot meet a minimum above 50,000 feet now. Incidentally, defendant publishes no minimum provision in connection with any other commodity moving in volume, such as cement. It is evident, therefore, and we so conclude, that the minimum provision of 500,000 feet is excessive and discriminatory. The record furnishes no adequate basis upon which to prescribe a reasonable minimum for the future.

Complainant's evidence of unreasonableness of the assailed rates consists of various comparisons with lumber rates in the Pacific coast coastwise and intercoastal trades. The dissimilarities of transportation and competitive conditions in the respective trades render these comparisons of little value. Neither is complainant's attack on defendant's practice of charging rates based on gross measurement supported by evidence of unreasonableness. Defendant takes the position that lumber is bought and sold on a gross-measurement basis and that surfaced lumber is more valuable and more susceptible to damage, requires greater care in stowage and handling, and that the use of the gross-measurement basis is a convenient means of arriving at the higher rate which is justified by these considerations.

We find that defendant's contract rates are unduly and unreasonably preferential of and advantageous to lumber shipped under contracts and the shippers thereof, and unduly and unreasonably prejudicial and disadvantageous to lumber moving over the defendant's line which is not shipped under contract, and the shippers of such lumber in violation of section 16 of the Shipping Act, 1916.

We further find that the minimum of 500,000 feet is unduly preferential and prejudicial in violation of section 16.

We further find that the assailed rates and practices have not been shown to be otherwise unlawful.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3rd day of August, A. D. 1939

No. 487

F. A. Smith & Co., Ltd.

v.

Matson Navigation Company

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the above-named defendant be, and it is hereby, notified and required to cancel its contract rates for the transportation of lumber from the Pacific coast of the United States to the Hawaiian Islands, effective on or before September 12, 1939, upon not less than 10 days' filing and posting in the manner required by law;

It is further ordered, That the above-named defendant be, and it is hereby, notified and required to cease and desist, on or before September 12, 1939, and thereafter to abstain from publishing, demanding, or collecting for the transportation of lumber from the Pacific coast of the United States to the Hawaiian Islands, rates which are lower for quantities of 500,000 feet gross board measure or more per shipment than those contemporaneously in effect on quantities less than 500,000 feet gross board measure per shipment.

By the Commission.

[SEAL] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 528

EAST-BOUND INTERCOASTAL BRANDY AND CHAMPAGNE RATES

Submitted July 24, 1939. Decided September 12, 1939

Proposed east-bound intercoastal rates on brandy and champagne found justified. Suspension order vacated and proceeding discontinued.

Harold S. Deming, *Chalmers G. Graham*, *Otis N. Shepard*, *A. L. Burbank*, *E. J. Martin*, and *David Dysart* for Shepard Steamship Company.

M. G. de Quevedo, *Harry S. Brown*, *Parker McCollester*, *Clement C. Rinehart*, *George E. Talmage, Jr.*, and *J. A. Stumpf* for members of Intercoastal Steamship Freight Association, except Isthmian Steamship Company, and for American-Hawaiian Steamship Company, Inc.

A. G. Frericks, *Louis R. Gomberg*, *A. R. Covell*, *Henry J. Buckman*, and *Charles R. Seal* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the examiner's proposed report, the findings in which are hereby adopted.

By schedules filed to become effective May 14, 1939, Shepard Steamship Company proposed to reduce its east-bound intercoastal carload rate on brandy from $1.10 to 90 cents per 100 pounds, minimum weight 24,000 pounds, no reduction being made in the champagne rate. Effective the same day, Calmar Steamship Corporation in its tariff SB–I No. 6, and parties to tariff SB–I No. 7 of Alternate Agent Joseph A. Wells, proposed to reduce their carload rates in the same trade on champagne and brandy from $1.49 to $1.14 per 100 pounds, minimum weight 24,000 pounds. Member lines of Intercoastal Steamship Freight Association protested the Shepard reduction and requested its suspension. Though making no formal protest, Shepard requested suspension of the Calmar and the Wells tariffs if its own schedules were suspended. All schedules involved were suspended to September 14, 1939.

Except for one short period, Shepard's brandy rate steadily increased from $2.75 per barrel (55 cents per 100 pounds) on June 1, 1933, until the present reduction was made. The rates of the other respondents also increased during the same period, ranging from 3 to 120 percent higher than the Shepard rate. The suspended schedules of all respondents were filed upon the announcement that the east-bound all-rail transcontinental rate would be reduced from $2.20 to $2 per 100 pounds and the rail-water rate from $2.20 to $1.85 per 100 pounds.

The east-bound brandy movement by water has not been heavy, the bulk of it being handled by Shepard as follows: 1934, 41 tons; 1935, 278 tons; 1936, 1,413 tons; 1937, 1,278 tons; and 1938, 892 tons. Brandy weighs 500 pounds per barrel (460 pounds net), stows 60 cubic feet to the ton of 2,000 pounds, and the value thereof averages approximately $35 per barrel or about $152 per ton. Shepard's costs for handling brandy total $8.12 per ton, apportioned as follows: Transportation from Stockton, Calif., to ship's side, $2.56½; loading, $1.62½; loading terminal, 45 cents; discharging terminal, 74 cents; stevedoring and discharging, $1.30; agency fee, $1.35; and claims, 9 cents. Based upon the suspended rate, there remains the sum of $9.88 to apply against the cost of transportation. This revenue, it was testified, is "quite well above the average" on other commodities transported. The daily operating cost of a Shepard vessel, exclusive of port charges and stevedoring, approximates $450, or a total of approximately $13,500 for an east-bound voyage of 30 days. The 90-cent rate would net approximately $55,000 on a full cargo of 7,000 measurement tons. With its east-bound vessels operating 96 to 98 percent fully loaded, Shepard's 1938 average net for all commodities was $20,000 per voyage. We find that the 90-cent rate has been justified.

Although there is no testimony whatever as to whether the $1.14 rate of the other respondents would be compensatory, it seems reasonable to assume that it is not unreasonably low since it is approximately 27 percent higher than the 90-cent rate. We find that the $1.14 rate has been justified.

The conclusions stated herein are based on the record in this proceeding, and are not to be regarded as limiting any order which may be issued in Docket 514, Intercoastal Rate Structure, a general investigation of rates and practices in the intercoastal trade, which is now pending before the Commission.

Subject to the above limitation, an order will be entered vacating the order of suspension and discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of September A. D. 1939.

No. 528

East-Bound Intercoastal Brandy and Champagne Rates

It appearing, That by order dated May 11, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices in the schedules enumerated and described in said order and suspended the operation of said schedules until September 14, 1939;

It further appearing, That investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and findings thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have been justified;

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is hereby, vacated and set aside as of this date, and that this proceeding be, and it is hereby, discontinued, without prejudice, however, to any order which may be issued in Docket 514, Intercoastal Rate Structure, now pending before the Commission.

By the Commission.

[SEAL] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 536

West-bound Carload and Less-Than-Carload Rates

Submitted July 6, 1939. Decided October 12, 1939

West-bound intercoastal reductions on classes 1 to A, inclusive, and on higher rated articles to $2 for transportation in ordinary stowage, and to $3 on commodities transported under refrigeration, and reductions in commodity rates based on the level of proposed class rates, found not justified. Reductions in rates to level of carload rates from New York via water-rail routes, and other adjustments incidental theerto, except reductions in commodity rates based on proposed class rates, found justified.

M. G. de Quevedo, *H. S. Brown*, and *W. N. Carney* for respondents, members of Intercoastal Steamship Freight Association; *Parker McCollester* and *J. H. Stumpf* for respondent American-Hawaiian Steamship Company.

R. H. Specker for Luckenbach Gulf Steamship Co., Inc., and *H. J. Niemann* for Inland Waterways Corporation, interveners.

Rene A. Stiegler for Board of Commissioners of the Port of New Orleans, New Orleans Joint Traffic Bureau and Mississippi Valley Association; and *R. M. Nielson* for Western Shade Cloth Co. of California, and Wm. Volker & Co., Inc., of Washington, and associated companies, protestants.

Report of the Commission

By the Commission:

Schedules of Calmar Steamship Corporation and of Alternate Agent Joseph A. Wells, published on behalf of American-Hawaiian Steamship Company and other intercoastal all-water carriers, and filed to become effective June 15, 1939, propose reductions in less-than-carload and any-quantity commodity rates to $2 and lower, and in rates applicable to classes 1, 2, 3, 4, 5, and A to $2 on commodities transported in ordinary stowage, and to $3 on commodities requiring refrigeration. Westbound transportation only is involved. Upon protest of interested persons the operation of the schedules was suspended until October 15, 1939, pending investigation as to their lawfulness. Luckenbach Gulf Steamship Company, Inc., and Inland Waterway Corporation intervened at the hearing. The filing of briefs and issuance of a proposed report have been waived. Rates are stated in cents, or in dollars and cents, per 100 pounds.

Respondents state that the necessity for reductions in rates on less-than-carload traffic has existed for several years. Prior to 1933 the difference between carload and less-than-carload rates, hereinafter called the spread, was approximately 50 cents. An upward general rate adjustment in 1933, with larger increases in less-than-carload rates, and further increases in 1935, widened the spread materially. For some time the effect of these increases, made primarily to obtain additional revenue, was difficult to ascertain, but in 1937 it became apparent that less-than-carload rates were producing unfavorable results. Carload shipments, exclusive of iron and steel articles, passenger automobiles, and trucks, moving westbound during March, April, and May 1936, were 23 percent greater than during the same three-month period in 1937. The increase in less-than-carload traffic was less than one-half of one percent, but shipments of professional consolidators, hereinafter called forwarders, via respondents' vessels increased 104 percent. Competition also exists through the use by forwarders of all-rail routes and also water-rail routes from the Atlantic seaboard. In December 1938 a committee of the lines appointed to study the situation recommended reductions in all less-than-carload and any-quantity commodity rates to the level of the carload rate via water-rail routes. Action upon this recommendation was deferred, but upon publication by transcontinental railroads on traffic from Chicago, and by carriers operating water-rail routes from Atlantic seaboard ports effective on June 15, 1939, of an all-commodity rate of $2.75, immediate action was deemed imperative. A special committee then appointed, reaffirmed the recommendation of the earlier committee, and in addition recommended the specific reductions in class rates involved.

The schedules involve approximately 540 rate changes. In addition to reductions in less-than-carload and any-quantity rates to the level of the water-rail carload rates, which level is also charged by transcontinental railroads from Chicago, reductions in carload and less-than-carload commodity rates are proposed in instances where such rates are now higher than $2 or higher than the proposed less-than-carload commodity rates; in a few instances carload rates are also increased. Some carload rates are changed to an any-quantity basis; in 42 instances such rates are initially established. Only 7 of the commodities thus affected have moved in carload quantities during recent years. Special adjustments became necessary when a spread of less than 10 cents between carload and less-than-carload rates would have resulted. In other instances, where there was a carload commodity rate in respondents' tariffs but only a class rate for small lots and the water-rail carload rate was less than the applicable class rate, a less-than-carload commodity rate equal to the water-rail carload commodity rate was established. The formula used also results in the cancellation of alternate carload minima and some released valuation rates. Many of the reductions in commodity rates are only a few cents, but there are some substantial reductions. The following tabulation is illustrative of the larger reductions, and also shows the competitive forwarder rate:

Commodity	Rates of respondents						Forwarder rate	
	Present			Proposed			All-rail	Water-rail
	C. L.	L. C. L.	A. Q.	C. L.	L. C. L.	A. Q.		
Horns or sound warning equipment			$3.30			$1.67		$2.15
Oil of mirbane	$2.05	$2.85				1.49	$2.25	2.15
Candy and confectionery			1.93			1.49		2.15
Magneto points			3.25			1.78	2.25	2.15
Automobile shock absorbers			1.75			1.43		2.15
Motortruck seat cabs	2.31½					1.54		2.15
Radiator and other automobile ornaments			3.25			1.67		2.15
Shoe trees		2.57			$2.00		[1] 2.25 [2] 3.13	

[1] From Chicago.
[2] From Pittsburgh.

The following is illustrative of class-rate reductions: On auto-parking indicators originating at Buffalo, N. Y., the first-class all-water rate was $4.40. The first-class rail rate from Buffalo to New York, N. Y., is $1. The forwarder rate from Buffalo to all Pacific coast cities is $3.13. Respondents' proposed rate is $2. Similar situations exist in respect to commodities rated lower than first class. On traffic from Cleveland, Columbus, Cincinnati, Akron, and Youngstown, Ohio, rates to Atlantic seaboard are higher than from Buffalo. Forwarder rates from such points all-rail to the Pacific coast are lower than from Buffalo, all-commodity rates available in combination with all-rail carload rates from Chicago lower than from Buffalo being a factor in their computation.

The establishment of $2 as a maximum on both classes and commodities will also result in large reductions on articles concerning which shippers have requested reductions. The following are illustrative:

Commodity	Present rate	Proposed rate
Artificial sun lamps	$4.63½	$2.00
Musical instrument cases	6.50	2.00
Polishing cloths	5.40	2.00
Cake ornaments	[1] 6.60	2.00
Cushions and pillows	5.78	2.00

[1] Class rate.

The general practice of the forwarder is to consolidate numerous small lots of merchandise into one shipment of a carload quantity, which is then tendered to a carrier for transportation at the published carload rate. The forwarder is both the consignor and consignee. At destination the shipment is segregated by the forwarder, who delivers each individual lot to the person for whom it is intended. The rate which a forwarder charges is sufficiently higher than the carload rate to cover expense of solicitation, assembling, segregation, delivery, accounting, and other incidental costs. It is, however, lower than the applicable less-than-carload rate published by the carriers. The forwarder's charge includes insurance on the goods transported and, in many instances, store door pick-up and delivery services. Respondents submit the following to illustrate the method used by representative forwarders in quoting rates to Pacific coast destinations via all-rail routes from Chicago and also via water-rail routes from Atlantic seaboard ports:

Rates on all-rail traffic from Chicago, Ill.

RAIL RATE— On commodities (straight carloads) named in Agent Kipp's I. C. C. 1417 and 1418 from group D territory at—	*Forwarder rate*
$1.30 or less, minimum 70,000 pounds or less	$2.00
1.31 to $1.55, minimum 60,000 pounds or less	2.25
1.56 to 1.85, minimum 60,000 pounds or less	2.55
1.86 to 2.60, minimum 40,000 pounds or less	3.30
2.61 to 3.00, minimum 30,000 pounds or less	[1] 3.70

[1] Applies only on commodities rated first, second, or third class; the charge on fourth class is $3.32.

Rates from Atlantic seaboard via water-rail routes

WATER-RAIL RATE— On commodities named in Agent Kipp's I. C. C. 1417 taking group A-2 solid carload rates of—	*Forwarder rate*
$1.74 or lower, minimum 50,000 pounds or less	$2.15
1.75 to $1.93, minimum 40,000 pounds or less	2.50
1.94 to 2.22, minimum 36,000 pounds or less	2.60
2.23 to 2.97, minimum 24,000 pounds or less	3.30
2.98 to 3.08, minimum 18,000 pounds or less	3.50

On shipments of forwarders routed via respondents' vessels, the charge of the forwarder, which in this instance does not include marine insurance or pick-up or delivery service, range from 2 cents to $1.00 higher than the carload rate, depending upon the spread.

Practices of forwarders, it is stated, are not confined to quoting rates in the manner shown. They sometimes offer to particular shippers a special rate concession on specific commodities, or special services not accorded to others, in order that they may control a volume of business for use as a nucleus with which to consolidate other merchandise. Respondents state that because of these special inducements their attempts in the past to adjust individual rates have not resulted in the desired increase in traffic. Forwarder service also appears particularly attractive to shippers of small lots because they are relieved of all responsibility in the transfer of shipments between connecting carriers and one freight bill covers the entire transportation service; also because of stoppage in transit privileges, a collection service on c. o. d. shipments and a saving of incidental terminal or port costs if all-water routes are used. Forwarder operations are also aided by liberal mixing rules in published tariffs. The reductions involved were published in an effort to meet the forwarder competition and to reestablish direct carrier-shipper contact which they formerly enjoyed. The importance of this class of traffic to individual respondents varies considerably. For instance, Luckenbach Gulf Steamship Company states its less-than-carload freight has not exceeded 3 percent of its total traffic, but American-Hawaiian states that its carryings have ranged from 16 to 40 percent, and that this class of traffic has produced 40 percent of its revenue. Individual respondents other than those named were not represented.

Respondents contend that irrespective of the forwarder competition their reductions are fully warranted. While there exists competition between all-rail carriers and respondents in respect to traffic originating in central territory and points east of Chicago, the competition of water-rail routes is said to be much more keen due to the shorter time in transit which attracts a considerable volume of less-than-carload traffic consigned to retail stores that do not carry a large stock of merchandise. Rates via such routes also include marine insurance and, in some instances, store-door delivery. On shipments via respondents' vessels, the cost of marine insurance alone is said to average in excess of 12 cents per 100 pounds. Even though such delivery is not included in the water-rail rate, charges for drayage from railroad terminals to consignee's place of business, particularly at Los Angeles, to which point the movement of less-than-carload traffic is heaviest, is less than from steamship piers at

Los Angeles Harbor. Drayage, on classes 1 to 4, inclusive, from piers to some points in the Los Angeles business district, when shipped in quantities less than 2,000 pounds, range from 42 to 46 cents; on shipments from 2,000 to 4,000 pounds charges range from 27 to 38 cents. The majority of the less-than-carload shipments would come within these weight groupings.

Protestants Wm. Volker & Company, Inc., of the State of Washington, and associated companies, wholesalers and jobbers of house furnishings in various Pacific coast cities contend that any reduction, or elimination of, the spread on merchandise which they handle will result in a decrease in their business for the reason that some retail merchants which they now supply may be enabled thereby to purchase direct from eastern manufacturers. Such evidence does not establish unlawfulness. In *Ames Harris Neville Co. v. American-Hawaiian Steamship Company*, 1 U. S. M. C. 765, we upheld the establishment of any-quantity rates on cotton piece goods and cotton factory products although similar objections were interposed by dealers, jobbers, and wholesalers. The principles underlying that decision are applicable here.

Other protestants have no objection to reductions per se, but they contend that because shippers who now use Gulf ports compete with shippers who use Atlantic ports, and because the establishment of lower rates from South Atlantic ports than are applicable from New Orleans will divert traffic from the latter port, undue preference and prejudice will result unless rates from the Gulf are no higher than those proposed by respondents. They also contend that the conference affiliations and close relationship between Luckenbach Steamship Co., Inc., and Luckenbach Gulf Steamship Co., Inc., at well as the operations of Isthmian Steamship Co., from both Atlantic and Gulf ports, require the maintenance of a competitive relationship between the Atlantic and the Gulf.

The record shows that proposed reductions will result in rates from Atlantic ports, with few exceptions, lower than from the Gulf. Luckenbach Gulf recognizes that this may adversely affect some shippers and the Gulf ports, and states that if the proposed rates from Atlantic ports become effective, some of the rates from the Gulf must also be reduced. It contends, however, that the establishment of complete rate parity is unnecessary since there are some commodities moving through the Gulf which do not compete with those moving through Atlantic ports, and that although competition in some instances exists, joint all-water rates from river points adequately protect the interests of both shippers and the port of New Orleans. However, it does not follow that the mere existence of joint

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rates relieves carriers of their obligation to maintain local rates on a proper level. No purpose is served by local rates so high that their use in combination with rates of inland carriers from interior points is prohibitive.

There are certain commodities set forth in Appendix B to the protest of the New Orleans Joint Traffic Bureau concerning which Luckenbach Gulf admits rate adjustments should be made. In fact the record shows that the Gulf Conference has already announced contemplated reductions on such commodities, and it is stated that an application for permission to file such reductions on short notice will be promptly made should reductions here involved be found justified. Luckenbach Gulf also indicated its willingness to make other adjustments should investigation disclose the need thereof, but even if all adjustments thought to be necessary are not made, the rights of injured persons or ports are fully protected by the provisions of section 22 of the Shipping Act, 1916.

Respondents admit the proposed reductions are drastic and in some instances greater than might have resulted if a study in respect to each commodity moving in the trade had been made. Nevertheless, they contend that the rates proposed are not lower than reasonable minima. They also contend that even though reductions appear drastic we are without authority to hold in effect rates on small shipments which are higher than rates applicable on the same commodities when shipped in larger quantities. This is tantamount to a statement that so long as rates proposed for less-than-carload traffic are higher than applicable carload rates, a finding that they are unreasonably low would not be warranted. Our findings make it unnecessary to discuss the latter contention.

On this record the attempt to meet forwarder competition, upon which respondents chiefly rely in support to their schedules, must be recognized. While forwarders, in their capacity as shippers, must be given every privilege accorded other shippers, there is no obligation on carriers to maintain rates that will benefit forwarders.

Reductions in class rates of the nature proposed presents an entirely different problem. Notwithstanding respondents' contention that the rates proposed for classes 1 to A and higher, are not lower than reasonable minima, the basis of the conclusion does not appear of record. It is apparent that an adequate study of class rates generally was not made. While the evidence was based upon forwarder, water-rail and all-rail competition on traffic to which class rates apply, it does not support an action which, if approved, will result in the virtual destruction of the class-rate structure. It is difficult to reconcile the retention of different rate levels resulting from continued adherence to rate-making principles for the articles within classes B, C, D, and E and the complete disregard of such basic principles in respect to higher grade cargo. Such treatment of the respective groupings would result in undue and unreasonable preference and prejudice in numerous instances. It is also difficult to escape the conclusion that if transportation conditions now warrant such drastic changes, present rates are unduly high. It is difficult to rationalize spreads exceeding 100 percent between reasonable minimum and maximum rates. Carriers are privileged to exercise their managerial discretion within reasonable limits, but to sanction a zone of reasonableness of so broad a scope would nullify all attempts at regulation. It should also be noted that proposed rates will result in a level on classes 1 to 4, inclusive, lower than was established effective October 3, 1935, and that on first and second-class traffic the rate will be lower than that charged in 1925. In *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400, the need for additional revenue to meet increases in the cost of transportation were apparent, and following the decision in that case the level of 1935, just mentioned, was established. On June 15, 1937, and again on July 29, 1938, the level established in 1935 was increased still further. Respondents made no study of the financial results to be expected from reductions which they now propose and, therefore, it is uncertain that earnings from the hoped-for increase in less-than-carload business will offset the decrease in revenue on traffic which they now handle.

Under the shipping statutes we administer, responsibility for rates which are both reasonable to shippers and remunerative to carriers rests with us. On this record we are not warranted in approving the proposed class-rate reductions. As has been noted, reductions are also proposed in commodity rates in instances where such rates are higher than the proposed class rates, or higher than the proposed less-than-carload commodity rates. Condemnation of the class-rate reductions compels condemnation also of reductions in commodity rates when such reductions are based solely upon the proposed class rates. We recognize that protests filed with respondents by shippers against class rates charged on their shipments may be deserving of some consideration. However, our action herein does not restrict respondents' right to establish specific commodity rates in proper cases.

We find that respondents' proposed reductions in class rates, also reductions in commodity rates, when based thereon, have not been justified. We further find that, subject to the limitation above mentioned, proposed changes in commodity rates have been justified. An appropriate order will be entered.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 12th day of October A. D. 1939

No. 536

West-Bound Carload and Less-Than-Carload Rates

It appearing, That by its orders of June 14 and 23, 1939, the Commission entered upon a hearing concerning the lawfulness of the schedules enumerated and described in said orders, and suspended the operation of said schedules until October 15, 1939;

It further appearing, That a full investigation of the matters and things involved has been had and that the Commission, on the date hereof, has made and filed a report containing its findings of fact and conclusions thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents be, and they are hereby, required to cancel, effective on or before November 13, 1939, schedules proposing reductions in class rates and in commodity rates based on the level of the class rates sought to be established, upon notice to this Commission and the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933;

It is further ordered, That in respect to schedules proposing changes in commodity rates, except those involving reductions of the nature herein condemned, the orders of suspension heretofore entered be, and they are hereby, vacated and set aside as of October 15, 1939, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 544

CLASS RATES BETWEEN NORTH ATLANTIC PORTS—PAN-ATLANTIC STEAMSHIP CORPORATION

Submitted September 11, 1939. Decided October 19, 1939

Schedules containing class rates between North Atlantic ports found justified. Suspension order vacated and proceeding discontinued.

M. S. Dixon for Pan-Atlantic Steamship Corporation.

Charles P. Reynolds, *Alexander Gawlis*, and *Frank H. Mickens* for Merchants and Miners Transportation Co. and Eastern Steamship Lines, Inc.

Frank S. Davis, *Walter W. McCoubrey*, *F. M. Dolan*, and *H. J. Wagner* for interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective July 19, 1939, respondent Pan-Atlantic Steamship Corporation proposes to establish class rates between Boston, Mass., New Bedford, Mass., New York, N. Y., Hoboken, N. J., Camden, N. J., and Philadelphia, Penna. Upon protest of Merchants and Miners Transportation Co. and Eastern Steamship Lines, Inc., the schedules were suspended until November 19, 1939.

Respondent has two services: one leaving New Orleans, La., on Friday and calling at various Gulf ports, thence to New York, Hoboken, New Bedford, and Boston, and returning to New York, Hoboken, Camden, Philadelphia, and the Gulf; the other leaving New Orleans on Saturday and calling at various Gulf ports, thence to Philadelphia, Camden, Hoboken, and New York, and returning to the Gulf. Respondent does not now handle local traffic between North Atlantic ports. It is contemplated that the traffic to be secured in that territory, very little of which would be new business, would be handled in connection with the present services.

Respondent testified that it actually intends to engage in the trades. The filing with us of a tariff of rates for the proposed services is a necessary preliminary for such undertaking. Publishing of the rates was not only intended to give solicitors an opportunity to make contacts to determine whether the services would be used, but to avoid additional regulation, and to satisfy any future statutory requirements incident to securing a certificate of public convenience and necessity. No advertising has been done and respondent's witness did not know whether solicitation has been made. Whether extra ships, personnel or terminals, except those at New York and Hoboken, would be needed to handle the traffic has not been determined.

Merchants and Miners has operated between Boston and Philadelphia for over 50 years, and at present has three sailings a week in each direction. Due principally to truck and rail competition, its traffic has decreased from 40,065 tons in 1935 to an estimated 32,000 tons in 1939. For the first six months of 1939 about 25 percent of this protestant's vessel space was utilized south-bound and about 60 percent north-bound. Eastern has operated between New York and Boston for approximately 75 years, and at present has an overnight service in each direction. Because of water, rail, and truck competition, its traffic has decreased from 383,412 tons in 1923 to 188,418 tons in 1938, or 50.8 percent. The movement now is mainly carload. This protestant's summer ships are filled about 75 percent of the time, and its winter ships are filled less than 60 percent of the time.

The suspended schedules provide for the following services: Boston to and from New Bedford, New York, and Hoboken; New Bedford to and from New York and Hoboken; New York and Hoboken to and from Camden and Philadelphia; and Camden and Philadelphia to and from New Bedford and Boston. The rates applicable between Boston and Camden are the same as those of Merchants and Miners between Boston and Philadelphia; those applicable between New York, Hoboken, and New Bedford are the same as respondent's rates between New York, Hoboken, and Boston; and those applicable between New York, Hoboken, Camden, and Philadelphia are the same as those of Eastern between New York, Hoboken, and Boston. All other proposed rates are the same as those of Merchants and Miners or of Eastern in their respective trades. It was testified on behalf of respondent that three of the proposed services would be entirely new. Although not served direct by Merchants and Miners, Camden is included in the Philadelphia area to which pick-up and delivery service applies on less-carload or any-quantity shipments.

It is protestants' position that the territory involved is amply served, that there is no demand for additional service, that they have idle ships that could be used if business warranted, that respondent cannot secure new traffic, and that respondent's entry into the field will only result in a further decrease of traffic for them. The witness for intervener Maritime Association of the Boston Chamber of Commerce stated that ordinarily his organization welcomes new water lines, but that in this particular instance there is no demand for the additional service, that the public interest would not be served by it, and that he feared protestants will be obliged to curtail their services unless able to retain present patronage. To contend that we can prevent a bona fide carrier from entering a trade for the above reasons presupposes a power which is not conferred upon us by the shipping acts. Nor can such affirmative authority be derived solely from the declarations in the various shipping statutes that it is the policy of the United States to foster the development and encourage the maintenance of an adequate merchant marine. *Yazoo R. Co.* v. *Thomas*, 132 U. S. 174, 188.

Protestants urge that the schedules should be ordered canceled because respondent has failed to show that the rates will be compensatory. No protest was made on that ground and respondent's witness was not prepared to testify in such connection. Inasmuch as respondent's proposed rates are aligned competitively with those of the other carriers in the trade, it cannot be assumed without proof that they will be noncompensatory.

We find that the schedules have been justified, and an order will be entered vacating the suspension and discontinuing the proceeding.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 19th day of October A. D. 1939.

No. 544

Class Rates Between North Atlantic Ports—Pan-Atlantic Steamship Corporation

It appearing, That by order dated July 18, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices in the schedules enumerated and described in said order, and suspended the operation of said schedules until November 19, 1939;

It further appearing, That investigation of the nature and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have been justified;

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is hereby, vacated and set aside, and that this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL]

(Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 525[1]

PACIFIC COASTWISE CARRIER INVESTIGATION

Submitted September 16, 1939. Decided October 20, 1939

No unlawfulness in connection with chartering, charter arrangements, or practices, rules, regulations, charges, and/or rates related thereto, shown to exist. Proceeding in No. 525 discontinued.

Suspended schedules proposing reductions in Pacific coastwise lumber rates not justified. Schedules ordered canceled and proceedings in Nos. 530 and 532 discontinued.

Robert C. Parker for complainant in No. 529.

L. G. Burns, *R. J. Deremer*, *W. E. Dooling*, *S. D. Freeman*, *Joseph J. Geary*, *S. A. Griffiths*, *Alfred A. Hampson*, *F. C. Lawler*, *Emmett G. Lenihan*, *Theodore M. Levy*, *Courtney L. Moore*, *L. C. Stewart*, *Reginald L. Vaughan*, and *Gilbert C. Wheat*, for defendants in No. 529 and respondents in No. 525.

Joseph J. Geary, *Theodore M. Levy*, and *Gilbert C. Wheat*, for respondent in No. 530, *Alfred A. Hampson* for respondent in No. 532; *K. C. Batchelder*, *Emmett G. Lenihan*, *Courtney L. Moore*, *Robert C. Parker*, *and Reginald L. Vaughan*, for protestants.

K. C. Batchelder for West Coast Lumbermen's Association, *H. S. Brown* and *M. G. de Quevedo* for Intercoastal Steamship Freight Association, *C. O. Burgin* for Port of Stockton, *T. G. Differding* for Oakland Chamber of Commerce, *C. A. Hodgman* for City of San Diego Harbor Commission and San Diego Chamber of Commerce, *Walter A. Rohde* for San Francisco Chamber of Commerce, *J. Richard Townsend* for Stockton Port District, *W. H. E. Usher*, for Calmar Steamship Corporation, interveners in No. 525.

[1] This report includes No. 529, *Robert C. Parker* v. *W. R. Chamberlin & Company et al.*, No. 530, *Pacific Coastwise Lumber Rates—McCormick Steamship Company*, and No. 532, *Pacific Coastwise Lumber Rates—Coastwise Line.*

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases involve related matters, were heard together, and will be disposed of in one report. Exceptions were filed by respondent McCormick to the examiner's proposed report. The findings recommended by the examiner are adopted herein.

No. 525 is an investigation instituted by us concerning the lawfulness of chartering and charter arrangements by respondent carriers[2] engaged in interstate transportation between Pacific coast ports, and of their practices, rules, regulations, charges, and/or rates related thereto.

No. 529 is a proceeding upon complaint filed by the Chairman of the Pacific Lumber Carriers' Association against certain members of that organization. All defendants therein are respondents in No. 525. At the hearing this complaint was withdrawn for the reason that all allegations made therein were embraced within the issues of No. 525.

Nos. 530 and 532 are investigation and suspension proceedings concerning the lawfulness of reductions in rates for transportation of lumber and forest products from Washington and Oregon to California ports proposed by respondents McCormick and Coastwise.

No. 525

This proceeding was instituted at the instance of carriers comprising the membership of the Pacific Lumber Carriers' Association, a conference governing its members' transportation of lumber and lumber products from Washington and Oregon to California ports and functioning pursuant to an agreement on file and approved under section 15 of the Shipping Act, 1916. Representations were made that the chartering by association and "outside" vessel operators to shippers at rates or hire different from the agreed conference tariff charges threatened the existence of the association and the stability of the trade. Along with all association members, the order named as respondents all known "outside" or nonassociation operators.[3]

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[2] American-Hawaiian S. S. Co., Burns S. S. Co., W. R. Chamberlin & Co., Coastal S. S. Co., Coastwise Line, Consolidated Olympic Line, S. S. Freeman & Co., Gorman S. S. Co., James Griffiths & Son, Hammond Shipping Co., Ltd., Hart-Wood Lumber Co., A. B. Johnson Lumber Co., Kingsley Co. of Calif., Lawrence-Philips S. S. Co., Fred Linderman, McCormick S. S. Co., Moore S. S. Co., Oliver J. Olson & Co., Paramino Lumber Co., Portland S. S. Co., J. Ramselius, Schafer Bros. S. S. Lines, Silverado S. S. Co., Sudden & Christenson, Wallingford S. S. Co., Wheeler-Hallock Co., E. K. Wood Lumber Co., West Oregon Lumber Co.

[3] American-Hawaiian S. S. Co., Coastal S. S. Co., S. S. Freeman & Co., James Griffiths & Son, Kingsley Company of California, Moore S. S. Co., Portland S. S. Co., J. Ramselius, Silverado S. S. Co., Wallingford S. S. Co.

Of the nonassociation respondents three, namely, Freeman, Griffiths, and Ramselius, are shown to transport lumber in the southbound trade involved under charter or contract. Respondent Freeman operates two vessels, built for the lumber carrying trade, in which it transports exclusively, under contract in the nature of a charter at a rate per 1,000 feet, the lumber of one wholesale lumber dealer. The contract arrangement has been in effect for two years, and the rate during such period has averaged lower than the corresponding association carriers' rate. This respondent was previously engaged in furnishing southbound transportation to shippers generally, as a common carrier. Respondent Griffiths operates one vessel in which under separate contracts it transports from North Pacific to California ports the lumber of two shippers only. In the past it has occasionally transported lumber under similar contract arrangements for several other shippers. Respondent Ramselius owns and operates one vessel in which under continuing contract it transports the lumber of one shipper only from Port Orford, Oreg., to San Pedro, Calif., at a rate which is at all times the association carriers' rate. Until June 9, 1939, this respondent was an association member. Of the association carriers, respondents Johnson, Chamberlin, and West Oregon are shown to furnish transportation under charter or contract to lumber shippers. Respondent Johnson is a mill representative for the sale of lumber in California and the managing owner of two steam schooners. Since 1938 the activities of the mills it represents have been curtailed, and the schooners have been used to transport the lumber of one or two other lumber interests as well. This transportation for others has been performed under individual contracts at the per 1,000-foot association carriers' rate, except in one instance of a per-day time charter of the vessel at a hire which is testified to have approximated such rate. Respondent Chamberlin is the managing owner of three schooners with which it formerly engaged as a common carrier. These vessels are now operated by it under time charters to two lumber interests in the transportation of the latters' lumber to California ports. Calculated per 1,000 feet of lumber carried, the charter hire approximates a rate ranging from \$5.64 to \$5.90, as compared with the association carriers' rate of \$6. The last of such charters was entered into in March 1939, since which time respondent has represented itself as a contract carrier. On June 23, 1939, it submitted its resignation from association membership. Respondent West Oregon, on two vessels chartered by it for use in the transportation of its lumber to California ports occasionally contracts with other lumber concerns for the carriage of negligible quantities of lumber. Such contracts are testified to be made only when respondent does not have a full cargo of its own lumber and as a matter of accommodation when other concerns importune it for service. The rate exacted by it for this sporadic service is at all times the association carriers' rate.

It is testified that subnormal Pacific coast lumber production and marketing and shipping conditions now existing have accentuated mill and carrier competition. As detailed above, vessels normally engaged in transportation of lumber for their owners are now employed in the carriage of lumber for other mills and interests under charter or special and individual contract. Also operators of several vessels normally engaged as common carriers of lumber and other cargo have reduced their operations to a single or to several lumber patrons for whom they transport under closely calculated charter or contract arrangement. On behalf of vessel owners who charter or contract under these subnormal conditions, the evidence is that due to economies in relation to type of vessel, maintenance of schedules, labor overtime, and lesser number of berths of loading and discharge, their operation costs are lower than for common-carrier service. Charterers and contractees are shown to gain certain advantages by control of loadings, sailings, and deliveries. Testimony is that their primary reason for chartering is not a lower transportation cost, but the assurance of a more responsive service than may be obtainable at all times in shipping via common carriers. According to one charterer, chartering is considered by it to be the long-range alternative to puchasing ships in which to move its lumber. The contention that no ultimate substantially lower cost is attained through chartering seems to be borne out by evidence of added expense incurred by the charterers' payments for overtime, disbursements in connection with labor difficulties, and expenditures incident to multiple berth loading and discharge, together with losses said to be incurred in relation to charter hire based on full cargoes when their cargoes are less than full vessel loads.

Upon the facts of record it is clear that the operators of vessels shown to be engaged in the transportation of lumber from Washington and Oregon to California ports under charter or contract with lumber shippers are private or contract carriers not subject to the regulatory provisions of the Shipping Act, 1916, as amended. It is not shown that any subject common carrier in that trade is so engaged or is violating any such provision through lumber chartering, chartering arrangement, or practice, rule, regulation, charge, and/or rate in relation thereto. It should be emphasized, however, that regular common carriers might, through chartering their vessels to shippers, be guilty of creating undue preference and prejudice. The recent increase in the extent of the lumber chartering and contracting by others in the trade, is directly traceable to existing subnormal lumber and shipping conditions, and should be met by increased individual and united effort of the common carriers concerned. The association chairman testified that "all these things can be corrected among the members themselves if they will show a disposition to do so." He suggests a pooling agreement between the members under section 15 of the Shipping Act, 1916, designed to compensate an operator whose vessel is laid up because of inability to obtain lumber cargo, thereby preventing chartering or contracting by such operator; or, in the alternative, establishment through a proper section 15 agreement of a rate for charter hire or other contract adjusted to protect the association carriers' rate. Emphasized as a potent contribution to the threatened instability of the trade are unsubstantiated rumors of secret and substantial rate cutting and of rate structure disintegration which are said to cause a holding back by lumber shippers of their business in anticipation of a rate break. Immediate cooperative effort by the common carriers in a constructive plan according to the suggestion of the association chairman or otherwise, will tend to remove this phase of their difficulties. The private or contract carriers might well, in their own interest, lend their aid to achieve stability in the trade.

In No. 525 we conclude and decide that no unlawfulness in violation of the Shipping Act, 1916, as amended, is shown. An order discontinuing the proceeding will be entered.

No. 530

The present rate of respondent McCormick applicable to lumber from Washington and Oregon to California ports is the established $6 association carriers' rate to which it agreed in the past as a member of the association. Although retaining its association membership, it filed with us pursuant to an independent action clause of the association agreement schedules proposing a rate of $5.50,[4] to become effective May 22, 1939. Upon protests the operation of these schedules was suspended by us until September 22, 1939, and they since have been postponed voluntarily by respondent until November 24, 1939.

The reasons ascribed by respondent for the filing of the reduction concerned are that "charters then existing might well reflect less than a $6 rate" and "shippers told us they believed the charters reflected less than the going rate." An offer by a chartering operator

[4] Suspended schedules, Robt. C. Parker Agency Tariff U. S. M. C. No. 1. Supplement No. 1, include reductions on forest products.

to permit respondent to examine its books and records for the purpose of comparison of costs was declined. Respondent maintains that all carriers should charge on the same basis and that no lumber charters should be made in the trade. Respondent nevertheless affirms that costs of vessel operation in the carriage of lumber to California under charter, and in common carrier service as well, vary "almost per voyage per vessel," and that common carrier service in the trade such as it furnishes is more expensive than service under charter. It states, further, that during existing subnormal trade and shipping conditions "it is very much of a disadvantage" for a lumber shipper "to have a vessel under charter."

Respondent made no study to determine whether its proposed $5.50 rate would be compensatory. It admitted that such rate would not in all instances pay the out-of-pocket cost, and might ultimately be to its disadvantage, but that it was filed "in the hope it would correct a situation we believed was not healthy." In the event its action would disrupt rather than correct the situation, respondent states it "would not be in favor of it."

Protestants' testimony is that the reduction proposed if permitted to become effective would be forthwith followed by reductions by other carriers, by withholding of lumber consignments to California by shippers in anticipation of further rate reductions, and by general and serious detriment to both Pacific coastwise shipping and the Pacific coast lumber trade.

We find that the suspended schedules have not been justified. An order requiring their cancellation and discontinuing this proceeding will be entered.

No. 532

Respondent Coastwise Line's present rate on lumber is $6 per 1,000 feet any quantity. By schedules filed to become effective June 24, 1939, it proposed a rate of $5 per 1,000 feet when shipped in a minimum quantity of 350,000 feet.[5] Upon receipt of protests the operation of the schedules was suspended by us until October 24, 1939, and they since have been postponed voluntarily by respondent until November 24, 1939.

Reasons advanced by respondent for the proposed reduction are that it has been unable to obtain lumber for carriage to the extent of its available carrying capacity: that shippers and consignees claim to enjoy lower rates, and that respondent found it necessary to take action similar to that of McCormick.

[5] Suspended schedules, Robt. C. Parker Agency Tariff U. S. M. C. No. 1, Supplement No. 6, include reductions on forest products.

As to lumber shipments of less than 350,000 feet, respondent would continue to charge $6 per 1,000 feet. The $1 per 1,000 feet lower rate which it proposes to accord shippers of 350,000 feet or more would clearly effect undue preference to such shippers and undue prejudice to shippers of lesser quantities, in violation of section 16 (First) of the Shipping Act, 1916.

This respondent operates seven vessels, transporting therein, under contract [6] with Crown Zellerbach Corporation, paper, paper products, and pulp from Washington and Oregon mills of that corporation to San Francisco and Los Angeles Harbor. As a common carrier it transports in the same vessels and on the same voyages miscellaneous cargo and on-deck lumber. The deck carrying capacity of each of such vessels for lumber is approximately 350,000 feet. Crown Zellerbach receives one-half the profit from respondent's whole operation, and in turn is shown to guarantee respondent against loss in such operation.

Respondent's witness testifies to lack of knowledge as to whether lumber could be profitably carried by it at the suspended rate, and whether except for its Crown Zellerbach contract it would be willing to transport lumber at such rate. Witnesses for other operators engaged in the trade in charter, contract, or common carrier transportation of lumber testified that this rate would not cover operating costs. Protestants predict that such a rate reduction if permitted to become effective would result in resignations of association members, general counter reductions, and grave detriment or chaos in Pacific coastwise shipping and Pacific coast lumber production and marketing.

We find that the suspended schedules have not been justified. An order requiring their cancellation and discontinuing the proceeding will be entered.

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[6] In Docket No. 484, In the Matter of Agreements 6210 et al., decided August 3, 1939, this contract was held to result in undue prejudice in violation of section 16 of the Shipping Act, 1916, as amended.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C, on the 20th day of October A. D. 1939.

No. 525

PACIFIC COASTWISE CARRIER INVESTIGATION

No. 530

PACIFIC COASTWISE LUMBER RATES—McCORMICK STEAMSHIP COMPANY

No. 532

PACIFIC COASTWISE LUMBER RATES—COASTWISE LINE

It appearing, That by its order of May 16, 1939, this Commission entered upon an investigation into and concerning the lawfulness of chartering and charter arrangements by, and of practices, rules, regulations, charges and/or rates of carriers named in said order engaged in interstate transportation between Pacific coast ports of the United States; and

It further appearing, That by its orders of May 18, 1939, and May 25, 1939, this Commission entered upon hearings concerning the lawfulness of rates on lumber and forest products proposed by McCormick Steamship Company and Coastwise Line stated in the schedules enumerated and described in said orders, and suspended the operation of said schedules until September 22, 1939, and October 24, 1939, respectively;

It further appearing, That the operation of said McCormick Steamship Company and Coastwise Line schedules has been voluntarily postponed by said carriers until November 24, 1939;

It further appearing, That full investigation of the matters and things involved has been made, and that the Commission on the date hereof has made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the proceeding in No. 525 be, and it is hereby, discontinued; and that the respondents in Nos. 530 and 532 be, and they are hereby, notified and required to cancel the suspended schedules therein concerned on or before November 24, 1939, upon notice to the Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, as amended, and that these proceedings be discontinued.

By the Commission.

(Sgd.) W. C. PEET, JR.,
Secretary.

[SEAL]

UNITED STATES MARITIME COMMISSION

No. 539

WEST-BOUND ALCOHOLIC LIQUOR CARLOAD RATES

Submitted September 9, 1939. Decided November 3, 1939

Proposed west-bound intercoastal carload rates on alcoholic liquors n. o. s. found justified. Suspension order vacated and proceeding discontinued.

Joseph J. Geary for Gulf Intercoastal Conference.

M. G. de Quevedo and *W. M. Carney* for Intercoastal Steamship Freight Association and Calmar Steamship Corporation.

Frank Lyon and *J. A. Stumpf* for American-Hawaiian Steamship Company.

Clement C. Rinehart and *George E. Talmage, Jr.*, for Baltimore Mail Steamship Company.

Herbert M. Statt for Shepard Steamship Company.

Wilbur La Roe, Jr., Edward F. Gallagher, W. L. Thornton, Jr., Samuel H. Williams, E. H. Thornton, C. A. Mitchell, Louis A. Schwartz, Charles R. Seal, W. A. Cox and *H. J. Wagner* for intervening port organizations.

Edward Gusky, M. F. Chandler, Frank H. Luther, for intervening shippers.

Neal D. Belnap, H. J. Niemann and *W. G. Oliphant* for Inland Waterways Corporation.

David E. Scoll for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By order dated July 7, 1939, we suspended until November 9, 1939, various schedules [1] naming reductions in westbound intercoastal carload rates on alcoholic liquors established by the members of the

[1] 12th Amended Page No. 300 of C. Y. Roberts' Tariff SB–I No. 3; 5th Amended Page No. 289 of Jos. A. Wells' Tariff SB–I No. 6; 8th Amended Page No. 203 of Calmar Steamship Corporation's Tariff SB–I No. 5; 10th Amended Page No. 278 of Shepard Steamship Company's Tariff SB–I No. 1.

Intercoastal Steamship Freight Association,[a] American-Hawaiian Steamship Company, Calmar Steamship Corporation, Shepard Steamship Company and the members of the Gulf Intercoastal Conference.[b] The members of the Intercoastal Steamship Freight Association, American-Hawaiian Steamship Company and Calmar Steamship Corporation will be referred to collectively as the Atlantic lines, and the members of the Gulf Intercoastal Conference as the Gulf lines. The Atlantic lines' reduction from \$1.54½ to \$1.41 per 100 pounds was filed June 5 and 6, effective July 9; the Gulf lines' reduction from \$1.41 to \$1.31 was filed June 7, effective July 9; and Shepard's reduction from \$1.40 to \$1.20 was filed June 28, effective July 28. Baltimore Mail Steamship Company and American-Hawaiian Steamship Company protested the reduction proposed by the Gulf. The protest was opposed by the Gulf lines and others, all of whom requested that if the Gulf rates be suspended the Atlantic rates also be suspended. There was no formal protest against the Shepard reduction. It was not contended in the original protest that the \$1.31 rate was unreasonable per se or was not within the "zone of reasonableness," but only that by the reduction the Gulf lines were endeavoring to maintain or establish a rate differentially lower than the Atlantic lines. Except as otherwise noted, rates will be stated in amounts per 100 pounds.

Alcoholic liquors move in large volume from points on or adjacent to the Atlantic seaboard, and from inland points in Kentucky, Ohio, Indiana, and Illinois. Competition between the Atlantic and Gulf lines exists only insofar as the inland points are concerned. Heretofore Shepard, whose last port of call is Philadelphia, has not been interested in this inland business as the rail rates to Philadelphia, together with the nature of the service offered by Shepard, have been such as to preclude its participation in the movement even though its port-to-port rate has been lower than that of the Gulf lines.

Shepard contends that its reduction was made to meet competition and to recapture tonnage which it has been losing since the latter part of 1938. Effective March 3, 1935, Shepard established a rate of \$1.29½ which continued in effect until October 13, 1938. Under this rate the company carried 1,269 tons during the first nine months of 1938, or an average of 115 tons per ship. On October 13, 1938, Shepard increased its rate to \$1.40 and, beginning with its sailings

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[a] American President Lines, Ltd. (Arrow Line), Sudden & Christenson, Isthmian Steamship Company, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific Coast Direct Line, Inc., Baltimore Mail Steamship Company, States Steamship, California Eastern Line, Inc.

[b] Luckenbach Gulf Steamship Company, Inc., Swayne and Hoyt, Ltd., Managing Owners (Gulf Pacific Line).

in October of that year to and including March 1939, it carried a total of only 112 tons, or an average of 14 tons per ship. It was stated that the increase in the rate brought about this loss of traffic.

To support its contention that the proposed reduction does not result in an unreasonable or unremunerative rate, Shepard compared the revenue obtained from alcoholic liquors with that derived from other commodities which were said to be similar from a transportation standpoint. Stowage was reduced to a basis of 60 cubic feet. Under the proposed rate, 60 cubic feet of alcoholic liquor would produce $22.18. The cost of handling, without allowance for vessel operating and administrative expenses, would amount to $6.01, divided as follows: Loading $1.20, terminal loading $0.76, terminal discharging $0.55, discharging $1.18, claims $0.23, and solicitation $1.16. Net revenue is $16.17. The compared commodities and the revenue obtained therefrom per 60 cubic feet are as follows: Codliver oil $7.73, milk of magnesia $7.39, printing paper $6.93, listerine $6.58, gingerale $5.60, canned goods $5.34, and cocoa $3.86. The value of these commodities ranges from $116 per ton for canned goods to $570 for listerine and codliver oil. The relationship of the rate to the value ranges from 2.3 percent in the case of listerine to 9 percent in the case of canned goods. Alcoholic liquors transported by this company were stated to be worth $425 per net ton and the rate was 5.6 percent of the value. It was shown that the revenue from a full carload of alcoholic liquors would return from two to two and a half times as much as the average revenue derived from general cargo per voyage during 1938.

We find that the rate of $1.20 has been justified.

Insofar as the reductions made by the Gulf and Atlantic lines are concerned, it is the position of the former that on shipments from inland points they are entitled to a differential for the reasons that they are faced with different competitive conditions, offer a different service, and that the traffic necessitates consideration of the preterminal movement and rates. Further, it is contended that the differential is necessary for the proper maintenance of their business; and that parity of port-to-port rates is impracticable because a differential has existed between the two groups since 1933. The Atlantic lines, on the other hand, contend that they are entitled to parity of port-to-port rates to enable them to participate in the movement of the traffic from these inland points inasmuch as the preterminal rail rates are lower to Baltimore, Maryland, the principal Atlantic port concerned, than to the Gulf. They maintain that they have not been able to participate heretofore because of the differential in the port-to-port rates. Shipments through Gulf ports are accorded preterminal rail, rail-barge, and barge service, whereas those through Atlantic ports are accorded only rail service.

At the time of the repeal of the Volstead Act, each group had in effect a rate of \$1.50 plus 3 percent surcharge. On September 4, 1933, the Gulf lines reduced their rate to \$1.14, plus 3 percent surcharge in order to obtain some portion of this new commercial movement of alcoholic liquors. On June 2, 1933, the transcontinental rail rate from this territory was \$5.25. It was reduced subsequently to \$3.00, \$2.75, \$2.25, and in November 1935, a further reduction to \$2.00 was proposed. The Atlantic lines reduced their rate to \$1.39 on March 1, 1935, and the present rate of \$1.54½ was established on October 3, 1935.

The principal competition met by the Gulf lines has been from the transcontinental lines, as it is the rail rate which fixes the ceiling above which water carriers may not go if they are to carry any traffic. As a result of the proposed rail reduction in 1935, the Gulf lines proposed to reduce their rate to \$0.92½. In short, the competitive situation was gradually resolving itself into a rate war. Because of these proposed reductions, a conference was called in Washington in November 1935 which was known as the "Washington Conference." Representatives of the Shipping Board Bureau, Department of Commerce; the Interstate Commerce Commission; the Atlantic carriers; the Gulf carriers and their inland connections; and the transcontinental rail lines were present. As a result of this conference, the rail lines restored their rate to \$2.25, the Gulf lines increased their rate to \$1.30, and the Atlantic lines maintained their rate of \$1.54½. These rate adjustments were for a trial period to ascertain what was necessary in the way of a differential between the competitors so as to enable each to obtain some portion of the traffic and thus avoid a rate war.

The Gulf lines contend that all carriers represented at the conference had agreed that some differential should be maintained as between the various groups; but the Atlantic lines stated that they were merely interested observers and were not parties to any agreement, and that the agreement, if any, was between the transcontinental rail lines and the Gulf lines. An agreement of this character can in no way derogate from the statutory powers of this Commission.

The competitive situation resulting from the movement of traffic from these inland points was the subject of discussion between the Atlantic and the Gulf lines as early as 1932. Until 1936, however, no definite solution had been found. On December 12 of that year, the members of each group filed an agreement with us pursuant to section

15 of the Shipping Act, 1916, which was approved January 9, 1937, and was assigned Agreement No. 5630. The general purport of the agreement was the establishment of a working arrangement between the two groups insofar as this territory is concerned. An imaginary line was drawn from Michigan City, Indiana, diagonally southeast to Logansport, Indiana, thence south to Frankfort, Indiana, thence following the line of the Chicago, Indianapolis & Louisville Railroad to Indianapolis, Indiana, thence along the line of the Baltimore & Ohio Railroad to Cincinnati, Ohio. For rate-making purposes territory west of the line was considered to be naturally tributary to the Gulf and that east of the line tributary to the Atlantic. Points on the line were considered as neutral territory. Traffic south and southeast of Cincinnati was to flow through the natural port as established by the applicable rail rate to the port.

A complaint was filed against this agreement by the Inland Waterways Corporation, and at the hearing thereon a stipulation was entered of record clarifying the intent of the agreement to show that there should be parity of intercoastal rates wherever practicable, and further that whenever rail rates from the interior favored one group of ports no adjustment was to be made by the other group subject, however, to the qualification that the Atlantic lines would not attempt to equalize rail-barge or barge rates through the Gulf so long as such rates remained on the customary relationship with the rail rates. Further, the Gulf lines were to be permitted to establish rail-barge-ocean or barge-ocean rates to meet rail competition when there was a bona fide movement of cargo from one of the interior points. See *Inland Waterways Corporation* v. *Certain Freight Companies*, 1 U. S. M. C. 653. This agreement continued in effect until July 9, 1938. About the time of the expiration thereof a new agreement, assigned No. 6510, was filed, which in general was similar to 5630. A hearing was conducted by us prior to the final consideration of this latter agreement and as a result thereof approval was withheld until the carriers made certain suggested modifications. See *In the Matter of Agreement No. 6510*, 1 U. S. M. C. 775. The carriers were unwilling to accept these modifications and consequently approval was never accorded to 6510. There is, therefore, no lawful agreement in effect today. The Gulf lines contend, however, that they have always observed the spirit of these agreements and that the Atlantic lines should do the same insofar as establishing rates to attract traffic from the involved territory. The Atlantic lines take the position that as there is no agreement in effect they may establish any rates they choose. While the Washington Conference and Agreements 5630 and 6510 indicate a course of conduct or a custom which has existed in the past with respect to the fixing of port-to-port rates insofar as attracting traffic from the inland points is concerned, the lawfulness of the rates here in issue cannot be determined by any such custom.

Both groups apparently are in favor of the general principle of parity of port-to-port rates wherever practicable. Insofar as alcoholic liquors are concerned, however, they differ over the interpretation to be placed upon the word "practicable," as used in the above-mentioned agreements. The Atlantic lines feel that there is nothing impracticable about their having parity of port-to-port rates on alcoholic liquors, whereas, the Gulf carriers take the position that there are certain peculiar circumstances pertaining to this traffic which take it out of the general principle of parity of port-to-port rates. These circumstances, as outlined by the witnesses for the Gulf carriers, are that they are forced to meet different competition than the Atlantic lines; that if the rates are maintained at the $1.41 level neither group would receive any traffic because of the ceiling fixed by the transcontinental railways, and that if the rates are maintained at the $1.31 level they fear the rail lines will retaliate by making further reductions to retain traffic which they would probably lose by virtue of the ability of the Atlantic lines then to participate in the movement of this traffic. In determining the lawfulness of the port-to-port rates of water carriers subject to our jurisdiction, we cannot anticipate that such competitive action will be taken.

The Gulf carriers and some of the interveners in support of their position state that the nature of the Gulf service justifies the according of a differential to this group, because of the preterminal service and the fact that the Gulf lines require a longer time in transit. Insofar as the movement from the inland territory is concerned, the Atlantic carriers must also consider the preterminal service and the fact that, with the exception of the service of Baltimore Mail Steamship Company, the service of Gulf lines is generally more expeditious than that of the carriers serving the port of Baltimore. Time in transit is not the sole factor in determining whether a differential is warranted.

Alcoholic liquors move in substantial volume from the two areas involved. During 1938, approximately 13,000 tons were transported from the Atlantic seaboard, and approximately 26,000 tons moved from inland points via the Gulf carriers. Practically no alcoholic liquors moved from inland points through Atlantic ports via regular common carriers. The Gulf lines state that their reduction was not made with a view to establishing a differential below the Atlantic lines but to meet transcontinental rail reductions. In May 1939, the rail lines reduced their rate from $2.41 to $2.25, thus disturbing the relationship between the rail and Gulf rates. A comparison of the reduced rail rate with the $1.41 rate of the Gulf to which must be added preterminal rates and accessorial charges shows that the total cost to the shipper would, in some cases, be but very little under the rail rate and that in many cases, the total charge via the Gulf would be higher. For example, taking a rail movement from Peoria, Ill., to New Orleans, La., destination Los Angeles, the total cost to the shipper would amount to 246.75 cents. If a preterminal barge movement was used, the total charge would be 217.75 cents. Even at the $1.31 rate, the total charges would amount to 236.75 and 207.75 cents, respectively. It was testified that approximately 75 percent of the traffic moving to the Gulf was via barge. The greater time in transit via this route than via the transcontinental rail route is a factor to be considered. Further, unless the Gulf carriers are willing to relinquish to the transcontinental rail lines the 25 percent of the traffic which moves in by rail, their port-to-port rates must be fixed by taking into consideration the preterminal rail rate rather than the preterminal water rate. At times the barge route is closed to traffic during the winter months and consequently, it is necessay to use the rail lines. It may readily be seen therefore, that the maintenance of a $1.41 rate from the Gulf will result in loss of traffic to the water carriers. Reductions to meet competition are proper if they do not result in unremunerative or unlawful rates or go beyond the limits of competition which rest within the managerial discretion of the carrier.

We find that the rate of $1.31 proposed by the Gulf carriers has been justified.

The Atlantic lines are faced with the same transcontinental rail competition as the Gulf from this inland territory. Insofar as the alcoholic liquors originating on the Atlantic coast are concerned, the Atlantic carriers are faced not only with Shepard competition, but also with competition from carriers operating over water-rail routes. Rates have been reduced by these carriers. The Shepard reduction has been found hereinabove to be justified. The rate as proposed by the Atlantic line is 21 cents higher than the Shepard rate and it would appear, therefore, that such rate also is justified. We find that the proposed Atlantic rate of $1.41 has been justified. The conclusions stated herein are based on the record in this proceeding, and are without prejudice to any order which may be issued in Docket 514, Intercoastal Rate Structure, a general investigation of the practices in the intercoastal trade in which decision is now pending.

The Atlantic lines state that the rail rates to the ports in many instances favor Baltimore and that, therefore, this port is a natural outlet for alcoholic liquors. They contend that they are entitled to port-to-port rate parity and to any advantages which may be derived from the difference between rail rates to Atlantic and Gulf ports. They do not desire to equalize the preterminal rail rates to Atlantic ports with the lower barge rates to Gulf ports. It also is the position of two shippers and of various Atlantic coast port organizations that a parity of port-to-port rates should exist. While carriers may make lawful reductions to meet competition, shippers are entitled to all the natural routes which may be open to them for the transportation of their commodities. This right may not be distorted by carriers through unlawful competitive practices. There is nothing inherently unlawful either in the existence of a differential between the two groups or the existence of a parity of rates. We are referred to no provisions of the law which would require the two groups to maintain rates from their respective areas made on principles other than those usually followed in rate making, nor does the record in this case justify a departure from these principles.

An order will be entered vacating the order of suspension and discontinuing the proceeding.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 3d day of November A. D. 1939

No. 539

WEST BOUND ALCOHOLIC LIQUOR CARLOAD RATES

It appearing, That by order dated July 7, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices in the schedules enumerated and described in said order and suspended the operation of said schedules until November 9, 1939;

It further appearing, That investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and findings thereon, which report is hereby referred to and made a part hereof, and has found that the schedules under suspension have been justified;

It is ordered, That the order heretofore entered in this proceeding, suspending the operation of said schedules, be, and it is hereby, vacated and set aside, and that this proceeding be, and it is hereby, discontinued, without prejudice, however, to any order which may be issued in Docket 514, Intercoastal Rate Structure, now pending before the Commission.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 527

KERR STEAMSHIP COMPANY, INC.

v.

DEUTSCHE DAMPSCHIFF-FAHRTS GESELLSCHAFT "HANSA" (HANSA LINE) ET AL.[1]

Submitted September 25, 1939. Decided November 7, 1939

Issues rendered moot by dissolution of United States Persian Gulf Conference. Complaint dismissed.

Herman Goldman, *Elkan Turk*, and *Leo E. Wolf* for complainant.
Roscoe H. Hupper and *Burton H. White* for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions to the report proposed by the examiner were filed by defendants and complainant replied. Our conclusions differ from those recommended in that report. Defendants' request for oral argument is denied.

Complainant alleged that defendants' refusal to admit it to membership in the United States Persian Gulf Conference and the practices of the members in connection with exclusive patronage contracts adopted after complainant applied for membership, and the admission of Ellerman & Bucknall Steamship Company, Ltd., and Frank C. Strick and Company, Ltd., to the conference subsequent to complainant's application, created undue and unreasonable preference and advantage to shippers who patronized defendants exclusively, subjected complainant to undue and unreasonable prejudice and disadvantage, were unjustly discriminatory and unfair as between defendants and complainant, as between shippers and exporters from the United States and as between carriers, and operated to the detriment of the commerce of the United States, all in violation of sections 14, 15, 16, and 17 of the Shipping Act, 1916, as amended. Complainant sought an order disapproving the conference agreement and the exclusive patronage contract rate system and practices thereunder

[1] Isthmian Steamship Company (Isthmian Line); Ellerman & Bucknall Steamship Company, Ltd., and Frank C. Strick and Company, Ltd. (operating jointly the Strick-Ellerman Joint Service).

unless within a reasonable time fixed by us defendants admitted it to full and equal membership in the conference.

Paragraph 10 of the approved conference agreement contained the terms under which members might withdraw from the agreement and included a provision that "in event of war involving a country under whose flag any of the parties hereto operate, then the line or lines whose country is involved may withdraw from this Agreement immediately on giving notice, remaining responsible to the other members, however, for due performance of all obligations incurred by it prior to the effective date of such withdrawal. Notice of withdrawal shall in any event be given to the United States Maritime Commission."

After the hearing defendants took the following conference action recorded in the minutes of the meeting of September 18, 1939, which was received by us on September 26, 1939:

> Reference was made to the disturbed international situation and to conditions and situations of one kind and another contemplated by paragraph 10 of the Approved Conference Agreement No. 5990 as occasion for withdrawal from said agreement. The representatives of the Hansa Line and of Strick-Ellerman Service simultaneously stated that in view of the above they had no option but to give notice of withdrawal immediately from the agreement, but that withdrawal was without prejudice to all rights, both now and in the future, all such rights being reserved. The Secretary thereupon stated to the meeting that in view of said two withdrawals (there having been only three members of the Conference), the Conference appeared to be dissolved and no longer in existence and that he would advise the U. S. Maritime Commission of the aforesaid two withdrawals and the resulting dissolution of the Conference and the termination of the agreement, by sending the Commission a true copy of these minutes.

The actions of defendants Hansa Line (German) and Strick-Elleman Joint Service (British) in withdrawing from the conference in accordance with the terms of the agreement and the consequent dissolution of the conference effect the alternative relief requested by complainant, and the issues in this proceeding are therefore moot. The stipulation by the representatives of Hansa and Strick-Ellerman that "withdrawal was without prejudice to all rights, both now and in the future, all such rights being reserved" does not affect their status under the agreement since the withdrawal of these parties as stated in the Minutes effected the dissolution of the conference and terminated the agreement. Therefore, no resumption of concerted action with respect to matters within the purview of section 15 may lawfully be taken by defendants until the agreement of the parties in respect thereto has been filed with us and has received section 15 approval. Notice of such filing will be publicly posted in the Commission's offices in accordance with its established procedure.

An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of November A. D. 1939.

No. 527

KERR STEAMSHIP COMPANY, INC.

v.

DEUTSCHE DAMPSCHIFF-FAHRTS GESELLSCHAFT "HANSA" (HANSA LINE) ET AL.

This case being at issue upon complaint and answer on file, and the Commission, on the date hereof, having made and entered of record a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 531

JOSEPH E. SEAGRAM & SONS, INC. ET AL.

v.

FLOOD LINES, INC.

Submitted August 4, 1939. Decided November 7, 1939

Rates on alcoholic liquors from Baltimore, Md., to Pacific coast ports not shown to be unreasonable. Complaint dismissed.

Frank H. Luther for complainants.

Ira L. Ewers, *Robert H. Duff*, and *Raymond Flood* for defendant.

Edward Gusky for Schenley Distilleries Corporation, intervener, *Joseph J. Geary*, *M. G. de Quevedo*, *W. M. Carney*, *George E. Talmage, Jr.*, *Frank Lyon* and *J. A. Stumpf* for interveners, intercoastal carriers.

David E. Scoll for the United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Complainants, subsidiaries of a Canadian company, are United States corporations engaged in the manufacture and distribution of alcoholic liquors. By complaint filed May 11, 1939, they allege that a rate of $1.54½ per 100 pounds, minimum weight 30,000 pounds, charged by defendant for the transportation of a shipment of 3250.18 tons of alcoholic liquors, n. o. s. shipped April 24, 1939, from Baltimore, Md., to Pacific coast ports was unreasonable in violation of section 18 of the Shipping Act, 1916, as amended. Reparation is requested. Rates are stated in cents per 100 pounds unless otherwise noted.

Complainants originally intended to transport the shipment in the S. S. *Walter D. Munson* which they had hired under a bareboat charter. But when question arose as to the legality of this transaction by virtue of their status as subsidiaries of a foreign corporation, they arranged with defendant to transport the shipment. Thereupon defendant, who does not operate regularly in the trade, chartered the ship from the owner and filed the rate in question effective on April 24, 1939, by special permission. This authority was obtained at the instance of complainants to avoid the further accrual of demurrage charges.

Complainants endeavor, through rate comparisons and evidence as to cost of service, to demonstrate that the rate assailed is unreasonably high. Reference is made to a rate on this commodity of $18 per ton (weight or measurement basis) from Atlantic coast ports to Honolulu, T. H.; and rates on numerous other commodities moving in the intercoastal trade such as: alcohol, n. o. s., $1.10; beverages 74 cents; and malt liquors 60 cents. The rate to Honolulu is assessed on the measurement basis which yields $27 per ton, the equivalent of $1.35 per 100 pounds. No showing is made as to comparability of transportation conditions affecting the compared services; nor is there any evidence as to the volume of movement or the value of the commodities alleged to be similar to alcoholic liquors. The rate assailed is the same as the rate contemporaneously maintained by the carriers regularly engaged in the intercoastal trade with one exception.

Complainants' witness estimated that the voyage cost $45,100 or approximately $13.85 per net ton of cargo. The actual cost, as revealed by defendant's testimony, was $76,029.71, exclusive of excess profit taxes. Total freight charges collected amounted to $101,453.17, resulting in a profit of $25,423.46, producing a return of 33 percent on the investment. The reasonableness of this rate of return must be judged in the light of the risk involved. Defendant was faced with several unusual risks such as threatened crew trouble, inability to obtain sufficient fuel and the possibility of stoppage of work at destination ports. Complainants admitted that the shipment was unique in many respects and conceded that the profit thereon should range between 25 and 30 percent.

The value of the service to the shipper is an important factor in this case. Through the arrangement complainants were relieved from further demurrage charges which were accruing daily; also from possible liability under the charter arrangement for the S. S. *Walter D. Munson*, the owner of which had spent approximately $18,000 in preparing it for this voyage. The value of the service in this instance is further enhanced by the fact that the shipment was of considerable value, placed at $2,255,355.50 for insurance purposes.

Upon the particular facts in this case we conclude and decide that the rate assailed has not been shown to be unreasonable. An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 7th day of November A. D. 1939.

No. 531

JOSEPH E. SEAGRAM & SONS, INC., ET AL.

v.

FLOOD LINES, INC.

This case being at issue upon complaint and answer on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part thereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 510

CITRUS FRUIT FROM FLORIDA TO BALTIMORE, MD.

Submitted September 19, 1939. Decided November 9, 1939

Rates and practices of common carriers by water in connection with transportation of citrus fruit from Florida ports to Baltimore, Md., found not unreasonable or otherwise unlawful. Proceeding discontinued.

Wilbur LaRoe, Jr., *James B. Sweeny*, and *Edward B. Wright* for respondent water carriers.

Frank W. Gwathmey, *Francis R. Cross*, and *Richard R. Bongartz* for intervening rail carriers.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. The findings recommended by that report are adopted herein.

By order of January 27, 1939, we instituted an investigation into and concerning the lawfulness of rates and practices of common carriers by water in connection with the transportation of citrus fruit from ports in Florida to Baltimore, Md., with a view to determining and prescribing just and reasonable rates and practices for the future. This proceeding was heard jointly with proceedings before the Interstate Commerce Commission with respect to the rail rates in effect from Florida to Baltimore.

Respondent Bull Steamship Line operates a service with vessels containing refrigerated space for the transportation of citrus fruit from Fort Pierce, Fla., to New York, N. Y. Any citrus consigned to Baltimore by this line is transported by its vessels to New York and thence to Baltimore. It formerly operated a direct service from Fort Pierce to Baltimore, but decreased movement of citrus on this route made it necessary for the company to discontinue its direct service and dispose of the ships operated in this trade. A witness for this respondent testified that the participation of its indirect service in the movement of citrus to Baltimore is inconsequential. The rate by the indirect route to Baltimore is 50 cents per standard box of 90 pounds, the same as the rate to New York.

Respondent Merchants and Miners Transportation Company, hereafter referred to as the M & M Line, maintains service with vessels containing some refrigerated compartments for the transportation of citrus fruit and other perishables from Miami, West Palm Beach, and Jacksonville to Baltimore. Although it maintains service from Fort Pierce to Philadelphia, it handles no fruit from this port to Baltimore and publishes no rates to cover such transportation. It maintains no service of any kind from the port of Tampa. The service from Miami is by the same ships that serve Baltimore from Jacksonville, and the service from West Palm Beach is by transshipment at Jacksonville. The movement of citrus fruit from Miami and West Palm Beach to Baltimore by water is light, because these two ports cannot compete successfully for this movement. The principal movement of citrus fruit by water to Baltimore is from Jacksonville. In this service the M & M Line operates two ships a week with sailings on Monday and Thursday. The ship sailing on Monday formerly called at Savannah on Tuesday to discharge and load, and arrived at Baltimore on Thursday morning. Since February 27, 1939, a call at Norfolk on Wednesday has been substituted for the Savannah call. The vessel sailing from Jacksonville on Thursday calls at Savannah on Friday and arrives at Philadelphia the following Monday morning. After discharging it proceeds to Baltimore via the Chesapeake and Delaware Canal, arriving on Tuesday morning.

The water rates on citrus fruit apply per standard box of 90 pounds. The rate from Miami to Baltimore is 55 cents per box, and from West Palm Beach 50 cents per box. The local rate from Jacksonville to Baltimore is 36 cents per box, published effective February 6, 1939. Proportional rates are also published, varying in amount according to the interior point of origin in order to equalize the through charges by truck and water with the through charges via other ports.

The movement of citrus fruit by truck from the producing areas to the port and by water to Baltimore is directly competitive with the faster all-rail movement. With an average trucking time of ten to twelve hours from points of origin to Jacksonville, delivery at Baltimore by the Monday sailing of M & M Line is made on the morning of the fifth day, but if the shipment has to be transferred to the railroad perishable terminal, delivery is made there on the morning of the sixth day. Shipments forwarded by the Thursday sailing arrive in Baltimore on the seventh morning from point of origin and the eighth morning if transferred to the railroad perishable terminal. Shipments by railroad arrive in Baltimore on the third day from any point in Florida.

It was not until the 1932–33 shipping season that any appreciable volume of citrus moved by water from Jacksonville to eastern port cities. During that season the boats were operated with draft ventilation only. Refrigerated service was established when precooling facilities were provided at Jacksonville. During the summer and fall of 1933 the M & M Line constructed a warehouse adjacent to its Jacksonville terminal and equipped the building with facilities for precooling approximately 18,000 boxes of citrus fruit a day. At the same time it installed refrigerating machinery in four steamers and during the 1933–34 season maintained a schedule of four sailings a week, on Wednesday, Thursday, Saturday, and Sunday, three of these sailings being to Philadelphia and one to Baltimore. During the 1933–34 season the M & M Line handled approximately 1,878,500 boxes of citrus fruit from Jacksonville. During the 1934–35 season the same schedule was maintained and the same refrigerated steamers were operated, but no figures were submitted to show the total volume of citrus handled. At that time the water rate from Jacksonville to Baltimore was 46 cents a box and during the greater part of the 1934–35 shipping season the all-rail rates to Baltimore were approximately 7 cents a box higher than the combination truck-water rate. During that season the water lines carried 623 carloads, or 44 percent of the total movement of citrus fruit to Baltimore.

Effective December 12, 1935, the differential was eliminated by reduction of the all-rail rates to meet the truck-water rates as authorized by the Interstate Commerce Commission in *Citrus Fruit from Florida to North Atlantic Ports*, 211 I. C. C. 535, and during the 1935–36 season the volume of Florida citrus handled by the water lines to Baltimore fell to 27.3 percent of the total movement to that port; 72.7 percent was carried by the rail lines. The water rate was thereafter reduced to 41 cents a box, effective March 23, 1936, but the establishment of this differential of 5 cents a box under the all-rail rate came too late in the season to have any appreciable effect on the movement. This differential was continued during the 1936–37 season as the result of a second decision in the above-mentioned proceeding (218 I. C. C. 637), by which fourth section relief to the rail lines was extended on the same basis as previously granted, except that to Baltimore the all-rail rates were fixed at a minimum differential of 5.6 cents per 100 pounds over the truck-and-water rates. This decision was made effective January 5, 1937, and at the same time the water rate was increased to 46 cents per box. During the season of 1936–37 the relative volume of citrus handled by the water lines to Baltimore showed a slight increase to 27.9 percent. With the same differential in effect from Sept. 1, 1937, to March 27, 1938, the participation of the water lines fell off to 5.9 percent of the total movement of citrus to Baltimore, but during this period the water lines were handicapped by labor difficulties. From March 28, 1938 to May 22, 1938, with a differential of 8.6 cents per box due to increased rail rates, the participation of the water lines increased to 10.4 percent of the total movement. Effective May 23, 1938, the differential was again eliminated by a reduction of the rail rates pursuant to a third decision in the case cited above (226 I. C. C. 315), which authorized the rail carriers to maintain the same rates from Florida origins to North Atlantic ports as those in effect over truck-and-water routes, including a modified free refrigeration service. From May 23, 1938 to July 31, 1938, the end of the 1937–38 season, the movement of citrus by water was only 8.5 percent of the total movement to Baltimore. For the entire season the movement by water was only slightly over 7 percent of the total.

At the beginning of the following season, from Sept. 1, 1938 to Nov. 30, 1938, the water movement represented only 3 percent of the total. Effective December 1, 1938, the differential of 5 cents a box in favor of the truck-water route was restored by a reduction of the water rate from 46 cents to 41 cents, and during the period from Dec. 1, 1938 to Jan. 1, 1939, the movement by water was 22.6 percent of the total. On January 2, 1939, the rail rates were again reduced to reestablish the equalization authorized by the Interstate Commerce Commission. This equalization of rates continued through February 5, 1939, but the water movement during this period amounted to 24.3 percent of the total. A witness for the M & M Line stated they were able to hold the traffic by making it clear to shippers that it would be their policy to continue the differential. In accordance with this announced policy, the M & M Line published and filed a rate of 36 cents which became effective on Feb. 6, 1939, thus restoring the differential of 5 cents a box. During the period from Feb. 6, 1939, to Feb. 28, 1939, the water movement increased to 30.7 percent. For the entire period from Sept. 1, 1938, to Feb. 28, 1939, the water movement amounted to about 20 percent of the total. Further reduction of the rail rates, to restore the basis of equalization authorized by the Interstate Commerce Commission, was deferred when the rail rate proceedings were instituted by that Commission.

From the foregoing analysis of the movement of citrus fruit from Florida to Baltimore and the relative rates applicable to such movement, it is apparent that the reductions in the water rate from Jacksonville to Baltimore were forced upon the M & M Line by the rate-equalization policy of the railroads, and it is equally clear that the water lines cannot hope to obtain a fair share of this traffic without a reasonable differential under the all-rail rates.

There is no showing that the present rate of 36 cents a box on citrus fruit from Jacksonville to Baltimore is less than a reasonable minimum rate. Although it is shown that during the years 1937 and 1938 the operating expenses of the M & M Line exceeded its total revenues, there is no evidence by which it can be determined what proportion, if any, of this deficit could be properly allocated to the movement of citrus from Jacksonville to Baltimore. The vessels operated on this route are combination passenger and freight ships, each having a cargo capacity of 242,500 cubic feet of which 66,200 cubic feet are refrigerated, leaving approximately 176,300 cubic feet of space on each ship for cargo other than citrus. These vessels carry passengers and cargo other than citrus, between ten different ports, and it is respondent's contention that it would be extremely difficult to determine the cost of handling any particular traffic between two given points. There is nothing of record to indicate the cost of transporting citrus fruit by water from Jacksonville to Baltimore. The M & M Line witness testified that the average rate of this line on merchandise traffic is about 29 cents per 100 pounds and that in his judgment this average could go as low as 25 cents and still return something more than actual cost. This witness testified further that in his opinion the lowest rate at which citrus could be transported from Jacksonville to Baltimore with any hope of making a profit would be 25 cents a box, which is the lowest proportional rate published on this traffic.

We find that respondents' rates and practices in connection with the transportation of citrus fruit from Florida ports to Baltimore, Md., have not been shown to be unreasonable or otherwise unlawful. An order will be entered discontinuing this proceeding.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 9th day of November A. D. 1939.

No. 510

CITRUS FRUIT FROM FLORIDA TO BALTIMORE, MD.

It appearing, That by its order dated January 27, 1939, the Commission instituted a proceeding of investigation into and concerning the lawfulness of rates and practices of common carriers by water in connection with the transportation of citrus fruit from ports in the State of Florida to Baltimore, Md.; and

It further appearing, That full investigation of the matters and things involved has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof:

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 535

In the Matter of Agreement No. 6630

Submitted June 30, 1939. Decided November 30, 1939

Action of applicants relating to an agreement dated May 22, 1939, between The New York and Porto Rico Steamship Company and Waterman Steamship Corporation limiting Gulf-Puerto Rico common carrier service, submitted for approval under section 15 of the Shipping Act, 1916, as amended, having rendered action thereon unnecessary, proceeding discontinued.

Roscoe H. Hupper for applicants.

William Cattron Rigby, *Rene A. Stiegler* and *Carl Giessow* for protestants.

Report of the Commission

By the Commission:

This proceeding involves the lawfulness of an agreement, executed May 22, 1939, by The New York and Porto Rico Steamship Company, hereinafter called "Porto Rico Line," and Waterman Steamship Corporation, hereinafter called "Waterman," in which parties expressed their several undertakings in connection with proposed discontinuance by Porto Rico Line of its common carrier service from Gulf ports of the United States to Puerto Rico and the sale of its good will to Waterman. On May 23, 1939, the agreement was filed with us for action under section 15 of the Shipping Act, 1916, as amended. A public hearing was held thereon on June 23, 1939.

Among other things, the agreement provided that if approval was not granted on or before July 1, 1939, or by such later date as may be agreed upon, parties thereto shall be relieved of all obligations thereunder. Subsequent to the hearing that date was extended from time to time to August 5, 1939. The issues not having been determined by that date, counsel for applicants requested that action be deferred and that the agreement be regarded as in suspense pending further advices. Such advices, received September 11, 1939, state that the agreement under investigation has expired by limitation and that a new agreement dated September 1, 1939, relating to the same subject, has been executed. Under the circumstances further consideration of the subject agreement is unnecessary. An appropriate order dismissing the proceeding will be issued.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 30th day of November, A. D. 1939.

No. 535

In the Matter of Agreement No. 6630

Hearing having been held in this proceeding, and subsequent thereto parties, through counsel, having advised that a new agreement dated September 1, 1939, has been executed relating to the subject under investigation herein; and

It appearing, That further consideration of Agreement No. 6630 is now unnecessary and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision, which report is hereby referred to and made a part hereof;

It is ordered, That the proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 509

NEW YORK MARINE COMPANY

v.

BUFFALO BARGE TOWING CORPORATION, ET AL.[1]

Submitted August 4, 1939. Decided November 30, 1939

Defendants not shown to be subject carriers, and their transportation of freight without schedules of rates on file not shown to be unlawful, as alleged. Complaint dismissed.

Pearce H. E. Aul and *Reginald G. Narelle* for complainant.

Edward Ash for Buffalo Barge Towing Corporation; *E. C. Denby* for Erie & St. Lawrence Corporation; *Carl V. Essery* for Ford Motor Company; *W. E. Hedger* for W. E. Hedger Transportation Corporation; *Richard F. Lenahan* for McLain Marine Corporation, O'Donnell Transportation Company, Inc., Frank Cunningham, Frank Egan, Frank Lowery and John Mulqueen; *William J. Mahar* for Conners Marine Company, Inc., Standard Towing Corporation and Joseph Hutton; *J. H. Muller* for Transmarine Transportation Corporation; *Ray M. Stanley* for Federal Motorship Corporation; *John A. Urquhart* for Michigan Atlantic Corporation, defendants.

A. R. Sheff for Minnesota Atlantic Transit Company; *Arthur C. Schier* for Water Routes, Inc.; *Frank W. Sullivan* for Great Lakes Transit Corporation and Minnesota Atlantic Transit Company; *C. H. Tregenza* for himself.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. His conclusions are adopted herein.

Complainant is a New Jersey corporation carrying on a transportation business between the Atlantic seaboard and points on the

[1] Conners Marine Company, Inc., Frank Cunningham, Frank Egan, Erie & St. Lawrence Corporation, Federal Motorship Corporation, Ford Motor Company, W. E. Hedger Transportation Corporation, Joseph Hutton, Frank Lowery, McLain Marine Corporation, Michigan Atlantic Corporation, John Mulqueen, O'Donnell Transportation Company, Inc., Standard Towing Corporation, Transmarine Transportation Corporation, Bernard Tucker. The complaint, as to Harry Killian, Murray Transportation Company, Reliance Marine Corporation, Frank Tucker, James Tucker, and Thomas Tucker, named as defendants therein, was withdrawn at the hearing.

Great Lakes. It alleges that defendants are common carriers by water in interstate commerce as defined by section 1 of the Shipping Act, 1916, and as such that their failure to file schedules of rates with the Commission is in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. Complainant requests a finding that defendants are subject interstate common carriers, and that they be required to file schedules in compliance with the section specified and to comply with other applicable regulatory provisions of the Shipping Act, 1916, as amended.

Defendants Erie & St. Lawrence, Federal Motorship, Ford, and Michigan Atlantic operate motorships between Atlantic seaboard ports and Great Lakes ports. They transit the Hudson River and New York State Barge Canal via Oswego, over what is known as the "Oswego route." Occasionally, due to weather conditions, they transit the Hudson River and New York State Barge Canal to Buffalo, over the so-called "inside route." Their motorships are of shallow draft, can clear bridges having 15½ feet clearance, and are designed for carriage of bulk cargoes. Ford's motorships are used primarily for transportation of Ford automobile parts and commodities. Michigan Atlantic's motorship is used for the carriage of bulk liquid cargoes from Wyandotte, Michigan, to New York, N. Y.

Erie & St. Lawrence and Michigan Atlantic also operate tug-propelled barge fleets. All defendants other than the four-named above are operators of barge fleets exclusively. A fleet ordinarily consists of a tug and six barges. No barge operation of any defendant extends beyond New York Harbor on the east or Buffalo on the west, and all of such operations are confined to the "inside route." In some instances the cargo carried by barge defendants originates at or is destined to United States or Canadian lake and inland points beyond Buffalo, or to interstate or foreign points beyond New York Harbor. Much of the cargo transported by them originates at or is destined to intermediate points in New York on the Hudson River and canal system. Hedger transports general cargo to Buffalo which is destined beyond over through routes in connection with common carriers by rail and by water. Tariffs covering this through transportation are filed by Hedger with the Interstate Commerce Commission and with the Maritime Commission. As the originating carrier this defendant has transported for various shippers to Buffalo in a single or "general cargo" barge under its tariffs on file with us miscellaneous commodities destined to Chicago, Detroit, Cleveland, Milwaukee, and other lake ports served by water carriers concurring in defendant's tariff. These concurring carriers are indicated to be without facilities for transportation of bulk cargoes. There is no showing that any other defendant operating barges allots or segregates a barge in a fleet for the interstate transportation of diversified cargo.

Illustrative cargoes carried by the motorship and barge defendants for others for hire are bulk sugar, sulphur, superphosphate, fertilizer, wood pulp, steel, waste paper, and case goods westbound, and bulk grain, flour, manganese, fertilizer, copper, steel billets, caustics, pig iron, coke, and case goods eastbound. Seasonal contracts for the carriage of these bulk cargoes predominate and are frequently entered into eight months in advance of transportation. Other agreements for carriage are made with cargo owners "wherever business exists at the moment" and wherever "our deliveries take us and to where return loads are available. * * * There are no particular routes or sailings; ports differ with each trip, depending upon time of season or other factors." In numerous instances defendants have refused to carry because of failure to agree with shippers and brokers concerning the rate, sailing, and other considerations. There is no testimony or intimation that any shipper at any time has contemplated or demanded service by any defendant as a matter of right independent of a prearranged special and individual contract to carry.

Defendants seek to confine their carryings to full motorship and full fleet loads of one kind of cargo for one shipper and one consignee. A full barge load is the minimum upon which arrangements for carriage by the barge defendants ordinarily are negotiated, and "split" barge loads are rare. The ports and the places in the ports served differ from trip to trip usually in accordance with the defendant's principal load engagement, the proprietary cargo or the cargo of seasonal or other principal shipper customarily determining defendant's operation in relation to port, place, and time. It was testified that the defendants' vessels leave when the shipper completes loading and that often they are laid up awaiting cargo. Cargo to fill out a motorship or a fleet load is solicited, or offers of shippers are accepted generally dependent upon the origin or destination of the principal load. Defendants do not maintain terminals where interstate cargo is delivered for shipment without prior agreement for carriage, and defendants' loadings and unloadings are principally at private refineries, elevators, and wharves. Between New York and Buffalo the State of New York provides free terminals. With the exception of Hedger, none of defendants is shown to have through route connections with railroads or with other carriers by water.

Complainant's position is that although defendants are engaged in transporting cargoes pursuant solely to individual contract negotiations with particular cargo owners, they are nevertheless common carriers because their patrons are considerable in number and the cargo carried is varied in character. Complainant urges that a carrier willing to transport for all who offer freight cannot evade a common carrier status merely by arranging to transport upon special contracts. There is, however, no evidence in the instant case of willingness by defendants to transport for all; nor of holding out to transport upon conditions and terms other than those made pursuant to privately negotiated arrangement, which are satisfactory to defendants. Except Hedger, whose service under tariffs is not here in issue, defendants are not shown to be common carriers. Their status as private or contract carriers is not changed to that of common carriers because their transportation activities, conducted entirely through special and individual negotiation and agreement, involve a considerable number of cargo owners and a varied character of cargo. Their status as common carriers is not established by a showing that in some instances the particular tonnage of cargo carried for different cargo owners has been comparatively small. Nor does complainant's showing that several of defendants are bonded carriers who have satisfied regulations of the United States Treasury Department applicable to common carriers establish their status as common carriers.

Complainant contends that the barge defendants when operating over the harbor waters of the ports of New York and Buffalo are engaged in transportation "on the high seas" and "the Great Lakes," within the meaning of those terms as used in the definition of a common carrier by water in interstate commerce contained in section 1 of the Shipping Act, 1916. Its further contention is that as the motorship and barge defendants invariably transit the Hudson River and the New York State Barge Canal System they are engaged in transportation "on regular routes" as that term is used in this definition. In view of our finding that defendants are not common carriers, these contentions, as well as complainant's showing that the motorship defendants are engaged in transportation on the high seas and Great Lakes, need not be considered.

We conclude and decide that defendants are not shown to be common carriers by water in interstate commerce as defined by section 1 of the Shipping Act, 1916, and that their transportation of freight without schedules of rates on file with us is not shown to be in violation of section 2 of the Intercoastal Shipping Act, 1933, as amended. An order dismissing the complaint will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION held at its office in Washington, D. C., on the 30th day of November A. D. 1939

No. 509

NEW YORK MARINE COMPANY

v.

BUFFALO BARGE TOWING CORPORATION ET AL.

This case being at issue upon complaint and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in this proceeding be, and it is hereby, dismissed.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 513

CONTRACT ROUTING RESTRICTIONS UNDER AGREEMENTS NOS. 16, 147, 185, AND 4490

Submitted September 13, 1939. Decided November 30, 1939

Contracts made pursuant to respondents' Agreements Nos. 16, 147, 185, and 4490 found to be unjustly discriminatory, unfair, and detrimental to the commerce of the United States.

If respondents do not modify their contracts to remove the discrimination found herein to exist, consideration will be given to the question of issuing an order disapproving the conference agreements.

Roscoe H. Hupper, *J. Franklin Fort*, and *James Sinclair* for respondents.

W. L. Thornton, Jr., and *Frederick E. Brown* for The Shippers' Conference of Greater New York, The Merchants Association of New York, The Port of New York Authority, and Boston Port Authority.

John E. Martin for State of Wisconsin, *Thomas Read*, *James W. Williams*, and *Willard McIntyre* for State of Michigan, *Omer Stokes Jackson* for State of Indiana, *Urban C. Stover* for State of Indiana and Indiana State Chamber of Commerce, *Thomas J. Herbert* and *Perry L. Graham* for State of Ohio, *Allen Dean* for Detroit Board of Commerce, *A. P. Zirkalosa* for Port of Detroit Commission, *Harry D. Fenske* for Port of Detroit Commission and Great Lakes Steel Corporation, *Harry C. Brockel* for Milwaukee Board of Harbor Commissioners, *John C. Beukema* for Muskegon Chamber of Commerce Harbor Committee, *R. F. Malia* for Great Lakes Harbors Association, *C. E. Hochstedler* and *A. H. Schwietert* for Chicago Association of Commerce, *Ralph S. McCrea* for West Michigan Docks and Market Corporation, and *C. B. Bissell* for Corydon-Ohlrich Company.

Olin P. M. Brown for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

This proceeding was instituted upon our own motion by order of February 17, 1939, requiring carriers parties to agreements of the

North Atlantic/United Kingdom Freight Conference (Conference Agreement 16), North Atlantic/Continental Freight Conference (Agreement 4490), North Atlantic/French Atlantic Freight Conference (Conference Agreement 185), and North Atlantic/Baltic Freight Conference (Conference Agreement 147), which carriers[1] are hereinafter called respondents, to show cause why an order should not be entered modifying or canceling the agreements on the ground that contracts made by them with shippers pursuant thereto are unjustly discriminatory, unfair, operate to the detriment of the commerce of the United States, and are in violation of the Shipping Act, 1916, as amended. A proposed report was issued; exceptions thereto were filed by respondents, and supporting interveners, to which other parties replied, and the case was orally argued.

The contracts in question obligate the shipper, including subsidiaries, affiliates, and agents to offer to respondents for transportation to certain European ports, at rates agreed upon, all of its export shipments thereto of commodities named or provided for, "which shipments move via any United States or Canadian North Atlantic port or waterway (Great Lakes, River St. Lawrence and other rivers and waters tributary to North Atlantic included)." All of such shipments, irrespective of their point of origin, must be tendered to respondents for their vessels which may load at the ports of Norfolk, Newport News, Baltimore, Philadelphia, New York, Boston, Portland, Montreal, Quebec, Halifax, St. John, or West St. John. Some of the contracts are seasonal, covering shipments from the Great Lakes region, but, for the most part, they are annual contracts extending over the calendar year and providing that they shall continue in effect on the same terms and conditions throughout consecutive subsequent years, subject to termination by either party on 90 days' written notice to the other. The rates, however, are subject to increases and reductions from time to time. If a shipment be made in violation of a contract, respondents, parties thereto, may declare

[1] Aktiebolaget Svenska Amerika Linien, Aktiebolaget Svenska Amerika Mexiko Linien, American Line, American Scantic Line, Inc., Anchor Line, Limited, Arnold Bernstein Schiffahrtsgesellschaft m. b. H., Black Diamond Lines, Inc., Bristol City Line of Steamships, Ltd., Cairn Line of Steamships, Ltd. (Cairn-Thomson Line), Canadian Pacific Steamships, Ltd., Compagnie Generale Transatlantique (French Line), Compagnie Maritime Belge (Lloyd Royal) S. A., County Line, Ltd. (County Line), Cunard White Star, Limited Den Norske Amerikalinje A/S, Oslo, Det Forenede Damps kibs-Selskab A/S, Dominion Line (Canadian/Bristol Channel Joint Service of Bristol City Line of Steamships, Ltd., and Donaldson Line, Ltd.), Donaldson Atlantic Line, Limited, The Donaldson Line, Ltd., Ellerman's Wilson Line, Limited, Furness Withy & Co. Ltd., Gdynia America Shipping Lines, Ltd., Hamburg Amerikanische Packetfahrt Actien Gesellschaft, Manchester Liners, Ltd., N. V. Nederlandsch-Amerikaansche Stoomvaart-Maatschappij "Holland-Amerika Lijn," Norddeutscher Lloyd, Osaka Syôsen Kaisya, Red Star Linie G. m. b. H., Rederiaktiebolaget Transatlantic, Ulster Steamship Co., Ltd., United States Lines Company, United States of America—United States Maritime Commission (America France Line), and United States of America—United States Maritime Commission (American Hampton Roads—Yankee Line and Oriole Lines).

the contract terminated, and shipments previously carried thereunder during that yearly period, as well as future shipments, shall be subject to the higher noncontract rates in effect at the time of making those shipments. Some contracts provide that it shall not be a breach of contract if a shipper uses its own or chartered vessels for boatload quantities of such commodities as steel, oil, and automobiles. A contracting shipper may not patronize a carrier operating a direct service from ports on the Great Lakes to Europe by way of the St. Lawrence River without being subject to the penalty of a higher noncontract rate on past and future shipments made via North Atlantic ports on respondents' lines. According to respondents' witness, the difference between the noncontract and contract rates might average 20 percent, with a minimum of $2 per ton. The record does not show the maximum spread.

Resolutions and witnesses assail the contracts as unjustly discriminatory, unfair, detrimental to the commerce of the United States, and in violation of the Shipping Act, 1916, as amended. On behalf of the ports of Milwaukee and Muskegon, attention is called to expenditures made in the development of those ports, to the overseas traffic of the former, and to the fact that seven concerns in Muskegon are overseas shippers, one at present using direct service.

The protests and the evidence submitted concern only the provisions in the contracts which so restrict routing to have the effect of prohibiting direct shipment from Great Lakes ports. The issue may thus be narrowed to the lawfulness of such provisions.

The first direct service on regular schedule from Great Lakes ports to Europe was inaugurated in 1933 by the Fjell Line, a Norwegian company, which had for several years operated tramp ships in the trade. Sailings are made about every 10 days or 2 weeks. At the time of hearing, another line, known as the Oranje Line, was expected to enter the trade with fortnightly sailings. According to the testimony, a shipment is in transit 3 weeks from Detroit to Antwerp via direct service and from 13 to 18 days by railroad to the Atlantic seaboard and respondents' lines beyond.

Respondents claim that the contracts benefit the shipper in that they make forward trading possible and contribute to the maintenance of improved services by stabilizing rates. They admit, however, that the purpose of the contracts is to retain business for their lines. The extent to which they have succeeded is indicated by the testimony of their own witness who estimated that they carry more than 80 percent of the traffic moving in the trades involved. The volume of the tonnage is not disclosed. Their sailings in these trades in 1938 totaled 1,594. Nonconference lines' sailings are estimated to average 60 a year.

The contracts are available to all shippers willing to abide by their terms. They were first entered into by respondents as conference groups in January 1927. Before that time, respondents acted individually in contracting with shippers. Prior to 1934, the terms of the contracts were such as to prohibit the use of Gulf, South Atlantic, and Pacific ports. It is testified that such a construction was never intended, and in 1934 the language of the contracts was changed to apply only to shipments moving through North Atlantic ports and waterways.

There is testimony that when the conference contracts were introduced to cover a limited group of commodities, the contract rates were made the same as the tariff rates previously in effect, the noncontract rates being increased above the contract rates. It is asserted that from a few commodities the contract list has been extended until at present most of the commodities moving in appreciable volume are included. Respondents' witness stated that while there had been some increases in rates to meet greater operating expenses, the rates in effect in 1938 were generally lower than in 1927. On packing house products, respondents, like railroads serving the Great Lakes region, maintain so-called summer rates during the months that the St. Lawrence route is open. Under their contracts with packers for 1938 and 1939, the summer rate was fixed at 36 cents per 100 pounds or 19 cents below the rate of 55 cents in force the rest of the year and which was the rate effective for the year 1927. The difference between the noncontract and contract rates on these products is 10 cents per 100 pounds.

According to respondents' witness, the higher noncontract rates have not been applied retroactively for breach of contracts, the penalty being confined to future shipments as in the case of Sears International, Chicago. This shipper has contracts with respondents on various commodities shipped to Continental Europe and for all of its shipments to the United Kingdom except refrigerators. Its contract on refrigerators was canceled in 1938 for patronizing the Fjell Line. It now pays respondents the noncontract rate on refrigerators shipped on their vessels, which is about 5 cents per cubic foot higher than the contract rate paid by its competitors.

Various other shippers registered objections to being subject to a penalty for using direct service from the Great Lakes. McCord Radiator & Manufacturing Company, Detroit, exports annually about 50 tons of automotive parts and accessories and refrigeration and air-conditioning equipment to Europe, where it encounters American, French, and German competition. It has had a contract with respondents for five years or more and does not use direct service from the Great Lakes, except that some of its customers in Scandinavia who have boats under charter have picked up its products at Detroit. It is estimated that it could effect an annual saving in transportation charges of approximately 50 per cent by shipping over the direct route from Detroit instead of using the rail-water route. Such a saving, according to the testimony, would have enabled this shipper to better its competitive position on many occasions.

The Norge Division of Borg-Warner Company, a contract shipper with plants in Detroit and Muskegon, exports electric refrigerators and other articles to European markets in competition with American and German manufacturers. Direct service is said to have made it possible for it to introduce gas and electric ranges into Belgium. Cutler-Hammer, Incorporated, Milwaukee, a manufacturer of electric control devices and moulded insulation, exports the latter product to Great Britain, 7 tons having been shipped in 1938. This company has never had a contract with respondents and it is testified that until direct service was available from Milwaukee, it could not compete with a manufacturer of moulded insulation at Garfield, N. J., because of the latter's location at seaboard. Its customer in Great Britain has requested it to use the direct service from Milwaukee. Massey-Harris Company, Racine, a contract shipper, would like to see respondents establish a service from the Great Lakes. It considers the contract to have been of some benefit to it but is opposed to being subject to a penalty for availing itself of direct service from the Great Lakes.

The Great Lakes Steel Corporation, Detroit, markets its products in the United Kingdom, France, Belgium, Scandinavia, and other countries. It competes with manufacturers of similar steel products in the United States closer to the seaboard and with manufacturers abroad. Prior to 1935, its exports were negligible. It has since developed an appreciable business in Europe, principally in the United Kingdom, where it markets steel sheets. It has never had a contract with respondents and made use of practically every one of approximately 25 sailings out of the Great Lakes in 1938, the shipments amounting at times to 1,000 tons per vessel. When the Great Lakes are closed to navigation, it ships through the North Atlantic ports. This shipper points to the greater hazard to commerce involved in the transfer of shipments at the seaboard necessitated by the contracts than in the use of direct service. Whereas it has had no claims for damage arising out of the use of direct service, damage to shipments made over the transshipment route resulted in one instance in actual loss of business. It is testified that the ability to ship direct from the Great Lakes to the United Kingdom has been an important factor in the development of business in that country.

In competing with manufacturers in England, it discovered that buyers feared that highly finished sheets could not be safely shipped to them. Direct service was a means of relieving this apprehension. While this shipper makes use of the transshipment route in the winter, it endeavors to hold its shipments for direct movement when the Great Lakes are open. According to the testimony, by using direct service the effect of the higher cost of the rail-water movement during the winter is reduced, enabling it to make c. i. f. quotations throughout the year in competition with exporters closer to the seaboard.

The contract rate system in foreign commerce, when based upon regularity of consignments, number of shipments or quantity of merchandise furnished for transportation is not unlawful *per se* (*The Rawleigh Case*, 1 U. S. S. B. 285), but it has been condemned where it operates solely to effect a monopoly. *Eden Mining Co.* v. *Bluefield Fruit & S. S. Co.*, 1 U. S. S. B. 41. Since they carry more than 80 percent of the traffic from the Great Lakes area, it is obvious that respondents, for all practical purposes, have a monopoly. A difference in rates for identical services based solely upon whether or not the carrier secures the shipper's entire patronage is *prima facie* discriminatory. The issue here is whether such discrimination is undue or unreasonable. In determining this question we are called upon to weigh the disadvantages of the monopoly against the advantages flowing therefrom such as stability of rates and consequent stability of service. *Swayne & Hoyt, Ltd., et al.* v. *United States* 300 U. S. 297.

Shippers have a right to enjoy their legitimate opportunities to obtain carriage on the best terms they can. *Menacho* v. *Ward*, 27 Fed. 529. And, as stated in Docket 539, *Westbound Alcoholic Liquor Carload Rates*, they are entitled to use all the natural routes open to them, which right may not be abridged by carriers through improper competitive practices. The Great Lakes-St. Lawrence route is one of our great natural waterways upon which millions of dollars of federal, state, municipal, and private funds have been expended in the expectation of a natural development and growth of traffic from areas contiguous to its ports. The testimony of shippers using this route shows convincingly that the economies as well as other advantages inherent in the direct service have enabled them to penetrate European markets despite severe competition from abroad and at the Atlantic seaboard. Should the right to use this route, which respondents do not serve, be unduly diminished or indeed abrogated altogether by those carriers through arbitrary contract routing restrictions imposed because they have the peculiar ability to attract substantially all the traffic, largely by virtue of their monopolistic power which, in this instance, is greatly enhanced through the incidence of climate? No. We do not look with favor upon the attempt of carriers by artificial means to control the flow of traffic not naturally tributary to their lines.

In addition to their tendency to stifle other carrier competition, the contracts are discriminatory in other respects. They place the shipper using the direct service at a disadvantage in competing with contract shippers when the former is compelled to patronize respondents' lines. No penalty is assessed against shippers utilizing the Gulf route to Europe. While contract shippers of small quantities are required to use respondents' vessels, those in position to make boatload shipments may provide their own transportation without violating their contracts. None of these discriminations appears upon the record to be fair or just.

As against this we have the statement of the conference chairman that the contracts contribute to improved service by stabilizing rates. Respondents produced no contract shippers to testify in support of the contracts. There is nothing of record which would lead us to believe that the routing restriction in the contracts is vital to the maintenance of stability of service and rates. On the other hand, we have no doubt that respondents, with their frequency and quality of service, are fully capable of retaining their fair share of this traffic without resort to coercive competitive tactics.

Respondents argue that shippers may, if they choose, refrain from entering into the contracts, but they overlook the fact that with the choice goes the penalty of the higher noncontract rates. Equality of treatment is not accorded the shipper merely by giving him the opportunity to enter into discriminatory contracts in the same manner as offered to all shippers. *Eden Mining Co.* v. *Bluefield Fruit & S. S. Co., supra.*

Respondents contend that we may take no action affecting the contracts because not all parties to the contracts are before us. The hearing in this case was held after due public notice, and under our rules of procedure any party to a contract could have become a party to the proceeding by entering an appearance. Though no shipper appeared in support of the contracts, none has complained that it was deprived of an opportunity to be heard. Furthermore, all parties to the contracts are presumed to have contracted with the knowledge that their agreements were subject to the regulatory powers of this Commission.

Respondents contend further that we should not have proceeded to reach the contracts under section 15 of the Shipping Act, 1916, through the conference agreements since the lawfulness of the contracts could have been investigated independently under other sections of the act. The conference agreements make the contracts possible, and if the contracts are unjustly discriminatory or otherwise unlawful, it follows that the conference agreements too may be canceled under section 15 if such discrimination is not removed.

We find that the contracts in question are unjustly discriminatory and unfair as between Great Lakes ports and shippers of traffic through such ports, on the one hand, and Atlantic and Gulf ports and shippers of traffic through these ports, on the other hand; and as between shippers having insufficient cargo to ship in boatload quantities from Great Lakes ports and shippers in position to ship in such quantities. We further find that the contracts interfere with the flow of commerce through ports on the Great Lakes and are detrimental to the commerce of the United States.

The record will be held open for a period of 20 days from the date hereof to permit respondents to modify their contracts in such a manner as to remove the unjust discrimination found herein to exist. Failing this, we will consider entering an order disapproving the conference agreements.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 470

IN THE MATTER OF AGREEMENTS NOS. 1438, 5260, 5261, 5262, 5263, AND 5264, AS AMENDED

Submitted September 18, 1939. Decided November 30, 1939

Agreements Nos. 1438 and 5264 found not unjustly discriminatory or unfair as between carriers or shippers, not detrimental to the commerce of the United States, and not otherwise in violation of the Shipping Act, 1916. Proceeding as to these agreements discontinued.

Roger Siddall and *Victor J. Freeze* for United States Lines Company.

Christian J. Beck for Hamburg-American Line and North German Lloyd.

James Sinclair for North Atlantic Continental Freight Conference and Continental North Atlantic Westbound Freight Conference.

John Tilney Carpenter for United States Navigation Co., Inc.

R. H. Hallett for United States Maritime Commission.

REPORT OF THE COMMISSION

BY THE COMMISSION:

No exceptions were filed to the report proposed by the examiner. The findings recommended by that report are adopted herein.

This proceeding was instituted upon our own motion, by order entered January 4, 1938, to determine whether Agreements Nos. 1438, 5260, 5261, 5262, 5263, and 5264, as amended, or any of them, heretofore approved under section 15 of the Shipping Act, 1916, should be disapproved, canceled, or modified. By a supplementary order entered March 14, 1939, the parties[1] to Agreements Nos. 1438 and 5264 were directed to show cause why we should not disapprove and cancel these two agreements as being unduly discriminatory

[1] Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), United States Lines Company (United States Lines), and United States Navigation Company, Inc.

between carriers and detrimental to the commerce of the United States. By the same order the investigation with respect to the other agreements was deferred pending our future orders. Pursuant to the supplementary order a hearing was held at which representatives of respondents testified in regard to the agreements and related matters deemed pertinent to the issues.

Agreement No. 1438, the east-bound pooling agreement, was approved December 20, 1930. This agreement, covering traffic from New York to Hamburg, was entered into between United States Lines Operations, Inc. (United States Lines), and Hamburg-Amerikanische Packetfahrt Actien Gesellschaft (Hamburg American Line), collectively referred to as the Lines, on the one hand, and United States Navigation Company, Inc., referred to as the Company, on the other. The parties agreed to pool their gross-cargo earnings, after deducting handling charges of $2.75 per manifest ton on general cargo and 70 cents per manifest ton on grain, and to distribute the same between the Lines and the Company on the basis of their respective percentages of cargo earnings during the three years ending December 31, 1929. The percentages of pool distribution as thus determined were 86.446892 for the Lines and 13.553108 for the Company. The agreement was made effective from January 1, 1931, and was to run for three years with provision for automatic extension from year to year thereafter unless terminated by written notice given by any party. The Company agreed to maintain a minimum service from New York to Hamburg of not less than one sailing per month and not more than 24 sailings per year, and that it would not, during the life of the agreement, without the sanction of the Lines, extend its activities in the Hamburg trade to U. S. North Atlantic ports other than New York or to ports other than Hamburg in the Continental range, Hamburg to Havre, both inclusive. There was no agreement by the Company to observe the rates maintained by the Lines, and no provision for changes in the percentages of pool distribution to represent future changes in the percentages of actual carryings of the respective parties.

By amendment approved November 10, 1932, The United States Lines of Nevada was substituted for United States Lines Operations, Inc. By amendment approved August 9, 1933, United States Lines Company was substituted for The United States Lines of Nevada, and Kokusai Kisen Kabushiki Kaisha (Kokusai Line), for which U. S. Navigation Co. was acting as agent, was included as a party to the agreement with provision that such participation was to continue only so long as the agency arrangement continued in existence. By amendment approved December 20, 1937, the percentages of pool distribution were changed to give the Lines 88 percent and the Company 12 per cent, commencing January 1, 1938; the right to terminate the agreement was mutually waived for the year 1938, and the agreement was extended to December 31, 1940, with provision that if the west-bound pool agreement (No. 5264) is terminated and not replaced for the year 1939 or 1940, Agreement No. 1438 may be terminated by written notice on or before October 1, 1938, or October 1, 1939. Otherwise, it was to be automatically continued from year to year after December 31, 1940, unless terminated by written notice on or before October 1, 1940, or October 1 of any subsequent year effective at the end of the particular year. The Company also agreed that it would not, without the sanction of the Lines, load any vessels from Gulf, Atlantic, St. Lawrence, or Great Lakes ports of the United States and Canada to ports in the Havre/Hamburg range, except from New York to Hamburg.

Agreement No. 5264, the west-bound pooling agreement, was approved December 16, 1933, as Agreement No. 223–D. This agreement, covering traffic from Hamburg and Bremen to New York, was entered into between Hamburg-Amerikanische Packetfahrt Actien-Gesellschaft (Hamburg American Line), Norddeutscher Lloyd (North German Lloyd), and United States Lines Company (United States Lines), collectively referred to as the Lines, on the one hand, and Kokusai Kisen Kabushiki Kaisha (Kokusai Line) and United States Navigation Company, Inc., referred to as the Company, on the other. It was provided that the term "Company" as used in the agreement included the Kokusai Line for the duration of the agency of the United States Navigation Company, Inc., for the Kokusai Line in said service. The parties agreed to pool their total revenue derived from ocean freight (except surcharge assessed by the express steamers *Bremen*, *Europa*, and *Leviathan*) from German ports to New York, after deducting a carrying charge of $2.50 per manifest ton on general cargo and $2 per manifest ton on bulk cargo, and to distribute the pooled revenue on the basis of 91½ percent to the Lines and 8½ percent to the Company. It was testified that these percentages were arrived at by negotiation between the parties, with knowledge of what the respective parties were carrying and having in mind the percentages agreed upon in the east-bound pool. Division among the Lines of the amounts paid or received by them was to be in accordance with agreement reached among the Lines themselves. The agreement was made effective from February 1, 1933, for a period of two years and eleven months, with the right to terminate as of December 31, 1933, with provision for automatic extension from year to year thereafter unless terminated by written notice given by any party. The Company agreed to maintain a regular service from

Hamburg to New York of not less than 12 and not more than 24 sailings per year, and that it would not, during the life of the agreement, without the sanction of the Lines, load any steamers from ports in the Hamburg/Havre range to ports in the Portland/Hampton Roads range except from Hamburg to New York. There was no agreement by the Company to observe the rates maintained by the Lines, but the parties did agree that special concessions such as free storage, warehousing, financing, rebates, or other preferences to shippers or consignees would not be permitted. There was no provision for changes in the percentages of pool distribution to represent any changes in percentage of cargo actually carried by the respective parties.

Agreement No. 223-D was renumbered 5264 by order entered June 23, 1936, and various amendments have been made since the initial approval, involving, among others, provisions in regard to deductions from gross freight, notice of termination, and percentages of pool distribution, by amendment approved December 20, 1937, the percentages of pool distribution were changed, effective January 1, 1938, to give the Lines 93.625 percent and the Company 6.375 percent; the Company was given the privilege of dispatching 11 sailings from Hamburg to New York during 1937; the agreement was extended to December 31, 1940, with provision for right of termination by written notice by any party on or before October 1, 1938, or October 1, 1939, if the so-called Continental North Atlantic Northern Group-Western Group Westbound Pool Agreement (No. 5260) should be terminated and not replaced by the same or substantially similar arrangement for the year 1939 or 1940. Otherwise, the agreement was to be automatically continued from year to year after December 31, 1940, unless terminated by written notice on or before October 1, 1940, or October 1 of any subsequent year effective at the end of the particular year. This amendment also provides that in event of termination no party, except by mutual consent, will negotiate term contracts for any period beyond the end of such year, before October 1 of the year in which notice of termination is given.

The agency of U. S. Navigation Co. for Kokusai Line terminated December 31, 1935, and thereafter, until December 31, 1937, the service was operated by U. S. Navigation Co. under a joint working agreement with Kokusai, as United States Navigation Company, Inc.-Kokusai Line Hamburg Service. Since December 31, 1937, when this joint agreement expired, U. S. Navigation Co. has operated the service, both east-bound and west-bound, for its own account, using chartered foreign flag vessels.

The two pooling agreements heretofore described, and related agreements hereinafter referred to, were consummated after extended negotiations between the parties with a view to lessening the severity of competition and stabilizing the rates in the North Atlantic-Continental trade. The North Atlantic Continental Freight Conference [2] and the Continental North Atlantic Westbound Freight Conference,[3] formed to promote commerce and to establish and control rates in the east-bound and west-bound trades, respectively, had not been effective in preventing rate wars, unequal treatment of shippers, and other undesirable practices by carriers. The operations of carriers outside the conferences contributed to, but were not the sole reason for, the chaotic conditions that had prevailed for some years. There was also intense competition between the conference carriers serving the same ports and between such carriers serving different ports or groups of ports in the range covered by the two conferences. The carriers serving Hamburg and Bremen, commonly known as the "Northern" ports, and the carriers serving Rotterdam and Antwerp, commonly known as the "Western" ports, were competing for traffic originating in or destined to interior Germany, Czechoslovakia, Austria, Switzerland, and Roumania. The competition between the two groups also extended to the North Atlantic ports of the United States and Canada.

The east-bound rate conference extended to both northern and western port groups from its inception, but the west-bound rate conference was not extended to include Rotterdam and Antwerp until 1933.[4] In 1928 some of the carriers in the western group formed a pool which relieved the situation to some extent between themselves, and after negotiations over a period of about five years, the present system of control in the west-bound trade was established, that is, extension of the conference rate agreement to include the western group, a pooling agreement [5] between the two groups, and separate pools between the lines serving the northern ports. In addition to the pool between the three conference lines and U. S. Navigation Co. Inc., heretofore described, the separate agreements between the conference lines of the northern group included a pooling agreement [6] between the two German lines and United States Lines on traffic to New York, an agreement [7] between the German lines and Baltimore

[2] Agreement No. 48, approved June 26, 1923, superseded by Agreement No. 4490, approved August 24, 1935.

[3] Agreement No. 70, approved conditionally November 3, 1925; condition of approval accepted and approval effective April 15, 1926.

[4] Agreement No. 70–1, approved May 16, 1933.

[5] Agreement No. 223, approved May 9, 1933, superseded by No. 5260, approved July 23, 1936.

[6] Agreement No. 223–A, approved December 16, 1933, superseded by No. 5261, approved June 23, 1936.

[7] Agreement No. 223–B, approved December 16, 1933, superseded by No. 5262, approved June 23, 1936.

Mail Steamship Company on traffic to Baltimore and Hampton Roads, and a pooling agreement [8] between the German lines and Yankee Line on traffic to Boston and Philadelphia. These agreements between the conference lines, in addition to dividing the revenue or traffic in the particular trades involved, also provide for proportionate participation by said lines in the west-bound pool with U. S. Navigation Co. The right to terminate the east-bound pooling agreement (No. 1438) with U. S. Navigation Co. for the years 1939 and 1940 is conditioned upon the termination of the west-bound agreement (No. 5264), and the right to terminate No. 5264 for the same years is conditioned upon the termination of Agreement No. 5260. As all of these agreements together form an interrelated structure, the entire effect of any single agreement cannot be measured independently of the others.

The U. S. Navigation Co. has been engaged in the cargo trade between New York and Hamburg since 1919, either for its own account or as agent, operating comparatively slow cargo vessels requiring considerably longer elapsed time than the faster vessels of the conference lines, and has generally maintained rates lower than the conferences but apparently not upon a fixed differential basis. This company has also maintained for some years separate regular services from the United States to the United Kingdom and to South Africa. The operation of the U. S. Navigation Co. Hamburg service with lower rates, outside of the conferences, presented a rather serious competitive situation and was a constant threat to the stability of the conference rate structure. In this service the company had maintained approximately 24 sailings per year from 1923 to 1930, inclusive, east-bound, and approximately the same number west-bound from 1923 to 1932, inclusive. Its carryings during these periods averaged about 123,000 payable tons per year east-bound with an average annual gross revenue of about $572,000, and about 67,410 payable tons per year westbound with an average annual gross revenue of about $304,000. U. S. Navigation Co. has carried principally low-grade commodities which could readily move by its slower vessels with the inducement of lower rates. The principal commodities carried by it eastbound have been flour, rags, asphalt, lubricating oil, lubricating grease, oil cake, scrap brass and copper, scrap rubber, and grain. The principal commodities carried west-bound have been chlorate of potash, muriate of potash, nitrate of potash, napthalene, wood pulp, rock salt, peat moss, and cod-liver oil. While carrying these low-grade commodities this

[8] Agreement No. 223-C, approved December 16, 1933, superseded by No. 5263, approved June 23, 1936.

company was also soliciting and quoting lower rates on the higher grade commodities but there is no evidence to show the amount of such cargo it was able to obtain. The pooling agreements with U. S. Navigation Co. were expected to ease the competitive situation and directly result in confining that company's activities largely to the low-grade cargoes, leaving the higher rated goods for the conference lines.

Immediately after the pooling agreements were consummated, U. S. Navigation Co. reduced the number of its sailings in the Hamburg trade from 24 to 12 per year and has continued to operate the service on this reduced basis. In 1934 it operated five of the Hamburg ships via London and in 1935 there were four of these sailings via London. Since that time all of this company's sailings to Hamburg have been via London. The record indicates that this change in the service was due to the comparatively small amount of cargo moving to Hamburg, and shippers by this line apparently did not object to the additional delay necessitated by a call at London.

In addition to curtailing its service, U. S. Navigation Co. also became less active in soliciting cargo both in the United States and in Europe. It has continued to carry some of the low grade commodities, but the total cargo carried and gross revenue earned by it have shown a substantial decrease in practically every year since the agreements became effective. Its percentage of the total cargo and gross revenue of all parties to each of the two pooling agreements has shown a similar decrease. This situation is more clearly illustrated by the following statement of its participation in the trade:

Year	East-bound				West-bound			
	Payable tons	Percent	Gross revenue	Percent	Payable tons	Percent	Gross revenue	Percent
1931	21,196	8.37	$120,299.97	4.64				
1932	20,500	13.10	119,035.76	7.50				
1933	18,240	11.69	92,058.73	6.73	[1] 11,755	4.04	$52,504.08	2.75
1934	14,186	8.90	67,732.85	4.54	12,472	4.64	56,860.17	2.94
1935	12,402	8.04	58,055.87	4.60	4,857	1.46	29,297.93	1.26
1936	10,319	6.05	39,216.39	2.75	7,385	1.89	42,448.74	1.46
1937	7,220	2.78	38,196.24	1.67	12,622	2.75	65,661.19	1.84
1938	1,627	.62	13,174.65	.52	6,496	1.90	52,825.92	1.59
Total			547,770.46				299,598.03	

[1] Feb. 1, 1933, to Dec. 31, 1933.

As U. S. Navigation Co. has been an undercarrier in both pools from their inception, it has received substantial payments each year from the other carriers to make up its percentage of the pooled revenue in accordance with the agreements. The payments thus received by it have been as follows:

Year	East-bound	West-bound	Year	East-bound	West-bound
1931	$185,335.30		1936	$117,481.19	$137,294.00
1932	85,402.76		1937	192,988.65	173,366.01
1933	81,086.09	$73,124.74	1938	201,517.40	118,773.21
1934	105,325.66	78,650.01			
1935	88,746.94	108,752.78		1,057,883.98	689,960.75

The payments to U. S. Navigation Co. in the east-bound pool have been divided between United States Lines and Hamburg American Line in accordance with the provisions of Agreement No. 1438, as follows:

Year	United States Lines	Hamburg-American Line	Year	United States Lines	Hamburg-American Line
1931	$38,228.80	$147,106.50	1936	$31,216.54	$86,264.65
1932	19,563.93	65,838.82	1937	55,625.99	137,362.66
1933	20,672.51	60,413.58	1938	44,239.61	157,277.79
1934	37,955.40	67,370.26			
1935	23,278.70	65,470.24		270,779.48	787,104.50

The payments to U. S. Navigation Co. in the west-bound pool have been divided between the participating lines in accordance with the provisions of Agreements Nos. 5260 to 5264, inclusive, as follows:

Year	United States Lines	Hamburg-American Line and North German Lloyd	Other participating lines
1933 [1]	$15,372.81	$50,243.07	$7,508.86
1934	16,690.51	54,032.57	7,926.93
1935	22,712.92	74,846.54	11,193.32
1936	20,392.57	44,614.79	72,286.64
1937	26,791.72	54,237.28	92,337.01
1938	18,971.95	38,015.48	61,785.78
	120,932.48	315,989.73	253,038.54

[1] Feb. 1 to Dec. 31.

During the years 1933, 1934, and 1935 the payments to U. S. Navigation Co. in the west-bound pool, as shown in the above statement, were all made by the lines of the northern group and the participation of the western group was separately handled between the two groups. For the years 1936, 1937, and 1938 the amounts contributed by the western group are included in the figures showing amounts paid by other participating lines.

In return for the payments made to U. S. Navigation Co. the conference lines have been directly benefited by decreased competition from U. S. Navigation Co. and increased stability of the conference rate structure. Although there have been some increases in conference rates since the pooling agreements became effective, it is not shown that these increases were the direct result of the agreements. The decreased service of U. S. Navigation Co. has not resulted in the shutting out of any Hamburg cargo for lack of space, but the conference lines have obtained an increased percentage of the total traffic at the higher conference rates with resulting benefit to all parties to the agreements.

The undertaking by U. S. Navigation Co. to confine its activities in the trade to New York and Hamburg has been the consideration for the pool contributions made by the lines which serve other ports in the North Atlantic-Continental range, as provided by agreements 5260 to 5263. Because of this provision of the agreements, U. S. Navigation Co. has been compelled to refuse the agency for the Fjell Line, which serves the western ports, anad to refuse cargo for those ports that is transshipped at London. The stability of the conference relations between the northern and western groups has been promoted by this restriction on the activities of U. S. Navigation Co.

The agreements undoubtedly have been of substantial benefit to the U. S. Navigation Co. The pool payments received from the other lines, together with the revenue received from the comparatively small amount of cargo carried in the Hamburg trade since the agreements became effective, have resulted in slightly greater revenue per voyage west-bound and reduced revenue per voyage east-bound. It must be remembered, however, that for the three years 1936–1938 the eastbound sailings were all via London and the expense of operation was shared by the London cargo. On the basis of 24 voyages per year eastbound from 1923 to 1930, inclusive, and the same number westbound from 1923 to 1932, inclusive, compared with 12 voyages per year in each direction since the agreements, the comparative voyage revenue has been approximately as follows:

East-bound:		West-bound	
1923–30	$23,833	1923–32	$12,667
1931–38	[1] 16,725	1933–38	[1] 13,744

[1] Includes pool payments.

U. S. Navigation Co. has continued to maintain rates less than the conference rates, but the agreements have made it unnecessary and unprofitable for it to engage in arbitrary rate-cutting, and it has shared in the increased revenue obtained by the conference lines on all competitive cargo that it may have lost to those lines by reason of its decreased service and solicitation. It is not possible to determine whether the payments made to U. S. Navigation Co. outweigh the advantages accruing to the conference lines, but it is clearly established that the agreements have been mutually advantageous, and there has been no showing that they are unjustly discriminatory or unfair as between carriers. At the hearing it was indicated that all parties to the agreements were in accord in desiring their continuance.

The agreements have resulted in effective control of the competition of the U. S. Navigation Co., a nonconference line, but at the same time have required that company to continue its Hamburg service both east-bound and west-bound. This service at less than conference rates has been an effective means of protecting the conference lines against competition from tramps or others outside of the conferences, and at the same time has furnished adequate facilities to those shippers who cannot or will not use the conference lines. There have been no complaints from shippers against the agreements, and there is no evidence that the agreements have operated to deprive shippers of adequate facilities for the movement of their goods.

We find that Agreements Nos. 1438 and 5264 are not unjustly discriminatory or unfair as between carriers or shippers, do not operate to the detriment of the commerce of the United States, and are not in violation of the Shipping Act, 1916, as amended. An order will be entered discontinuing the proceeding as to these agreements.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 30th day of November A. D. 1939.

No. 470

IN THE MATTER OF AGREEMENTS NOS. 1438, 5260, 5261, 5262, 5263, AND 5264, AS AMENDED

It appearing, That by its order dated January 4, 1938, the Commission instituted a proceeding of investigation to determine whether Agreements Nos. 1438, 5260, 5261, 5262, 5263, and 5264, as amended, or any of them, should be disapproved, canceled, or modified.

It further appearing, That by a supplementary order dated March 14, 1939, the parties to Agreements Nos. 1438 and 5264 were directed to show cause why the Commission should not disapprove and cancel these two agreements as being unduly discriminatory between carriers and detrimental to the commerce of the United States, and the investigation with respect to the other agreements was deferred pending future orders of the Commission;

It further appearing, That full investigation of the matters and things in connection with Agreements Nos. 1438 and 5264 has been had, and that the Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which report is hereby referred to and made a part hereof:

It is ordered, That this proceeding, as to Agreements Nos. 1438 and 5264, be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 519 [1]

WATERMAN STEAMSHIP CORPORATION

v.

ARNOLD BERNSTEIN SCHIFFAHRTSGESELLSCHAFT M. B. H. (ARNOLD BERNSTEIN LINE), ET AL.

Submitted October 11, 1939. Decided December 19, 1939

Defendants' conference agreements and exclusive patronage contracts with shippers found to be unjustly discriminatory and unfair as between complainant and defendants and to subject complainant to undue and unreasonable prejudice and disadvantage.

If complainant be not admitted to full and equal membership in the conferences, consideration will be given to disapproval of the conference agreements.

Gessner T. McCorvey for complainant.

R. H. Hupper, *B. H. White*, and *J. Sinclair* for defendants.

M. G. de Quevedo for defendant Black Diamond Lines, Inc.

REPORT OF THE COMMISSION

BY THE COMMISSION:

These cases involve similar issues, were heard together, and will be disposed of in one report.

Defendants filed exceptions to the report proposed by the examiner to which complainant replied, and the cases were orally argued. Our conclusions agree with those recommended by the examiner.

Complainant is an Alabama corporation and common carrier by water in foreign and domestic commerce. Defendants [2] are common

[1] This report also embraces No. 520, *Same* v. *French Line et al.*, and No. 521, *Same* v. *American Line et al.*

[2] No. 519: Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line), Black Diamond Lines, Inc. (Black Diamond Lines), Canadian Pacific Steamships, Ltd., Compagnie Maritime Belge (Lloyd Royal) S. A., County Line, Ltd. (County Line), Ellerman's Wilson Line, Limited (Ellerman's Wilson Line), Hamburg-Amerikanische

carriers by water in foreign commerce and are the members of the North Atlantic Continental Freight Conference (Docket No. 519); the North Atlantic French Atlantic Freight Conference (Docket No. 520), and the North Atlantic United Kingdom Freight Conference (Docket No. 521).

Complainant alleges that defendants' denials of its applications for admission to the three conferences, in connection with defendants' exclusive patronage contracts with shippers, subject it to unjust and unfair discrimination, create monopolies in the trades, give undue or unreasonable preference or advantage to defendants, and operate to the detriment of the commerce of the United States in violation of sections 15 and 16 of the Shipping Act, 1916, as amended. We are asked to require defendants to admit complainant to membership in the conferences and if they fail to do so, to cancel the conference agreements and the exclusive patronage contracts.

The agreements of the conferences in question were approved in accordance with section 15 of the Shipping Act, 1916, August 24, 1935, August 24, 1932, and March 19, 1929, respectively. They provide for establishment and maintenance of agreed rates, charges, and practices and the members agree to endeavor to stabilize and otherwise improve, in all proper ways, the steamship and export trade. Provisions are also made for the admission of other carriers to the conferences. The agreement of the North Atlantic Continental Freight Conference further specifies that such admission shall not be denied except for just and reasonable cause.

Waterman Steamship Corporation operated the Mobile Oceanic Line for account of the United States from 1919 until October 1931, between East Gulf ports, Gulfport, Miss., to Tampa, Fla., inclusive, and ports in the United Kingdom and Continental Europe. On or

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Packetfahrt Aktien-Gesellschaft (Hamburg-American Line), Norddeutscher Lloyd (North German Lloyd), N. V. Nederlandsch-Amerikansche Stoomvaart-Maatschappij (Holland-America Line), Osaka Syosen Kaisya, Red Star Linie G. m. b. H. (Red Star Line), United States of America-United States Maritime Commission (American Hampton Roads-Yankee Line), and United States Lines Company (United States Lines).

No. 520: Compagnie Generale Transatlantique (French Line), County Line, Ltd. (County Line), United States Lines Company (United States Lines), and United States of America-United States Maritime Commission (America France Line).

No. 521: American Line, Anchor Line, Limited (Anchor Line), Arnold Bernstein Schiffahrtsgesellschaft m. b. H. (Arnold Bernstein Line), Bristol City Line of Steamships, Ltd., Cairn Line of Steamships, Ltd. (Cairn-Thompson Line), Canadian Pacific Steamships, Ltd., Cunard White Star, Limited, Dominion Line (Canadian/Bristol Channel Joint Service of Bristol City Line of Steamships, Ltd., and Donaldson Line, Ltd.), Donaldson Atlantic Line, Limited, The Donaldson Line, Ltd., Ellerman's Wilson Line, Limited (Ellerman's Wilson Line), Furness, Withy & Co., Ltd. (Furness Line), Manchester Liners, Ltd., Osaka Syosen Kaisya, Red Star Linie G. m. b. H. (Red Star Line), Ulster Steamship Co., Ltd. (Head Line), United States Lines Company (American Merchant Line), United States of America-United States Maritime Commission (American Hampton Roads-Yankee Line), and United States of America-United States Maritime Commisssion (Oriole Lines), United States Lines Company (United States Lines).

about October 1, 1931, the Corporation purchased the line and 14 vessels from the Government, thereafter operating the service for its own account. Additional American flag vessels have been purchased since then. The fleet now consists of 21 vessels aggregating 185,662 deadweight tons. Practically all of the ships have been improved in speed, and some have been provided with refrigerated space. A minimum of 72 sailings per year has been maintained for the last seven years, and commencing June 1, 1939, weekly sailings were scheduled to London; semi-monthly sailings to Liverpool, Manchester, Glasgow, Bremen, Hamburg, Rotterdam, and Antwerp, and sailings every four weeks to Avonmouth, Havre, Hull, and Newcastle. Waterman, as a member of the Gulf United Kingdom Freight Conference and of the Gulf French Atlantic Hamburg Range Freight Conference, carried approximately 80 percent of the total exports from Mobile, Ala., to United Kingdom and Continental ports during the fiscal year 1937, and an estimated higher percentage from the other East Gulf ports.

Complainant applied for admission to the North Atlantic Continental Freight Conference by letter of October 25, 1938, informing the conference of its intention to inaugurate a freight service from Norfolk, Va., to Bremen, Hamburg, Rotterdam, and Antwerp, with semimonthly sailings, the initial sailing to be on or about December 21, 1938. Details of the vessels to be used were given with the advice that the ships would call at Norfolk enroute from the East Gulf; that applicant was prepared to allocate such vessel space to the Norfolk trade as might be required for general cargo, and that applicant was prepared to serve the Norfolk trade with vessels independent of its Gulf operations when warranted by trade conditions. Additional information being requested, applicant thereafter advised the conference of its intention to load at Norfolk for Bremen, Hamburg, Rotterdam, and Antwerp only; that while in all probability discharging would be in that order it was Waterman's custom to arrange discharging itineraries that best suit cargo requirements; that the contemplated service was to be maintained by the Waterman Steamship Corporation with American flag vessels owned by it and that a trade name had not been assigned for the proposed service. By letter of November 18, 1938, the conference notified Waterman that at a meeting on November 17, 1938, its application was considered but was not approved.

On November 28, 1938, complainant sought to learn why its application was not accepted, and renewed it. At the same time application was made for admission to the North Atlantic French Atlantic Freight Conference and the North Atlantic United Kingdom Freight Conference, outlining the proposed services, frequency of sailings and probable discharging itineraries, the first sailing to be during the second half of January 1939. The conferences desired to know if a definite amount of space on each vessel was to be assigned to Norfolk irrespective of cargo offerings at Gulf loading ports, and they were informed Waterman did not intend to restrict space allocations but to supply sufficient space to accommodate the trade requirements. Complainant was advised under date of January 12, 1939, that its application had been considered by the various conferences but was not approved.

Waterman renewed its application for membership in the three conferences by letter of March 3, 1939, and under date of April 4, 1939, was advised that after consideration by the conferences the application was not approved.

Although denied admission to the conferences, Waterman started the new service with its S. S. *Iberville* sailing from Norfolk January 24, 1939, direct for London, having lifted 32 tons of apples for London and 55 tons of fertilizer for Antwerp. When applying for conference membership, Waterman was aware that the members had contracts with shippers requiring them to confine their shipments to conference lines, and knew that unless admitted to the conferences it would be handicapped in obtaining cargo. When solicitation for cargo began it was found that contracts had been entered into with so many shippers that it was impossible for Waterman to secure any appreciable amount of cargo. Bookings of scrap metal and glucose were cancelled when the shippers learned that Waterman was not a conference member. Some business of substantial importance was offered at a later date for loading at Hampton Roads at less than conference rates but Waterman declined this, preferring to protect conference rates. Because of its inability to secure cargo due to the conference contracts, Waterman has put no other ships into Hampton Roads.

The position of the conferences is that Hampton Roads ports are amply served by the member lines, that the entry of Waterman into the trade from Hampton Roads is not required in the public interest and that it would bring about excessive and unnecessary competition. The chairman of the conferences testified that a special study made in view of these proceedings showed that on the average the ships serving those destinations left Hampton Roads with at least 50 percent of their space unoccupied, which condition had existed for a number of years. The conference lines consider the current business rather spotty and contend that, based on their experience and anticipations for the future, they are sure "the lines already serving the port will be able to supply adequate tonnage for the cargo offered." They therefore believe that no additional service out of Hampton Roads is required. The probable effect of an additional service would be to diminish the carryings of each line now operating in the trade when there is already a limited amount of cargo available. There is said to be some doubt whether all of these lines could continue to operate their services if they incurred the losses that obviously would be incurred. The members think this would tend to prejudice rather than improve shipper interests, not only at Hampton Roads ports but at other ports now being served. They know of no particular demand for direct service from Hampton Roads but say that they are prepared to give such service if it is justified. Defendant Black Diamond Lines, Inc., which presented no separate defense, discussed in its brief, the possibility that complainant might extend its service to other North Atlantic ports if permitted to become a member of the conferences. In considering this phase of the matter it should not be overlooked that defendant Holland America Line is a member of the Gulf United Kingdom Freight Conference; that this line and defendant French Line are members of the Gulf French Atlantic Hamburg Range Freight Conference; and that these defendants are operating from East Gulf as well as North Atlantic ports.

Since the discontinuance of the Baltimore Mail Line, there has been no direct line service, except for occasional sailings, from Hampton Roads to United Kingdom and Continental ports. Generally, the calls are made at Baltimore first and Hampton Roads next. Some vessels already have called at Philadelphia, in which case Hampton Roads is the third. Some of the vessels after leaving Hampton Roads go to New York, others to Halifax, and still others to Boston to complete loading. Whether the order of calling is a reason why vessels do not load to capacity at Hampton Roads ports is not made clear by the record. Complainant's witness testified that his examination of many of defendants' schedules showed vessels sailing from other North Atlantic ports five to eight days after leaving Hampton Roads. In his opinion those services are not as satisfactory to the trade as Waterman's contemplated direct sailings would be, which ordinarily would make the trip from Norfolk to Liverpool in not more than 13 days and to London in about 14 days. We must observe that "direct service" is only that service from the last loading port to the first discharging port of a vessel. Therefore complainant's proposed service from Hampton Roads to Rotterdam by vessels discharging first at Bremen and Hamburg would be less direct than Black Diamond Lines' service from Hampton Roads with vessels calling at New York en route to Rotterdam. Waterman is convinced that the delay incurred by its vessels in calling at Hampton Roads en route to Europe from the Gulf would not exceed 36 hours and possibly not more than 24 hours. In view of the asserted superiority of its Gulf service over all others from the Gulf, Waterman feels that that delay is not a matter of any material consideration nor of any prejudice to the Gulf trade.

Complainant regards denial of its applications as particularly discriminatory in that the North Atlantic United Kingdom Freight Conference admitted Osaka Syosen Kaisya to membership on July 6, 1938. The conference chairman, however, pointed out that while Waterman's proposed service was to be in connection with its vessels sailing from the Gulf, Osaka Syosen Kaisya is not diverting its ships to North Atlantic ports for the purpose of lifting cargo. Its vessels call at North Atlantic and European ports to discharge cargo loaded in the Far East and are consequently there without any diversion. As a member of the conference, Osaka Syosen Kaisya has a right to go to Hampton Roads ports and to enjoy the benefits of the exclusive patronage contracts of the conference. Excessive vessel tonnage in this North Atlantic trade proved to be no deterrent to the admission of that carrier to conference membership just a short time prior to complainant's application. Under these circumstances the denial of Waterman's application for admission to this conference is clearly unjustly discriminatory as between carriers.

From the foregoing it is apparent that Waterman is prepared to engage regularly in the trade in conformity with the terms of the conference agreements; that the proposed direct service will be an improvement over the present indirect service; that denial of conference membership to Waterman, together with the effect of the exclusive patronage contracts, acts as an effective bar to that carrier's participation in the trade; and that it is not shown conclusively that the trade is over tonnaged.

Defendants contend that complainant is not entitled to membership in the conference unless it can show that its participation in the trade would be in the public interest. Specifically, it is suggested that the test here should be similar to that applied in cases involving a certificate of public convenience and necessity. It would be illogical to assume the power indirectly to grant such certificates without exercising the concomitant authority to deny the right to abandon service. These powers have not been directly conferred upon us, and they are of such drastic nature as not to be implied. As stated in *McCormick Steamship Company* v. *U. S.*, 16 Fed. Supp. 45, the delegation by Congress of such power "would have to be made in terms so clear that there was no possible ambiguity or doubt as to such intent." We are urged to consider, as determining factor, whether the trade is adequately tonnaged. But, this factor cannot be controlling for the reason that if adequacy of existing service is to prevent new lines from engaging in the trade, carriers already in the service could perpetuate their monopoly by the simple and expedient method of continuing to maintain adequate service.

We are not unsympathetic with defendants' desire to prevent alleged excessive and unnecessary competition. However, the record is not convincing that this would result if complainant's prayer is granted.

We find on the record in these cases that complainant Waterman Steamship Corporation is entitled to membership in the North Atlantic Continental Freight Conference, the North Atlantic French Atlantic Freight Conference, and the North Atlantic United Kingdom Freight Conference on equal terms with each of the defendants, and that failure to admit complainant to membership in said conference, including participation in shippers' contracts entered into pursuant to the conference agreements, resulted in the said agreements and contracts being unjustly discriminatory and unfair as between complainant and defendants, thus subjecting the agreements to disapproval or modification under section 15 of the Shipping Act, 1916, as amended; and in the complainant being subjected to undue and nnreasonable prejudice and disadvantage. Defendants will be allowed twenty days within which to admit complainant to full and equal membership in each conference, failing which consideration will be given to the issuance of orders disapproving the conference agreements.

By the United States Maritime Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

WASHINGTON, D. C., *December 19, 1939.*

UNITED STATES MARITIME COMMISSION

No. 481

In the Matter of Wharfage Charges and Practices at Boston, Mass.

Submitted October 17, 1938. Decided January 4, 1940

1. Certain respondents operating under agreements or working arrangements within the purview of section 15 of the Shipping Act, 1916, without approval as required by said section. Other agreements for furnishing terminal facilities to rail carriers not within scope of section 15 of the Sbipping Act, 1916.
2. Practice of Department of Public Works of the Commonwealth of Massachusetts of collecting wharfage charges on freight interchanged between vessel and pier, which moves to or from points within a prescribed area, while exempting from such charges freight moving to or from points beyond that area, unduly preferential and prejudicial in violation of section 16 of that act.
3. Charging of different rates of wharfage by other respondents, operators of different wharves and piers, and practices of such operators not shown to be unduly preferential, prejudicial, unjust or unreasonable.

John F. Fitzgerald, *Richard Parkhurst*, and *Walter W. McCoubrey* for Boston Port Authority; *Richard D. Chase* for Boston Wool Trade Association; *Kenneth B. Williams* for the Boston Coffee Brokers Association, Dwinell-Wright Company, Economy Grocery Stores Corporation, Stanley W. Ferguson, Inc., Standard Brands, Inc., and La Touraine Coffee Company; *Walter E. Dougherty* for Foreign Commerce Commission of Boston; *Eli C. Benway* for the Motor Truck Club of Massachusetts, Inc.; and *Frank S. Davis* for the Maritime Association of the Boston Chamber of Commerce, interveners.

George H. Fernald, Jr., for Boston & Albany Railroad; *W. A. Cole* and *Richard W. Hall* for Boston & Maine Railroad and Mystic Terminal Company; *H. D. Boynton* for New York, New Haven & Hartford Railroad Company; *Raymond E. Sullivan* for the Department of Public Works of the Commonwealth of Massachusetts;

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L. J. Coughlin for Boston Tidewater Terminal, Inc.; *Leland Powers* for Piers Operating Company; and *Samuel G. Spear* for Wiggin Terminals, Inc., respondents.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Interveners and respondents filed exceptions to the report proposed by the examiner and the case was orally argued. The findings recommended by the examiner with certain exceptions are adopted herein.

This proceeding was instituted by our orders dated April 12, 1938, and April 21, 1938, upon petitions filed by the Boston Port Authority, the Boston Wool Trade Association, the Boston Coffee Brokers Association and others. It is an investigation concerning the lawfulness under sections 15, 16, and 17 of the Shipping Act, 1916, as amended, of wharfage charges and practices in connection with water-borne traffic at Boston, Mass., of respondent terminal operators;[1] and of their agreements relating to wharfage charges and practices.

The Commonwealth of Massachusetts, though presenting evidence on behalf of its Department of Public Works, contends that it is not an "other person" within the definition contained in the Shipping Act, 1916, as amended, and submits that any rates or charges applicable to Commonwealth Piers are not subject to our approval or disapproval. In principle this question was set at rest in *United States* v. *California*, 297 U. S. 175, a suit brought by the United States against the State of California to recover the statutory penalty for violation of the federal Safety Appliance Act by a common carrier owned and operated by that State. There it was argued that inasmuch as the State was operating the railroad without profit, for the purpose of facilitating the commerce of the port, and was using proceeds for harbor improvements, it was engaged, as argued here, in performing a public function in its sovereign capacity and therefore could not lawfully be subjected to the provisions of the federal act. The Court said:

> Despite reliance upon the point both by the government and the state, we think it unimportant to say whether the state conducts its railroad in its "sovereign" or in its "private" capacity * * * The only question we need consider is whether the exercise of that power, in whatever capacity, must be

[1] Boston & Albany Railroad, operating Grand Junction Docks; Boston & Maine Railroad; New York, New Haven & Hartford Railroad Company; Boston Tidewater Terminal, Inc., operating the New Haven's Piers 1 and 4, as agent; Department of Public Works of the Commonwealth of Massachusetts, operating Commonwealth Piers Nos. 1 and 5; Piers Operating Company, operating the Army Base Pier under lease from the United States Government; Wiggin Terminals, Inc.; and Mystic Terminal Company, operating the Boston & Maine's Mystic and Hoosac Wharves.

in subordination to the power to regulate interstate commerce, which has been granted specifically to the national government. The sovereign power of the states is necessarily diminished to the extent of the grants of power to the federal government in the Constitution.

California, by engaging in interstate commerce by rail, has subjected itself to the commerce power, and is liable for a violation of the Safety Appliance Act, as are other carriers, unless the statute is to be deemed inapplicable to state-owned railroads because it does not specifically mention them * * * No convincing reason is advanced why interstate commerce and persons and property concerned in it should not receive the protection of the act whenever a state, as well as a privately owned carrier, brings itself within the sweep of the statute, or why its all-embracing language should not be deemed to afford that protection.

We conclude therefore that the Commonwealth of Massachusetts, insofar as it engages in the activities of an "other person" as defined in the Shipping Act, 1916, as amended, is subject to that act.

There are two bases of wharfage rates under attack: the "Commonwealth Scale," applied generally by respondents on intercoastal traffic and by Commonwealth Piers on all freight, with certain exceptions hereinafter noted; and the "Howard Scale," applied generally on import and export traffic by respondents except the Commonwealth of Massachusetts.

The Commonwealth Scale provides for a flat charge of 25 cents per net ton or 40 cubic feet whichever makes the higher charge. At Commonwealth Piers this charge is levied on all freight interchanged between vessel and pier except that on traffic moving by rail to or from points more than 40 miles distant from Boston, the charge is not assessed. The Howard Scale, applying on traffic trucked to or from the piers, provides varying charges on many commodities grouped in five classes, and for other articles, rates of 50 cents per long ton or three-fourths of a cent per cubic foot whichever makes the higher charge. Following authority granted to railroads by the Interstate Commerce Commission [2] respondents, except Piers Operating Company and Department of Public Works, increased their wharfage charges approximately 10 percent, effective April 15, 1938. This action precipitated the petitions upon which this proceeding was instituted.

At the outset the question occurs whether railroad respondents, in revising and applying the Howard Scale, conformed with section 15 of the Shipping Act, 1916. While the testimony on behalf of each respondent railroad is that the 10-percent increase was a matter of independent determination and no agreement was involved, nevertheless the representative of the Boston & Maine Railroad

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[2] Ex Parte No. 123, *The Matter of Increases in Rates, Fares, and Charges*, 226 I. C. C. 41 (March 8, 1938).

testified, in regard to a meeting concerning the increase, that "the purpose of the meeting was to get together and have an understanding that (there) would be concerted action at the same time and (in) the same manner, to devise the proper method of putting those rates into operating form," and while increases in excess of 10 percent were discussed at that meeting, "it was the consensus of opinion that there would be only the 10-percent increase" and "the only thing put into effect was what all three railroads agreed upon." These activities clearly establish the existence of a cooperative working arrangement as described in section 15,[3] no memorandum of which has been filed with and approved by us. Railroad respondents will be expected to comply immediately with the provisions of section 15 applicable to this arrangement.

Certain interveners contend that the varying bases of wharfage charges, including the differences based on method of movement to and from the piers, and the practices of respondents in assessing them result in discrimination and chaotic conditions in the port. These differences may be illustrated by the charges on import coffee which are as follows: at Army Base, 60 cents per long ton; Commonwealth, 25 cents per short ton (Commonwealth Scale); and other piers, 66 cents per long ton (Howard Scale). Wharfage charges at other North Atlantic ports on foreign traffic, moving other than in railroad service, are shown to be uniform, but respondents herein do not operate wharves at such ports. It should be noted that the rates of each respondent are the same to each class of shippers and that no individual respondent controls the rates assessed at any other pier. Application of different wharfage rates on foreign and intercoastal traffic will not be condemned where, as here, there is no showing of a competitive relation between the traffic and an injurious effect arising from the discrimination. *Philadelphia Ocean Traffic Bureau* v. *Philadelphia Piers, Inc. et al.*, 1 U. S. M. C. 701. The Boston Coffee Brokers Association contends that the assessment of wharfage charges, particularly at Army Base, against coffee trucked from the wharf, while no wharfage charge is made against such traffic moving out by rail, is unduly prejudicial against the former

[3] Section 15 of the Shipping Act, 1916, requires that every common carrier by water, or other person subject to that act, shall file immediately with us a true copy, or, if oral, a true and complete memorandum, of every agreement with another such carrier or other person subject to that act, or modification or cancellation thereof, to which it may be a party or conform in whole or in part *inter alia* controlling, regulating, preventing, or destroying competition, or which in any manner provides for an exclusive, preferential, or cooperative working arrangement. The term "agreement" in that section includes understandings, conferences, and other arrangements. This section further provides that agreements shall be lawful only when and as long as approved by us, and before approval or after disapproval it shall be unlawful to carry out in whole or in part, directly or indirectly, any such agreement.

and preferential of the latter traffic. The rail rate to and from the wharf, whether the wharf is railroad-owned or otherwise, is a shipside rate covering all terminal services. The record does not disclose what, if any, amount is included therein for wharfage. It is obvious that, if the shipside rates do include a charge for wharfage, the railroads collect the same whether they render the service or not. It is also obvious that, if the shipside rates include wharfage charges, the nonrail terminal respondents cannot attempt to make and collect such charges from rail borne traffic bearing the shipside rates, as the shippers would thereby be required to pay the charges twice. It is equally clear that the nonrail terminal respondents cannot afford, for competitive reasons, to assess a wharfage charge against rail traffic, the inevitable effect of which would be to drive that business away from them. The result is that these nonrail terminal respondents are furnishing a service and the use of their facilities for which they can collect no charge from the shipper because the railroads have either already charged for the service or absorbed the charge in their rates. If the nonrail respondents are to continue in business, their rates on other services must be sufficiently high to bear this burden. Rail carriers have received the sanction of the Interstate Commerce Commission to publish their rates in this manner in *Charges for Wharfage, etc., at Atlantic and Gulf ports*, 157 I. C. C. 663. We have no jurisdiction over the railroad shipside rates. The failure of the railroad-owned terminals to publish and collect from rail borne traffic charges for the use of their services and facilities separate from the line haul rail rates creates a situation which is potentially discriminatory as between shippers, appears to give those terminals an unfair and unjust preference and advantage over other terminals and may result in the double payment by shippers or consignees for wharfage services, and which appears to demand corrective action.

Our lack of jurisdiction to compel the railroads to disclose the actual services and charges therefor contained in their rates prevents a finding as to the actual amount of discrimination, preference, or double payments which may result from the present practice. In view of the existence of the competition which confronts the nonrailroad-owned terminals from those which are railroad-owned we cannot say that any discrimininaton or preference arising from the adoption by the former of the practices of the latter with respect to wharfage charges is undue or unjust.

The Boston Port Authority submits that respondents' practice with respect to assessment and collection of wharfage charges makes it impossible for a shipper or consignee to determine in advance the exact charge he will be required to pay since he does not know at what particular pier many vessels will dock. The practice is alleged to be unreasonable in violation of section 17 of the Shipping Act, 1916. Considering the actual movement of the traffic, the adverse effects attributed to this practice are over-emphasized. In point of fact, import and export traffic moves principally over railroad-owned piers and the Army Base at which piers, including Wiggin Terminal, the Howard Scale applies. Intercoastal traffic finds its way principally through Commonwealth Pier No. 5 at which the Commonwealth Scale applies. Negligible amounts of export and import traffic move over this pier at the same rates. Also small quantities of intercoastal traffic move over other piers on which, for competitive reasons, the Commonwealth Scale is applied. Thus there is substantial uniformity of charges on the two classes of traffic and the allegation of unreasonableness is not sustained.

It is also contended that it is an unreasonable practice to increase wharfage charges on short notice and for respondent terminal operators to maintain rates and charges for wharfage without furnishing shippers copies of the tariff containing such charges. With this contention we agree and repeat what we stated in Docket No. 418, *Eastbound Intercoastal Lumber*, decided July 28, 1939, that:

> The failure of a public utility to publish and post a tariff of rates is plainly indefensible. The failure to give adequate notice of rate changes is unjust and unreasonable both to the shipping public and the water carrier who of necessity must utilize the facilities of the terminals. Sudden rate changes cannot be immediately reflected in the tariff of the carrier, resulting in an unexpected loss either to the carrier or shipper. This is a disruptive factor both in the transportation and marketing of the commodity involved.

See also, *Buxton Lines, Inc.* v. *Norfolk Tidewater Terminals, Inc.*, 1 U. S. M. C. 705.

As stated, at Commonwealth Piers, the Commonwealth Scale applies on all freight interchanged between vessel and pier, except on shipments which move by rail to or from points more than approximately 40 miles distant from Boston. This area was determined in 1928 by drawing an arbitrary line around a zone then representing a reasonable distance for teaming and trucking. According to the record there are companies within the 40-mile zone which compete with companies located beyond that area whose shipments by rail to and from Commonwealth Pier are not charged wharfage. Under such circumstances we conclude that this practice is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916.

There remains for consideration the status of two agreements. One is between the Commonwealth of Massachusetts and the New Haven whereby the latter agrees to make its Boston rates apply to and from the former's piers in South Boston and to make no additional charge to shippers or consignees for wharfage. The New Haven also agrees to pay to the Commonwealth a wharfage charge of ten cents a ton on all goods taken by it to and from the South Boston piers, or transported between its terminals and the South Boston piers, and to absorb this charge in the freight rates. An associate commissioner of the Department of Public Works testified that the charge of 10 cents per ton has always been interpreted as a trackage charge, and is for the use of its tracks and piers. The Commonwealth makes no similar charge against trucks.

The other agreement is between the Piers Operating Company, lessee of the Army Base Pier, and the New Haven. Piers Operating Company agrees to maintain the wharf premises and the railroad company agrees to pay to the Piers Operating Company as full compensation for the use of said premises 10 cents per net or gross ton on all freight received ex vessel or delivered at said premises by the railroad company for movement by vessel. The railroad company also agrees to pay extra for use of the Piers Operating Company's equipment, to remove snow and ice from tracks, and to perform light maintenance of tracks. These are operating agreements between the terminals and railroads which are not operating under said agreements as "other persons" as defined in section 1 of the act and are not subject to our jurisdiction under section 15 of the act.

We conclude and decide that:

1. Respondents Boston & Albany Railroad, Boston & Maine Railroad, and New York, New Haven & Hartford Railroad Company, are parties to agreements or cooperative working arrangements within the purview of section 15 of the Shipping Act, 1916, and that copies or memoranda of such agreements or arrangements have not been filed for approval as required by that section.

2. The charging of different rates of wharfage by operators of different piers has not been shown to be unduly preferential, prejudicial, or unjustly discriminatory.

3. The agreement between the Commonwealth of Massachusetts and the New York, New Haven & Hartford Railroad Company, and the agreement between Piers Operating Company and the New York, New Haven & Hartford Railroad Company are not within the scope of section 15 of the Shipping Act, 1916.

4. The Commonwealth of Massachusetts, insofar as it furnishes wharfage and other terminal facilities at its Commonwealth Piers in Boston Harbor in connection with common carriers by water in inter-

and pier which moves by rail to or from points beyond an area arbitrarily fixed, while collecting such charges on goods moving to or from points within such area, has established and is observing and enforcing a practice which is unduly preferential and prejudicial in violation of section 16 of the Shipping Act, 1916, as amended. All other terminals which have adopted the Commonwealth Scale and which engage in the same practices are subject to this same conclusion.

5. Respondents' practices other than those described in paragraph 4 hereof have not been shown to be unjust and unreasonable.

An order will be entered requiring respondent Department of Public Works of the Commonwealth of Massachusetts to cease and desist from the aforementioned practice found unlawful.

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of January A. D. 1940

No. 481

In the Matter of Wharfage Charges and Practices at Boston, Mass.

It appearing, That by orders of April 12 and April 21, 1938, the Commission entered upon a hearing concerning the lawfulness of respondents' wharfage charges and practices at Boston, Mass., on interstate and foreign water-borne commerce of the United States;

It further appearing, That a full investigation of the matters and things involved has been conducted and that the Commission on the date hereof has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That respondent Department of Public Works of the Commonwealth of Massachusetts be, and it is hereby, notified and required to cease and desist, on or before February 21, 1940, and thereafter to abstain from the practice herein determined to be in violation of section 16 of the Shipping Act, 1916, as amended, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 471

IN THE MATTER OF RATES, FARES, CHARGES, REGULATIONS, AND PRACTICES OF INTER-ISLAND STEAM NAVIGATION COMPANY, LTD., BETWEEN POINTS IN THE TERRITORY OF HAWAII

Submitted September 19, 1939. Decided January 4, 1940

Rate base, fair rate of return, and probable future revenues and expenses under present rates of respondent, determined.

Present rates found to yield less than fair return on rate base.

Respondent's rate structure as a whole and regulations and practices in connection therewith found not unreasonable or unduly prejudicial or preferential.

J. Garner Anthony, and *Dudley Lewis* for respondent.

David E. Scott, *Ralph H. Hallett*, *William R. Furlong*, and *John R. Wolf* for United States Maritime Commission.

Jon Wiig for Public Utility Commission of Hawaii.

REPORT OF THE COMMISSION

BY THE COMMISSION:

Exceptions were filed to the examiner's report by respondent and counsel for the Commission, respondent replied, and oral argument was had. Our conclusions are substantially those of the examiner.

This investigation was instituted January 4, 1938, on our own motion upon complaints, to determine whether the rates, charges, regulations, and practices of Inter-Island Steam Navigation Company, Ltd., the respondent, are unduly prejudicial or unreasonable in violation of sections 16 and 18, respectively, of the Shipping Act, 1916. Hearings were had in Honolulu, T. H., and Washington, D. C.

Respondent was incorporated in 1883 under the laws of the Kingdom of Hawaii. It provides the only regular common-carrier service between the Hawaiian Islands. It owns and operates steamers, drydocks, terminals, a hotel, and appurtenant real estate; charters tugs and barges; and acts as agent for other transportation companies, including an airplane and automobile service which it controls through stock ownership.

Operating conditions.—Respondent serves 22 ports, 18 of which have open roadsteads unprotected by breakwaters. In small ports the ships anchor offport and cargo is transferred by surf boat. At one port cargo can be received only by cable. The isolation of the Islands, which are 2,400 miles from the mainland, is an important factor in respondent's operations. It means larger inventories of supplies and spare parts, higher fuel costs, and accounts for the maintenance of drydocks and spare vessels for stand-by use.

Traffic.—The company's local competition is negligible. But with the gradual development of deep-water harbors at outports it has progressively lost most of its heavy-volume cargo to transpacific lines which carry 98 percent of the sugar and pineapple shipped, the principal products of the Islands. Its chief competitor is Matson Navigation Company, the owner of 18 percent of its capital stock. The bulk of the company's traffic moves between Honolulu and the Islands of Hawaii, Kauai, and Maui, respectively, the percentages being approximately 41, 28, and 24 percent, respectively. Main cargo moves 26 percent inward to Honolulu, and 74 percent outward, indicating an unbalanced traffic. Aside from a few bulk commodities such as sugar, fertilizer, lime, and cattle, the traffic consists of general merchandise in small lots. In 1937, 292,867 bills of lading were issued, the average number per trip approximating 568. Revenue per bill of lading averaged $3.45. Approximately one-fourth of all bills of lading take the minimum charge of 25 cents. Sixty-two percent of shipments weigh less than 500 pounds, and 95 percent 4,000 pounds or less. Fifty-three percent of the traffic moves between ports on class rates of $4.00 per ton or less, and 95 percent at rates of $4.40 or less. Respondent's business may thus be characterized as an express type of service requiring much paper work and cargo handling.

Issues.—Respondent's entire rate structure is under review here, and the only satisfactory test of its reasonableness is whether the rates "yield a fair return upon the value of the carrier's property devoted to the public service." *Smyth* v. *Ames*, 169 U. S. 466. This calls for a classification of properties used and useful in the public service, and consideration of the fair value of those properties, a fair rate of return on such value, and the estimated revenue and expense reasonably to be expected under the present rates and operations.

Classification of property.—Counsel, by stipulation, agreed that substantially all of respondent's property, except the drydock plant and Kona Inn, is devoted to common-carrier operation.

Respondent owns two steel drydocks capable of lifting 2,500 and 4,500 tons, respectively, which can be joined together; and a small wooden drydock with a capacity of 150 tons for serving small craft. At times both large docks are in use simultaneously. The alternative to maintaining drydocks is to send the vessels, if not seriously disabled, to the mainland for drydocking at an estimated cost of $200,000 a year. Outside commercial repair work is done which provides a broader spread for distribution of overheads and results in a saving to common carrier ship operations. Thus it appears that the entire drydock plant is a necessary adjunct to respondent's steamer operations, that efficient use of the plant requires its operation as a unit, and that no segregation should be made as between carrier and noncarrier operation.

Kona Inn is located on the Island of Hawaii, which attracts more passenger traffic from Honolulu than any of the other Islands. The hotel affords accommodations for tourists taking the company's two-day automobile tour around the Island. The question arises whether the hotel is kept for the accommodation of the general public and is therefore noncarrier property, or whether it is used primarily by respondent's passengers and should be classified as common-carrier property. The President of the company testified that Kona Inn was built by the company, after unsuccessful efforts to enlist outside capital, solely for the purpose of stimulating passenger traffic, and that the hotel facilities, together with the automobile tour, have had that effect. The number of passengers accommodated at the hotel as distinguished from other guests is not disclosed. But it is reasonable to assume that practically all of the passenger guests travel via the Inter-Island because round-the-world cruise ships do not stop at Hilo, where the tour begins and ends, long enough for their passengers to visit the Kona district; and only a few patrons come by plane. The remaining source of nonpassenger patronage is the residents of the Island of Hawaii. Thus it is fair to conclude that the hotel is patronized chiefly by tourists carried by the Inter-Island, and that use by the general public is incidental. There are only two other hotels on the Island, one at Hilo, 100 miles away, and one at Kilauea Volcano, which is 30 miles from Hilo. Obviously, neither one is suitably located to accommodate passengers on the tour.

It is concluded, therefore, that Kona Inn is reasonably necessary in respondent's common carrier operations and should be classified as common-carrier property.

Fair Value

We are bound in this proceeding by two fundamental rules. We are to accord procedural due process, and our findings must not result in confiscation of the carrier's property. This is clearly stated by the Supreme Court in *Railroad Commission of California* v. *Pacific Gas and Electric Company*, 302 U. S. 388, as follows:

When the rate-making agency of the state gives a fair hearing, receives and considers the competent evidence that is offered, affords opportunity through evidence and argument to challenge the result and makes its determination upon evidence and not arbitrarily, the requirements of procedural due process are met, and the question that remains for this court, or a lower federal court, is not as to the mere correctness of the method and reasoning adopted by the regulatory agency but whether the rates it fixes will result in confiscation.

No formula has been adopted by the Supreme Court for the determination of nonconfiscatory rates. As Chief Justice Hughes stated in *The Minnesota Rate Cases*, 230 U. S., 352, 434, such determination is "not a matter of formulas, but there must be reasonable judgment having its basis in a proper consideration of all relevant facts." However, the Court did attempt definitely to mark the limit below which public regulation of rates would amount to deprivation of property without due process of law by establishing the "fair value" rule, in *Smyth* v. *Ames*, *supra* 546–7, as follows:

We hold, however, that the basis of all calculations as to the reasonableness of rates to be charged by a corporation maintaining a highway under legislative sanction must be the fair value of the property being used by it for the convenience of the public. And, in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.

We are referred to no case wherein this oft-repeated decision has been overruled. On the other hand the Court has repeatedly held that no element or measure of value is an exclusive or final test. As stated in *Los Angeles G. & E. Corp.* v. *Railroad Commission*, 289 U. S. 287, 306, 308:

The actual cost of the property—the investment the owners have made—is a relevant fact. * * * But while cost must be considered, the Court has held that it is not an exclusive or final test. The public have not underwritten the investment. The property, on any admissible standard of present value, may be worth more or less than it actually cost. * * *

The weight to be given to actual cost, to historical cost, and to cost of reproduction new, is to be determined in the light of the facts of the particular case.

We shall proceed therefore to consider the evidence bearing upon the elements of value as revealed by the record, giving them such weight as may be just and right in this case.

ORIGINAL COST

Respondent's accounting records as to existing property, though not kept according to any prescribed uniform system of accounting, are complete and well kept. They afford a reliable record of the detailed cost of the property. And there is no suggestion from the evidence that the investments were not honestly, wisely, and prudently made. Our accountants and those of the company, after an exhaustive investigation, agreed upon original cost of property and equipment and recorded accrued depreciation thereon as of June 30, 1938, as shown in the following table:

	Original cost	Accrued depreciation	Original cost less depreciation
Vessels and auxiliaries	$5,420,507	$3,198,597	$2,221,910
Drydocks and shops	828,694	718,031	110,663
Terminal facilities	645,336	300,702	344,634
Office building and equipment	232,282	112,720	119,562
Kona Inn	285,978	103,693	182,285
Total	7,412,797	4,433,743	2,979,054
Land:			
Drydock site	80,000		80,000
Dredging	76,278	76,278	
Terminal site	222,809		222,809
Dredging	265,259		265,259
Office building site	90,004		90,004
Kona Inn	27,733		27,733
Grand total[1]	8,174,880	4,510,021	3,664,859

[1] To the total original cost less accrued depreciation there should be added $76,578 representing salvage value of vessels, hereinafter discussed, bringing the grand total to $3,741,437.

COST OF REPRODUCTION LESS DEPRECIATION

Respondent introduced the only estimate of reproduction cost.

Vessels and auxiliaries.—Witness A. F. Pillsbury, marine surveyor, consulting engineer and ship appraiser, ascertained what he termed "depreciated value" of the fleet as of April 1, 1938. He trended original cost to present prices by adding a factor of 45 percent; deducted 5 percent for residual value to arrive at cost to be depreciated; depreciated the vessels at 4 percent annually on basis of a service life of 25 years for each vessel; and after deducting depreciation, added back the residual value, thus arriving at present depreciated cost. The appraised value of the vessels is $4,115,393. Including launches, other operating equipment, and overheads brings the estimate to $4,679,337.05. The factor of 45 percent is not broken down into unit costs applied to the plans and specifications of the vessels, but represents a general estimate of increased costs based on bids, cost of present construction of certain barges, and information obtained by the witness from interviewing shipbuilders on the Pacific coast where theoretically the ships would be reproduced.

Witness J. E. Schmeltzer, who is supervising the design, estimating and construction work on vessels under construction for this Commission, outlined the customary steps in estimating the cost of a ship. Estimated weights of steel structure, machinery, deck equiment, and quantities of other material are computed from plans and specifications. Material and labor costs based on the experience of a particular yard are applied. To this is added overhead and profit. He stated that labor and material costs vary as between different yards and overheads range anywhere from 50 to 100 percent. Illustrative of this are bids received by us on a steel cargo vessel ranging from $1,856,675, to $3,400,000. No ships larger than 850 gross tons have been built on the Pacific coast since 1929. The witness was of the opinion that the advance in design since then would materially increase the percentage of error in estimating costs.

Drydocks and shops.—Witness George M. Collins, a local construction engineer, estimated the cost of reproduction less depreciation of the three drydocks and shops, which, including other items and overheads, amounts to $666,325.50. Prices based on local contractor's current costs were used.

Terminal facilities.—Mr. Collins also estimated cost of reproduction less depreciation of the common-carrier portion of the terminal facilities at Iwilei, which, with certain adjustments including overheads, amounts to $509,644.40.

Office building and equipment.—Witness Stanley Livingston, chairman of the appraisal committee of the Honolulu Realty Board, estimated cost of reproduction less depreciation of respondent's five-story office building in Honolulu at $90,000, which, plus the stipulated value of equipment with overheads, amounts to $147,838.60.

Kona Inn.—The estimate of reproduction less depreciation for buildings and equipment at Kona Inn is stipulated on the basis of original cost or $205,725.22 which, including overheads equals $221,343.22.

Respondent's estimates for cost of reproduction new, including overheads, and excluding land, total $10,545,269 and for reproduction cost less depreciation, $6,224,488.

LAND

Respondent's land in Honolulu is located at Fort and Merchant Streets, occupied by the office building; in the Kakaako District along Ala Moana Road, occupied by the drydock properties; and in the Iwilei District, occupied by the terminal properties. It also owns the land occupied by Kona Inn. Mr. Livingston also appraised the land in Honolulu. He inspected the property and made a study of the market values of similar adjacent and adjoining land, of sale prices over a period of years, and of assessed valuation for taxation purposes, which represents 60 percent of market value. The total valuation placed by respondent upon land, including dredging and excluding overheads, is $1,580,118.

Respondent excepts to the examiner's recommended reduction of the unit price on Lot 2 of the Ala Moana drydock land from $1.50 to $1.10 per square foot. This land consists of two lots separated by a street. Lot 1, which has no water frontage, is vacant except for a shed and is used for storage purposes. Lot 2 contains the drydocks and shops and fronts on the water. The witness testified to a recent sale of improved non-water-front residential land 1,000 feet away from Lot 1 at 50 cents a square foot; also, that adjoining water-front land was selling at $1.80 per square foot. Leases of property across Ala Moana Road, capitalized at 6 percent, produce a unit value of $1.00 per square foot. Lot 1 is assessed at $43,891, which adjusted to market value, would be $73,151, or 69 cents per square foot. The assessment on Lot 2 produces a market value of $123,186, or 67 cents per square foot. The tax assessor testified that consideration was given in the assessment to the fact that the land was dredged. It will be observed that while the value assigned by the witness to Lot 1 is only 15 percent higher than market value based on the assessment, the estimate for Lot 2 is 125 percent higher. In view of all the facts we conclude that the reduction is proper. This reduces the value of land to $1,507,238 not including overheads. No allowance will be made for overheads inasmuch as market value of land reflects all the elements of value thereof. *The Minnesota Rate Cases*, *supra*.

WORKING CAPITAL

In arriving at estimated working capital, respondent's witness used the average value of material and supplies on hand during the last four years. To this was added the equivalent of a half month's pay roll, prepayments of insurance, and $50,000 for a buffer fund to meet contingencies. The total of $259,000 was rounded off to $250,000.

Summary and conclusion as to fair value.—Respondent's estimates of reproduction cost may fairly be criticized in two respects. Prices applied, except to vessels, are current or "spot" prices which, without evidence showing the present trend of prices, cannot blindly be accepted as representing normal prices which might obtain during the entire period required for constructing the property. But the most serious objection runs to Mr. Pillsbury's synthetic trend of original cost of vessels to present prices. Obviously, this method can produce only the most approximate results because prices of the numerous

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items that enter into the construction of a ship do not change uniformly. The witness supplied no underlying data from which the accuracy of the factor of 45 percent increase in cost may be verified. In the circumstances, we may take judicial notice of the trend of prices generally as did the Supreme Court in *McArdle* v. *Indianapolis Water Co.*, 272 U. S. 400. As of valuation date the prices [1] of metals and metal products, of building materials, and of all commodities as a group were substantially lower than during the years 1923, 1924, 1928, and 1929 when five of the ships were purchased. In the absence of compelling evidence to the contrary, there is no reason to believe that the trend of prices for materials entering into ship construction has differed so radically from that of commodities generally—certainly not to the extent indicated in Mr. Pillsbury's appraisal. Ignoring the alleged increase of 45 percent and adding $248,112 for additions in 1938 at cost reduces the estimate for vessels and auxiliaries approximately to $6,121,164 for cost of reproduction, new, and $3,628,940 for cost of reproduction less depreciation.

The following statement summarizes the data as to the elements of value of respondent's property used in common-carrier service as of June 30, 1938:

	Undepreciated	*Less depreciation*
1. Original cost except land	$7,412,797	$3,055,632
2. Original cost including land	8,174,880	3,741,437
3. Original cost, except land, depreciated same percentage as item 4	---------	4,440,265
4. Cost of reproduction, including overheads, except land	8,637,553	5,174,091
5. Present value of land	1,507,238	---------
6. Working capital, including material and supplies	250,000	---------

Essentially, this is a rate rather than a valuation proceeding. Therefore it is unnecessary to make a precise determination of the value of the property in question. The estimates submitted are considered insofar as they have a bearing upon the economic cost of performing the service; also as they indicate the level of rates which may avoid the taking of the carrier's property for public use without just compensation.

In addition to the elements of value mentioned above, the record shows the volume of earnings past and present, the sums estimated as necessary to meet operating expenses, hereinafter discussed, and the amount and market value of the stocks and bonds. Considering all these factors, and recognizing that the property is an integrated

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[1] See index numbers of wholesale commodity prices published by Bureau of Labor Statistics, U. S. Department of Labor.

operating enterprise and that respondent is a going concern, it is concluded, for the purpose of this particular proceeding, that the value of the property in question is not more than $6,565,000.

RATE OF RETURN

Fair return has been defined by the Supreme Court as follows:

"The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties," *Bluefield Water Works & Improvement Company* v. *Public Service Commission of West Virginia*, 262 U. S. 679.

The rate expected and usually obtained from investments with corresponding risks in the locality offers a comparable measure of return for respondent. *Willcox* v. *Consolidated Gas Co.*, 212 U. S. 19. The rate of return on real estate mortgages in the Territory is 6 percent. The Supreme Court of the Territory allowed a return of 7½ percent on the value of the Honolulu Gas Company in 1935. The Public Utilities Commission of the Territory, on the basis of rate bases established as of December 31, 1936, fixed returns ranging from 7 percent to 8 percent for certain local electric and gas companies. Respondent submitted an exhibit showing, among other things, that the ratios of market price of stocks to earnings of representative Hawaiian companies during the past six years averaged 7.96 for the utility group, 8.57 for the transportation group including respondent, and 7.78 for the sugar group. Based on these ratios and allowing for the relatively greater risks inherent in the operation of a few large expensive units, exposed to the perils of the sea, as compared with the risks of operating a land utility, respondent's treasurer testified that the company should receive a rate of at least 9 to 10 percent. A local banker thought that 8 or 9 percent would represent a fair rate. On brief, counsel for respondent contends that 8 percent is a minimum fair return.

Testimony given by one of our finance examiners shows that 29 large Hawaiian companies were able not only to increase their invested capital substantially during the five-year period, 1932 to 1937, but were also able to reduce materially their outstanding debt. The increase of invested capital during this period amounted to $16,077,500, whereas, the decrease in outstanding debt was $9,018,000. In other words, these companies had sufficient capital in the five-year period not only to provide for expansion, but to retire 78 percent of their debt outstanding at the beginning of the period. Figures were also submitted showing a general upward trend in the economic progress of the Islands through progressive increases over a ten-year period in population, tourist trade, automobile registrations, use of telephones, bank deposits, imports and exports, insurance business, and aviation transportation.

The investment risk to be evaluated is the possibility that the investor will not receive any income or that his principal will be lost. The respondent, through insurance, makes adequate provision for losses due to the hazards of operation. Its property is well maintained, and there is nothing of record to indicate that any capital for carrier operations will be required for some time to come. The company maintains reserves totalling $2,714,682 which is available for expansion or replacements before outside capital would be required. While it is true that respondent has lost some of its heavy volume traffic, nevertheless, as to cargo providing the bulk of its revenue there is no competition.

Judging from its financial history and its present sound credit standing, there appears to be no serious doubt as to respondent's ability to attract capital at reasonable rates. Of the total $5,850,000 par value [2] of common stock outstanding on valuation date, $3,150,000 or 53 percent was issued as stock dividends. The average dividend rate for 33 years ending 1937 on the total stock outstanding, including stock paid out as dividends, was 9.97 percent. The dividend paid in any year on the total stock outstanding has never been less than 5 percent, and has been as high as 40.23 percent. Annual dividends for the same period, calculated on the basis of capital actually paid into the business, have ranged from 10 percent to 96.49 percent. These dividend rates reflect earnings from noncarrier as well as carrier operations. However, in considering the risk of the enterprise there must be taken into account the earnings of the business as a whole.

Upon consideration of all the evidence, we conclude that for the purpose of this proceeding the fair rate of return on the value of respondent's property does not exceed 7 percent.

REVENUE AND EXPENSE

The Treasurer of the company estimated the probable future annual net income of the company based primarily upon the company's average experience for the past five calendar years, namely 1933–1937, inclusive, and the year 1937. The results from the five-year period cannot be wholly relied upon in view of certain changed conditions affecting operations for 1938, as for instance, the reduction of passenger fares on January 17, 1938, and the strike which began May

[2] Par value, $18 per share; market value as of June 30, 1938, $21 per share. Respondent has no securities senior to its common stock.

26, 1938, and ended about the middle of August with its consequent disruption of passenger and freight service and increased costs for wages involved in its settlement. The estimates have been modified to reflect these abnormal conditions. The following table shows respondent's estimates of net income, as compared with net income for the five-year period and for 1937, together with net income stated on the basis of revisions hereinafter discussed:

Department	Respondent's estimate of net income	Average annual net income for 5 years ended Dec. 31, 1937	Net income for year ended Dec. 31, 1937	As revised herein						
				Total revenues	Total expenses	Net income before income taxes	Allocation of drydock net loss [1]	Revised net income before income taxes	Income taxes payable	Revised estimate of net income
CARRIER OPERATIONS										
Vessels	$116,228	$345,859	$376,606	$2,141,446	$1,818,058	$323,388	[2] $9,126	$314,262	$70,439	$243,823
Drydocks	[2] 20,429	339	23,482	527,361	545,112	[2] 17,751				(3)
Terminal	61,488	64,769	83,612	152,031	73,603	78,428	[2] 497	77,931	17,467	60,464
Kona Inn	[2] 20,923	[2] 18,745	[2] 20,371	72,397	93,366	[2] 20,969		[2] 20,969		[2] 20,969
Other carrier property	6,969	7,505	1,869	36,706	27,720	8,986		8,986	2,014	6,972
Airline agencies		14,736	24,732	43,000	13,566	29,434		29,434	6,597	[4] 22,837
	143,333	414,463	490,020	2,972,941	2,571,425	401,516	9,623	409,644	96,517	313,127

[1] Reallocation of net loss from drydock operations according to drydock revenues contributed by each department. Balance of $8,128 allocated to noncarrier operations and special work.
[2] Indicates loss.
[3] Allocated.
[4] Transfer of airline agency net income from noncarrier to carrier operations.

These figures relate to respondent's common-carrier operations which, during the five-year period, accounted for approximately 71 percent of respondent's net income.

Revisions.—Respondent's estimate of passenger revenue is obviously too low. The trend during the five-year period and the seven normal[3] months of 1938 is upward. Revenue for the corresponding seven months of 1936 and 1937 was 51.82 percent and 51.63 percent, respectively, of the total revenue for each of those years. Adjusting revenue of $553,787 for the seven normal months of 1938 to an annual figure on basis of these ratios produces figures which average approximately $1,070,000 or $164,888 more than respondent's estimate.

In respondent's estimate for cost of marine insurance there is included $15,656 representing an accrual for self-insurance in excess of actual losses suffered. The company's position is that this amount should be charged to operations inasmuch as it would have to pay the same amount to an outside insurer. It must be remembered however that the self-insurance fund was created out of excess

[3] Excluding January because of fare reduction and May to August, inclusive, on account of strike.

accruals charged to operation and that income from the investment of such funds are available for dividends. The public, which has contributed the fund, should pay no more than the actual cost of carrying the risk. Therefore, the sum of $15,656 will be deducted from marine insurance expenses.

The estimate of depreciation charges submitted by respondent is excessive to the extent it ignores salvage value. Generally speaking, the original cost of vessels is depreciated on the basis of 20 years service life, and additions on the basis of remaining service life. While respondent allows 5 percent of the cost new for salvage value in its reproduction estimate, no allowance is made therefor in the estimate of annual depreciation accruals. Mr. Schmeltzer testified that salvage value should be computed at $10 per ton of estimated built weight of respondent's vessels which would amount to $116,000. Adjustments in depreciation accruals to account for this value would reduce the annual depreciation estimate $4,386. Considering salvage value, the balance of accrued depreciation of vessels as of June 30, 1938, should be reduced $76,578 and the book value increased by the same amount.

Respondent estimates an annual net loss of $20,429 for drydock operations. The average experience for the five years to December 31, 1937, shows that, to cover drydock overheads, labor was billed at an average mark-up of 66⅔ percent to the various departments, 74 percent on special work, and 52 percent on outside work. The average mark-up on material was 20 percent to departments, 23 percent on special work, and 24 percent on outside work. While these mark-ups were ample to produce sufficient revenues to take care of overheads and leave a margin of $339 during the five-year period, they fail to do so by $20,429 in the estimate because of increased taxes and other overheads. There is no certainty that outside work will produce sufficient profit to absorb this loss. Under the circumstances, it appears reasonable to allocate it proportionately on the basis of work performed during the five years. Because of the necessary reallocation of general and administrative expense the loss to be allocated is $17,751 of which amount $9,623 is allocable to common-carrier operations.

Respondent excepts to the allocation of only $9,623 of the estimated loss to common-carrier operations. As all drydock property has been valued by us as common carrier it contends that all revenue and expenses, whether from carrier or noncarrier sources, should also be classified as common carrier. The soundness of this argument is not questioned. However our adjustment of the loss does not violate the principle advanced by respondent. Drydock revenues consist of the amounts including mark-ups on labor and material for overhead, at which labor, material, plant, and service and wharfage are billed to the various departments and to outside interests, including revenues from some outside work that is obtained under competitive bidding and performed for a fixed amount. Any revenues that accrue from work performed for the various departments are reflected as departmental costs equal to the drydock revenue, so that for work done for respondent's departments there can be no true profit from the drydock operation. The only possible profit must be derived from outside work. The drydocks and appurtenances are primarily designed as a plant facility to service the steamer and auxiliary departments and the charges to these departments should be the amount necessary to reimburse the drydock department for actual costs after deducting any profits or adding any losses that accrue from outside work. In other words, the accounting should follow the principle of clearing accounts. In making its estimate respondent should have increased the mark-ups and correspondingly the drydock revenues sufficiently to take care of these increased overheads, and wipe out the loss of $20,429. If this had been done the various departments would have been billed for that additional amount in proportion to the work done for them. The net effect would have been substantially the same as our adjustment in allocating the loss to the various departments. This allocation was merely a convenient method of adjusting an error in respondent's estimate.

Net income from air-line agencies has been allocated to common-carrier income, because the services, such as administrative and accounting duties, the sale of tickets and so on, are performed by officials and employees of respondent who are primarily engaged in steamer operations. This accords with the treatment of income from drydock operations, which is allocated to common-carrier income notwithstanding a substantial amount of work is done for outsiders.

Minor changes have been made in the revenue and expense estimates in connection with other items largely to accord with the revisions mentioned above.

CONCLUSIONS

Reasonableness of rate structure.—Upon the basis of the value tentatively found herein of $6,565,000, respondent's estimated earnings revised by us to $313,127, will yield a return of 4.77 percent. This is 2.23 percent less than 7 percent, which is found herein to be a fair return. On basis of book cost less accrued depreciation, plus working capital, the return would be 7.84 percent; on this basis, but including land at present value as required by *The Minnesota Rate Cases*, *supra*, the return would be 6.51 percent. So it is clear that the rate structure as a whole is not shown to be unreasonable from the standpoint of the fair value test.

The record is devoid of any testimony from shippers, thus we are at a loss to know their estimate of the value of the services rendered. One of our rate experts introduced studies showing that respondent's rate structure averages 300 to 400 percent higher than the rate structure applying between the Philippine Islands; that respondent's rates yield earnings per mile which are 348 percent of the revenue earned by rates for comparable distances between Los Angeles and San Francisco; that respondent's rates are 102 to 500 percent of rates for comparable distances between points in Alaska and between Puerto Rico and the Virgin Islands; that respondent's local rates between Honolulu and Hilo are 177 percent of its proportional rates on the same commodities between the same points on traffic from the Orient; and that earnings per cubic foot yielded by respondent's rates from Honolulu to Hilo, 194 nautical miles, average 677 percent of earnings under rates between Honolulu and San Francisco, 2,091 nautical miles.

Rates in other trades, even though comparable in some respects, have little probative value when the lawfulness of an entire rate system is in issue. The value of the comparisons made is seriously impaired by the absence of a convincing showing that the traffic conditions in the compared trades, such as the methods, conditions, and cost of operation, the amount and characteristics of the tonnage carried, and other conditions surrounding the traffic are comparable.

Although no reduction in rates can be ordered upon this record, it is not amiss to point out that respondent announced, immediately prior to the institution of this investigation, a reduction in passenger fares which became effective January 17, 1938, averaging 18 percent on first-class accommodations and 9 percent on steerage.

Preference and prejudice.—Evidence bearing upon the matter of undue prejudice and disadvantage was presented by the proprietor of a drug store at Hilo, the Superintendent of the Hawaiian National Park, and the proprietor of the Volcano House, a hotel located in the park. Their chief complaint is that the company's tour around the Island of Hawaii is so arranged that the tourists must, of necessity, stop at Kona Inn, and are permitted only a short stopover at Hilo or the park with no opportunity to patronize the stores at Hilo, or the Volcano House, or to take full advantage of the scenic attractions offered by the park. From a business standpoint it is only natural that respondent should give preference to its own hotel accommodations over those of its competitors. But this is not the kind of undue preference that is condemned by section 16 of the Shipping Act, 1916. Respondent's only duty is to its patrons. And there is no complaint of record from any passenger of undue preference or prejudice arising from respondent's arrangements for the Island tour.

FINDINGS

Upon this record we find, for the purpose of this proceeding:

1. That Kona Inn and the drydock plant are reasonably necessary in respondent's common-carrier operations and should be classified as common-carrier property.

2. That the value for rate-making purposes of respondent's properties which are used and useful in the public service does exceed $6,565,000.

3. That the fair rate of return on such value does not exceed 7 percent.

4. That the probable net income from respondent's present rates will approximate $313,127 annually, which represents a return of 4.77 percent on present value.

5. That the evidence of record does not disclose that respondent's rate structure as a whole is unreasonable or otherwise unlawful. This finding is not an approval of individual rates, and is without prejudice to the right of shippers to file formal complaint against such rates in accordance with section 22 of the Shipping Act, 1916.

The task of calculating future revenues and expenses was complicated by the reduction in passenger fares and the strike. Therefore, the proceeding will be held open for the incorporation of evidence showing the actual net income for the calendar year 1939.

WOODWARD, *Commissioner*, concurring:

I concur in the conclusion of the report that the record does not establish that the rate structure as a whole is unreasonable or otherwise unlawful.

The report finds a value for rate-making purposes of respondent's properties which are used and useful in the public service. It finds a fair rate of return on such value and that the probable net income from respondent's present rates will yield an amount less than a fair rate of return on the value found for rate-making purposes. Assuming the correctness of these findings, it does not in my judgment necessarily follow that the respondent's rate structure as a whole is not unreasonable. A fair return upon the value of the property is only one of the tests to determine the reasonableness of rates. It is not the sole test, nor should it be overemphasized. This investigation was instituted because of complaints made informally that the rates were too high. Some of the rate comparisons introduced in the record at the Honolulu hearing by one of the rate experts of the Commission disclose that the interisland rates exceed rates for comparable and greater distances in other trades. These differences appear extreme. However, in the absence of a showing of similar transportation conditions in the compared trades, such rate comparisons are of insufficient probative value to impeach the rates in issue.

TRUITT, *Commissioner*, concurring:

Here no individual rate either is assailed or is the subject of controversy.

The case is grounded on the sole question of the lawfulness of the general rate structure of the Inter-Island Steam Navigation Company, which in turn is dependent upon a determination of a fair return upon a fair value of the property of the company used in its common-carrier operations. The "fair value" of such property, which is the rate base for determining such "fair return," involves consideration of standards laid down by a long line of opinions of the United States Supreme Court in various decisions affecting rates. In a comprehensive brief filed by counsel for the Commission, many of these cases have been carefully reviewed and summarized. In that brief it is ably argued that the "prudent investment theory" should be the *sole* test applied in determining valuation for a rate base in this case. Although this theory has found support by State Utility Commissions, text writers and some court decisions, the Supreme Court of the United States has yet to hand down an opinion upholding rates determined *solely* on a "prudent investment theory" basis. There are those who believe that an early decision to such an effect is not beyond the realm of possible expectancy. Nevertheless, unless and until such a ruling may be rendered it is my belief that the Commission, in the judicatory capacity in which it sits—as in this case—is obliged to follow [4] the existing decisions enunciated by that court and to apply the rules and standards therein laid down with respect to the elements to be considered in determining a rate base. The Commission in its report in this case has arrived at a valuation by averaging original cost of the property, except land, depreciated on the same basis as cost of reproduction new, and cost of reproduction less depreciation, and by then adding to this figure the present value of land and working capital. Such an application of all elements of value,

[4] *Hudson & Manhattan Railroad Co.* v. *Iorio*, 239 Fed. 855 (C. C. A. 2d, 1917); *Chastleton Corporation* v. *Sinclair*, 290 Fed. 348, 53 App. D. C. 373 (1923); *Travelers Mutual Casualty Co. of Des Moines* v. *Skeer, et al.*, 24 F. Supp. 805 (W. D. Mo., 1938).

including original cost and cost of reproduction less depreciation, and a rejection of the contention that book cost less recorded depreciation alone should be considered, conform, in my opinion, with the controlling decisions on the subject.[5]

For these reasons, I concur in the result reached in the report of the Commission in this case.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

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[5] *Smyth* v. *Ames*, 169 U. S. 466 (1898); *McCardle* v. *Indianapolis Water Co.*, 272 U. S. 400 (1926); *Los Angeles Gas & Electric Co.* v. *Railroad Comm. of Calif.*, 289 U. S. 287 (1933); *Railroad Comm. of Calif.* v. *Pacific Gas & Electric Co.*, 302 U. S. 388 (1938); *Driscoll et al.* v. *Edison Light and Power Co.*, 307 U. S. 104 (1939).

Order

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 4th day of June A. D. 1940

No. 471

In the Matter of Rates, Fares, Charges, Regulations, and Practices of Inter-Island Steam Navigation Company, Ltd., Between Points in the Territory of Hawaii

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This proceeding, instituted by the Commission on its own motion, having been duly heard, and full investigation of the matters and things involved having been had, and the Commission, on January 4, 1940, and the date hereof having made and entered of record reports stating its conclusions and decision thereon, which reports are hereby referred to and made a part hereof;

It is ordered, That this proceeding be, and it is hereby, discontinued.

By the Commission.

[SEAL] (Sgd.) W. C. Peet, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 478

PACIFIC AMERICAN FISHERIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

No. 490

BELLINGHAM, WASH., TERMINAL FACILITIES

Submitted November 1, 1939. Decided January 25, 1940

Practice of restricting application of established rates for intercoastal transportation of canned goods from Bellingham Warehouse Company Pier B to shipments of 250 tons or more not shown to be in violation of the Shipping Act, as alleged. Defendants not shown to have carried out an agreement in violation of that act, as alleged. Complaint dismissed.

Elimination of Bellingham Warehouse Company Pier B from application of Bellingham terminal rate on eastbound canned goods in minimum lots of 250 tons not justified, and denial of such rate to such traffic is unreasonable and unduly prejudicial. Cease and desist order entered.

H. Thomas Austern, *Stephen V. Carey*, *J. L. Collins*, *J. Harry Covington*, *Harry A. Grant*, *Evan McCord*, and *E. Marshall Nuchols, Jr.*, for complainant in No. 478; *Same* and *F. E. Lovejoy* and *Philip D. McBride* for protestants in No. 490.

M. G. de Quevedo for defendants in No. 478 and respondents in No. 490, members of the Intercoastal Steamship Freight Association other than American-Hawaiian Steamship Company and Isthmian Steamship Company.

E. M. Hopkins and *Walter B. Whitcomb* for Port of Bellingham, *H. D. Fadden* for Port of Seattle, *E. A. Chapman* for International Longshoremen's Union, Local 16, *N. A. Bass* for Longshoremen's and Warehousemen's Auxiliary, Local 1–6.

Report of the Commission on Further Hearing

By the Commission:

No exceptions were filed to the examiner's proposed report on further hearing in No. 478. In No. 490 exceptions were jointly filed by respondents members of the Intercoastal Steamship Freight Association in respect to the findings proposed with reference to service from Bellingham Warehouse Company Pier B, and oral argument thereon was had. Exceptions were also filed in No. 490 by protestant Pacific American Fisheries, Inc., seeking reparation in that proceeding.

By complaint filed March 9, 1938, in No. 478, Pacific American Fisheries, Inc., hereinafter called P. A. F., alleges that a practice of defendants [1] then existing of restricting application of their established rates for transportation of canned salmon and other canned goods from Bellingham Warehouse Company Pier B, Bellingham, Wash., to Atlantic coast ports to shipments of 250 tons or more [2] was unduly prejudicial and disadvantageous in violation of section 16 of the Shipping Act, 1916, as amended, and unjust and unreasonable in violation of section 18 thereof. The complaint further alleges that said practice was arrived at by agreement between defendants, which agreement is alleged to have been carried out by defendants in violation of section 15 of that act. Reparation is requested.

Subsequent to the filing of the above complaint, defendants (except Panama Pacific whose intercoastal service had been discontinued) and other common carriers by water in intercoastal commerce [3] by schedules filed to become effective July 12, 1938, and on later dates eliminated Astoria & Puget Sound Canning Company Dock, Bellingham Canning Company Dock, Bellingham Warehouse Company Pier B, Citizens Dock, and Quackenbush Dock, thereby cancelling rates to and from such terminals and restricting the application of their Bellingham intercoastal rates to one Bellingham terminal, namely Municipal Dock.[4] By our orders of June 10, 1938, and July 8, 1938,

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[1] American-Hawaiian S. S. Company; American Lines S. S. Corporation and Atlantic Transport Company of W. Va. (*Panama-Pacific Line*); Dollar S. S. Lines, Inc., Ltd.; Isthmian S. S. Company; Luckenbach S. S. Company, Inc.; McCormick S. S. Company; Pacific-Atlantic S. S. Company (Quaker Line); States S. S. Company-California Eastern Lines, Inc. (California Eastern Line); Weyerhaeuser S. S. Company.

[2] Joseph A. Wells' Alternate Agent SB-I No. 7, Third Amended Page 3, Note CC.

[3] *Sudden & Christenson*; Border Line Transportation Company; Calmar Steamship Corporation; Hammond Shipping Company, Ltd.; Coastwise Line; Consolidated-Olympic Line; Panama Mail S. S. Company; Northland Transportation Company; Pacific Coast Direct Line, Inc.; Puget Sound Navigation Company; Puget Sound Freight Lines; Schafer Bros. S. S. Lines; Skagit River Navigation & Trading Company.

[4] Joseph A. Wells' Alternate Agent, Amended pages to SB-I Nos. 6 and 7. Service at Puget Sound Pulp & Timber Company Dock, subject to prior booking, was not changed. At time of hearing this wharf was not in operation.

in Docket No. 490 we suspended the eliminations until November 12, 1938, and instituted an investigation to determine their lawfulness. The eliminations became effective after the expiration of this suspension period. These cases were the subject of separate hearings conducted on June 13, 1938, and of consolidated further hearing on June 5, 1939. Both proceedings will be disposed of in one report. Dollar, defendant in No. 478, and respondent in No. 490, discontinued intercoastal transportation effective December 3, 1938. Panama Mail, respondent in No. 490, discontinued intercoastal service effective August 18, 1938.

Prior to December 9, 1937, the intercoastal canal carriers involved (except Dollar, Panama Mail, and Panama Pacific, whose vessels did not operate north of San Francisco) either called their vessels direct at Pier B or handled shipments from that pier by transshipment via a local Sound carrier at Seattle. Effective on the date referred to, a 250-ton minimum of canned goods was required for the application of the terminal rate from Pier B whether for direct or transshipment service. Thereafter shipments of P. A. F. of less than 250 tons were transferred from Pier B by it to Bellingham Municipal Dock, a distance of two miles, for movement therefrom by defendants direct or by transshipment from Sound carrier at Seattle, and on and after November 12, 1938, and later dates on which the carriers respectively eliminated Pier B from Bellingham terminal rate application, shipments of P. A. F. of whatever quantity have been so delivered by it to Municipal Dock. The expense to P. A. F. of transferring its shipments, including Municipal Dock wharfage charge, is 70 cents per ton. This transfer expense is tho basis of P. A. F.'s claim for reparation in No. 478, and of its protest in No. 490 against the elimination by respondents of Pier B from application of Bellingham terminal rates entirely. The elimination of Pier B is also protested by Bellingham Warehouse Company, operator of Pier B. Elimination of Citizens Dock is protested by Citizens Dock and Puget Sound Freight Lines.

No. 478

P. A. F. operates numerous canneries in Alaska, and has an interest in the operation of two canneries in the State of Washington. It is one of the three largest Alaska salmon packers, the other two being located at Seattle and San Francisco, respectively. Ninety percent of its normal annual pack of approximately 1,000,000 cases is Alaska salmon, which is brought to Bellingham and there stored in warehouses of the Bellingham Warehouse Company, adjoining Pier B. From these warehouses the salmon is distributed by water and by rail as sales are made f. o. b. Pacific coast steamship terminal. During 1936 and the first eleven months of 1937, 36,142 tons of P. A. F. salmon moved from Pier B to Atlantic ports via intercoastal carriers. In the marketing of its salmon P. A. F. actively competes with various packers located in Seattle. The 250-ton minimum requirement in controversy has been applicable at all Seattle salmon wharves since November 8, 1936, and Seattle packers pool their shipments in order to meet that minimum, or dray them to the intercoastal carrier's Seattle terminal. A witness for Northwestern Marine Terminal Association, an organization comprised of public and private terminal operators, testifies that during the period November 8, 1936, to December 9, 1937, when the 250-ton minimum requirement applied at Seattle and not at Bellingham, the Seattle packers were thereby subjected to discrimination and detriment. During this period Nakat Packing Company, which ordinarily stores its salmon at Seattle and ships therefrom, transferred its storage and its shipping activities to Bellingham Warehouse Company and Pier B. Its retransfer to Seattle following defendants' application of the 250-ton minimum requirement at Pier B in Bellingham is instanced as evidence that such minimum requirement caused loss of business to Bellingham Warehouse Company and Pier B. Defendants' 250-ton minimum was also applicable to the Astoria & Puget Sound Canning Company's wharf during the period covered by the complaint.

Testimony of P. A. F. is that there are very few customers who buy canned salmon in quantities of 250 tons or more. It asserts that the customary market unit is 600 cases, or approximately 36,000 pounds or 18 tons, and that a minimum of 250 tons, equivalent to slightly more than 8,000 cases, was detrimental to it in meeting competition in eastern seaboard markets. Pooling of shipments to aggregate the 250-ton minimum as was and is done by Seattle packers, is declared to have been impracticable. Defendants point to the fact that during the period December 1937 to May 1939, inclusive, the monthly shipments of canned salmon to Atlantic coast originating at Pier B averaged 998 tons as proof that P. A. F. and others using Pier B were able to ship in quantities of 250 tons or more.

P. A. F. emphasizes that Pier B is on deep water, has berthing accommodations for three vessels, and is a public terminal operating under published tariff on file with the State of Washington Public Service Department. It shows that during 1937, 750,531 cases of salmon of others than itself, including salmon stored by Nakat Packing Company, were stored in the warehouse of Bellingham Warehouse Company to which that pier is adjoined, and that during

1936 and the first eleven months of 1937, 37,563 tons of eastbound intercoastal cargo moved over Pier B. The restricted extent of the use of Pier B as a public facility, however, is indicated by the fact that less than 4 percent of the 37,563 tons referred to, or an approximate monthly average of 62 tons, was the property of others than P. A. F. The entire tonnage of westbound intercoastal cargo which moved over its pier during the 23-month period concerned was for others, but totaled only 214 tons.

To Gulf ports a 250-ton minimum on general cargo, including canned salmon, was contemporaneously required by the carriers in that trade for application of their Pacific coast terminal rates. On shipments of lesser quantity, arbitraries covering the movement from Pier B, Bellingham, to Seattle of 9 and 12.5 cents per 100 pounds are added to the Seattle to Gulf carload and less carload rates, respectively. Twenty-five percent of the intercoastal shipments of P. A. F. move to Gulf ports.

It is clear from the record that defendants' application of the 250-ton minimum requirement at Seattle and not at Bellingham was an inadvertence which was corrected after a period of approximately 13 months by application of the same requirement at Bellingham. During this period complainant was advantaged over its Seattle competitors. The 250-ton requirement at Bellingham was established by defendants at the insistence of complainant's Seattle competitors, through the Northwestern Marine Terminal Association, that they be put on parity with Bellingham. It is this parity which P. A. F. alleges to have been, as to it, unduly prejudicial and disadvantageous, and unreasonable, in violation of sections 16 and 18 of the Shipping Act, 1916. These allegations are not sustained.

Complainant contends that as defendants' schedules providing for the 250-ton minimum requirement were identical in terms, were concurrently filed, and were concurrently effective, there is established a concert of action between defendants and the existence of an agreement between them. From this premise complainant argues that the application of the requirement was a carrying out of an agreement without filing and approval, in violation of section 15 of the Shipping Act, 1916. Defendants' position is that all matters of the nature concerned are determined by each defendant for itself, and are the subject of individual decision and instruction. Defendants publish and file their schedules through a common publishing agent, which fact is ascribed as the reason why their filings frequently show similarity of form and coincidence of dates. The Intercoastal Steamship Freight Association agreement on file with and approved by us authorizes the signatory lines to formulate and effect practices such as the one in question without obtaining separate approval every time a practice is revised. It is therefore evident that the alleged unlawfulness has not been proven.

We conclude and decide that defendants' practice has not been shown to have been unduly prejudicial or disadvantageous in violation of section 16 of the Shipping Act, 1916, as amended, or unreasonable in violation of section 18 thereof, as alleged. We further conclude and decide that defendants have not been shown to have carried out an agreement in violation of section 15 of that act, as alleged. An order dismissing the complaint will be entered.

No. 490

To justify the restriction of their Pacific coast terminal rates at Bellingham to one Bellingham terminal,[5] namely Municipal Dock, canal respondents show from protestants' exhibits that during 1936 and the first eleven months of 1937, no intercoastal cargo moved over Quackenbush Dock, and that over all of the other five wharves concerned the volume was 76,880 tons, or an average of about 3,343 tons per month, as follows:

	Tons eastbound	*Tons westbound*
Bellingham Warehouse Company Pier B	37,563	214
Municipal Dock	25,398	6,346
Citizens Dock	1,944	3,080
Astoria & Puget Sound Canning Co. Dock	1,205	0
Bellingham Canning Company Dock	1,130	0

Municipal Dock is located in the retail section of Bellingham, a city of 34,000 population. It is owned by the Port of Bellingham, a municipal corporation organized under the laws of the State of Washington, and operates under tariffs filed with the State Commission. Canal respondents urge that its facilities are ample to accommodate the intercoastal traffic of the port, and testimony of the chairman of the Bellingham Board of Port Commissioners is that the present capacity of Municipal Dock is sufficient to accommodate its daily business. Estimate is made by canal respondents that the per-day operating cost of an intercoastal vessel is $1,000. The approximate per day operating cost of a vessel of the Sound transshipment carrier is estimated at $150. Canal respondents assert that generally the loading of 1,000 tons of cargo at one wharf consumes about one-third the vessel time consumed in loading a 500-ton lot of cargo at each of two wharves. One canal respondent estimates that the cost of a call by it at Pier B for 500 tons, in addition to a call at Municipal Dock, would be $300. These facts are presented by canal respondents to support their position that the elimination

[5] Except in the case of Puget Sound Pulp & Timber Company Dock, as hereinbefore noted.

of the five wharves, including Pier B and Citizens Dock, from the application of their terminal rates was in the interest of economy of operation, an exercise by them of their managerial judgment, and therefore justified and lawful.

Respondents urge that, judging from the number of tons shown by protestants to have been transferred from Pier B to Municipal Dock during the three-month period of 1939 immediately preceding the further hearing, the intercoastal shipments of canned salmon therefrom were more than 267 percent of what they were during the corresponding period of 1938 before that pier was eliminated from terminal rate application. Witness for protestants testifies that the increase in the volume of such shipments in 1939 over 1938 was due to lower market prices of salmon. Increase in the volume of a protestant's shipments is not justification of a carrier's practice.

To refute the claim of respondents that the elimination of Pier B was in the interest of economy, and to illustrate and support their claims that elimination of east-bound service was arbitrary and unlawful, protestants P. A. F. and Bellingham Warehouse, through their witness, the Pacific coast manager of respondent American-Hawaiian Steamship Company, show that of the five calls made by vessels of that respondent at Municipal Dock during the period March 19 to May 1, 1939, inclusive, the only cargo lifted by two of such vessels was cargo which had been transferred from Pier B, and that practically all of the cargoes of the other three vessels concerned were similarly transferred. No in-bound cargo was discharged by any of these five vessels, and in calling at and departing from Municipal Dock they navigated the customary route over Bellingham Bay past Pier B. Outbound for Atlantic ports they loaded at Municipal Dock a total of 2,483.5 tons, all but 54.6 tons of which was canned salmon originating at Pier B. The 54.6 tons referred to consisted of three shipments, approximating 10.2 tons of paper, and 31.6 and 12.7 tons of canned salmon, respectively, which moved from Municipal Dock separately in three of the five vessels. This witness testifies further that at the time of the elimination of Pier B from terminal rate application respondents received cargo at that pier at ship's tackle, whereas cargo was and is received at Municipal Dock at point of rest on wharf. His estimate of the expense to respondents for trucking or otherwise conveying canned goods from point of rest to ship's sling is 60 cents per ton. Protestants show by this witness that had the 2,428.9 tons involved been lifted at Pier B rather than Municipal Dock, the saving to respondent American-Hawaiian would have been approximately $1,457. The cost to consignors for transferring the cargo from Pier B to Municipal Dork was approximately $1,700. These figures are presented by protestants to illustrate waste asserted to result from the elimination of Pier B from the application of terminal rates.

Respondents state that the five calls of American-Hawaiian involved during a period of less than a month and a half were unusual insofar as salmon is concerned, but do not show that the illustration is inapt as to intercoastal shipments of canned goods transferred from Pier B and lifted by them at Municipal Dock over a longer period of time and in lesser quantities. It appears from carriers' agreements and tariff filings with the Commission that the division of the joint through rate received by the Sound carrier in transporting the canned goods to Seattle is the same whether transported from Pier B or Municipal Dock. Nevertheless, since the elimination of Pier B has added to the Sound carrier's expense because canned goods are received at place of rest rather than at ship's sling, this lack of economy affecting respondents' direct call service also exists in relation to their service by transhipment.

The Pacific coast manager of respondent American-Hawaiian, witness for protestants P. A. F. and Bellingham Warehouse, states that in general it is less expensive for a carrier to lift cargo concentrated at one port terminal than to shift between terminals. He concedes, however, that Bellingham is not different from Seattle and other Puget Sound and Pacific coast ports at which shifts by respondents between terminals to lift cargoes in minimum quantities as determined by them are normal incidents of operation. Included among the shifts of respondents' vessels at Seattle are those between the salmon wharves of protestants' competitors for minimum lots of canned goods of 250 tons.

Protestants P. A. F. and Bellingham Warehouse charge that the elimination of Pier B concerned was an act of retaliation by the canal respondents against P. A. F. because of the latter's refusal to withdraw its complaint in No. 478. They show that the chairman of respondents' conference organization, the Intercoastal Steamship Freight Association, threatened the president of P. A. F. that the pier would be eliminated from terminal rate application unless such complaint was withdrawn, and that apparent authority was given by respondents to their chairman to effect such elimination. Apart from the force of such evidence as possible added proof of unreasonableness and undue prejudice, it shows an attitude toward and treatment of shippers by these respondents which is to be condemned, in view of the provision of section 14 (Third) of the Shipping Act, 1916, prohibiting resort by a subject carrier to a discriminating or unfair method because a shipper has filed a complaint.

Elimination of Citizens Dock from the application of Bellingham terminal rates is assailed by Citizens Dock, and by Puget Sound Freight Lines, owner and operator of that dock, as unlawful on the grounds that such elimination is inconvenient to Bellingham consignees and a burden and expense to Puget Sound Freight Lines. Vessels of the protestant Sound carrier leave Seattle in the evening with local cargo and cargo transhipped to it by respondent canal lines, arriving at Bellingham at 7 a. m. the following day. Early morning delivery at Bellingham of the local cargo is necessary because of truck competition. Local cargo is unloaded at Citizens Dock, and prior to the elimination of that dock by respondents, intercoastal cargo also was unloaded there. But since the elimination, the Sound vessel after unloading local freight at Citizens Dock, proceeds a distance of approximately ¼-mile to Municipal Dock to discharge intercoastal freight. This shift consumes from 45 minutes to an hour's time, and upon the record involves an operating expense to the Sound carrier of approximately $6. Puget Sound Freight Lines regularly serves Municipal Dock, and it is not shown that delivery of intercoastal cargo is the sole cause of the vessel shift to that terminal.

As hereinbefore shown, only 5,024 tons of intercoastal cargo—3,080 tons in-bound, and 1,944 tons out-bound—were handled over Citizens Dock during a period of 23 months. This amount of tonnage does not warrant the continuance of the wharf as an intercoastal terminal. It follows that its elimination is justified. In view of the lack of any cargo over Quackenbush Dock during the same 23-month period, only 1,205 tons over Astoria & Puget Sound Canning Company Dock, 1,130 tons over Bellingham Canning Company Dock, and 214 west-bound tons over Bellingham Warehouse Company Pier B, these eliminations are likewise justified.

The exceptions and argument on behalf of association respondents on jurisdictional and other grounds have been considered and are determined to be without merit. The exceptions of P. A. F. seeking reparation overlook that No. 490 is a suspension proceeding instituted and conducted under section 3 of the Intercoastal Shipping Act, 1933. Reparation awards by us are authorized only in connection with proceedings under section 22 of the Shipping Act, 1916.

Following service of the examiner's report, respondents American-Hawaiian, Isthmian, Luckenbach, Pacific-Atlantic, States, and Weyerhaeuser reestablished, by duly filed schedules, the application from Pier B of their Bellingham terminal rate on east-bound canned goods when shipped in minimum quantities of 250 tons.

We find that the elimination by respondents Calmar and McCormick of Bellingham Warehouse Company Pier B from the application of their Bellingham terminal rate for east-bound intercoastal transportation of canned goods in minimum quantities of 250 tons has not been justified, and that denial by these respondents of such rate therefrom, in view of their contrary practice at Seattle, is, and for the future will be, unjust and unreasonable, in violation of section 18 of the Shipping Act, 1916, as amended, and unduly prejudicial, in violation of section 16 of that act. An order requiring respondents Calmar and McCormick to cease and desist from the said violations of sections 18 and 16 will be entered.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 25th day of January A. D. 1940.

No. 478

PACIFIC AMERICAN FISHERIES, INC.

v.

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

No. 490

BELLINGHAM, WASH., TERMINAL FACILITIES

These cases being at issue upon complaint and answers on file or having been instituted by the Commission on its own motion without formal pleading, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been made, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaint in Docket No. 478 be, and it is hereby, dismissed; and

It is further ordered, That respondents Calmar Steamship Corporation and McCormick Steamship Company be, and they are hereby, notified and required to cease and desist, on or before March 11, 1940, and thereafter to abstain, from the unreasonableness, and undue prejudice, in violation of sections 18 and 16, respectively, of the Shipping Act, 1916, as amended, herein found.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, Jr.,
Secretary.

UNITED STATES MARITIME COMMISSION

No 503 [1]

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE), ET AL.

Submitted November 6, 1939. Decided February 13, 1940

Upon rehearing, found that as a result of the withdrawal of complainants' vessels from the trades involved, the issues presented herein have become moot. Complaints dismissed without prejudice to complainants' right to petition for reopening of proceeding upon their reentry in the trade.

Farnham P. Griffiths and *Joseph B. McKeon* for complainants.
Chalmers G. Graham for defendants.

REPORT OF THE COMMISSION

BY THE COMMISSION:

In the original report herein, 1 U. S. M. C., decided July 27, 1939, it was found that defendants' refusal to admit Brodin Line to conference membership while maintaining contracts with shippers was not unjustly discriminatory, unfair, detrimental to commerce of the United States, unduly prejudicial, or otherwise unlawful. The complaints were dismissed.

Upon petition of complainants, by order dated October 18, 1939, we reopened these proceedings for rehearing, which was had, beginning November 2, 1939, at San Francisco, California. The purpose of the rehearing was to bring the record down to date as it appeared that conditions had changed materially as a result of the European war.

[1] This report also embraces No. 504, *Same* v. *Same*, and No. 505, *Same* v. *Same*.

Although the complainants in these cases were Hind, Rolph & Company, Inc., and Rederiaktiebolaget Disa-Kare, it does not appear of record that any application has ever been made by Hind, Rolph & Company for admission to the conference in its own right. As to the other complainant, it appears that it is, in fact, two corporations, namely, Rederiaktiebolaget Disa and Rederiaktiebolaget Kare, and that it was only on their behalf that applications for admission were filed, consequently they are the only proper complainants.

Since the rehearing it appears that the two vessels employed by complainants in these trades, namely the *O. A. Brodin* and the *Disa* are proceeding to Sweden under recall orders from their owners. In view of the fact that complainants have recalled these vessels, thereby withdrawing service offered by them in this trade, the issues presented have been rendered moot. An order will be entered dismissing the complaints without prejudice to complainants' right to petition for reopening of this proceeding, or to file a new complaint if and when they reenter the trade involved.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 27th day of July, A. D. 1939.

No. 503

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 504

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

No. 505

HIND, ROLPH & COMPANY, INC., ET AL.

v.

COMPAGNIE GENERALE TRANSATLANTIQUE (FRENCH LINE) ET AL.

These cases being at issue upon complaints and answers on file, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had, and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That the complaints in these proceedings be, and they are hereby, dismissed.

By the Commission.

[SEAL]

(Sgd.) W. C. PEET, JR.,
Secretary.

UNITED STATES MARITIME COMMISSION

No. 557

BALTIMORE, MD.-VIRGINIA PORTS WINE RATES

Submitted January 15, 1940. Decided March 1, 1940

Proposed any-quantity port-to-port commodity rates on wine between Baltimore, Md., on the one hand, and Norfolk and Newport News, Va., on the other, found not justified. Suspended schedules ordered canceled without prejudice to the filing of new schedules in conformity with the findings.

L. H. Hogshire for Norfolk, Baltimore and Carolina Line, respondent.

T. C. Crouch for Middle Atlantic States Motor Carrier Conference, protestant.

Charles Clark for Chesapeake Steamship Line and Baltimore Steam Packet Line and *A. P. Donadio* for Trunk Line Freight Association, interveners.

REPORT OF THE COMMISSION

BY THE COMMISSION:

By schedules filed to become effective November 20, 1939, respondent Norfolk, Baltimore, and Carolina Line, Incorporated, proposed to establish a local any-quantity commodity port-to-port rate of 22 cents per hundred pounds for the transportation of wine, in cases, between Baltimore, Md., and Norfolk, Va., and with respondent Buxton Lines, Incorporated, a joint any-quantity commodity port-to-port rate of 24 cents on wine in cases, moving between Baltimore and Newport News, Va., to be competitive with a motor common-carrier any-quantity rate on wine from Baltimore to Norfolk of 12 cents per case maintained for about 5 years by Jimmie Thomas Bryant. Upon protest of Middle Atlantic States Motor Carrier Conference, Inc., the operation of the schedules was suspended until March 20, 1940.

This proceeding was heard jointly with proceedings before the Interstate Commerce Commission involving similar water and motor carrier rates. At the hearing Chesapeake Steamship Line and Baltimore Steam Packet Line, common carriers by water serving Baltimore and Norfolk and under the jurisdiction of the Interstate Commerce Commission, intervened on behalf of respondents; Trunk Line Freight Association, an organization of railroads, intervened on behalf of protestant. Protestant is an organization of about 500 motor common carriers transporting property in the States of New York, Pennsylvania, New Jersey, Delaware, Maryland, Virginia, West Virginia, and the District of Columbia, not including Bryant. Respondent Norfolk, Baltimore, and Carolina operates two small diesel type vessels of about 250 and 350 cargo tons capacity between Baltimore and Norfolk, 198 statute miles, on a daily schedule, carrying miscellaneous freight. Respondent Buxton, a common carrier by water, furnishes on-carrier service to Newport News.

Wine is shipped in boxes containing pints, fifths, and gallons ranging from 37.5 to 45 pounds each, averaging about 40 pounds. Witness Bryant testified that for insurance purposes the value of an average truck load of 550 cases weighing 22,000 pounds is between $1,500 and $1,700. Witness for respondent Norfolk, Baltimore, and Carolina asserted that the value does not exceed $3.50 per case of 12 quarts and goes as low as $2.50, or less than a case of high-grade beer, the container of beer being returned and that of wine not. The alcoholic content is not shown.

Although the rates in question are proposed to apply between the ports, the traffic moves southbound from Baltimore where two wine manufacturers are located. During the past several years respondents have lost all of the movement to Bryant. According to witness Bryant the movement is not steady. Sometimes Bryant hauls a load every 2 weeks; at other times a load once a month or more. Railroads do not participate in the traffic. Recently the water and rail carriers found that Bryant was carrying all of it at the 12-cent per case rate. The proposed rates are an attempt by respondents to regain a share of this business.

Respondents do not now maintain commodity rates on wine between Baltimore and Norfolk. Under their exceptions to the governing official classification, wine, in carloads, in glass in wicker baskets; in containers in boxes or barrels; or in bulk in barrels is rated class 50, minimum 30,000 pounds and class 44, minimum 40,000 pounds. The class 50 and 44 rates are 32 and 27 cents per 100 pounds, respectively. The less-than-carload rates of respondents are subject to official classification which classes wines according to the alcoholic content. Wine less than 3.2 percent by weight of alcohol is rated second class, while that exceeding 3.2 percent is first class. The second-class rate is 53 cents and first-class is 62 cents. Witness for respondents testified that their port-to-port rates were 10 percent lower than water-truck rates maintained between Baltimore and Virginia points.

Respondents take the position that the proposed rates are necessary to meet Bryant competition, that wine will not move between the points in question at class rates and that the proposed rates are compensatory. Bryant's rate of 12 cents per case weighing 40 pounds is equivalent to 30 cents per 100 pounds. Its operation includes pick-up service from manufacturing plants in Baltimore and delivery to consignees' doors at destination, while respondents' rates apply from their Baltimore terminal to their terminals at Norfolk and Newport News. Respondents estimate that shippers would have to pay at least 10 cents per 100 pounds for the pick-up and delivery services to and from their terminals. They are satisfied with a rate 10 cents lower than competitive motor carriers' rates which would place them on a rate parity considering the estimated pick-up and delivery service. Bryant's position is that he would "be glad" to increase his rate but is forced to maintain the present rate because of some unknown motor carrier competitor, which he has been told, is now offering transportation at 10 cents per case.

Respondents point out that the suspended rate of 22 cents yields a per ton-mile revenue of 2.67 cents based on a distance of 165 nautical miles, Baltimore to Norfolk. In the absence of estimated cost of handling wine at the terminals, damage ratio, and stowage factors that figure is not of itself proof of compensatory revenue even though it may compare favorably with revenue on other freight.

Protestants express the fear that if the proposed rates become effective they may lead to a spreading of unduly low rates. That possibility is remote as long as both the Interstate Commerce Commission and this Commission have the power of suspension and minimum rate jurisdiction.

Wine is high-grade commodity. The proposed rates would apply to "high" wine as well as wine of less value and alcoholic content. Since the wine in question generally moves in shipments of about 22,000 pounds, the record affords no justification of either less-than-carload or any-quantity commodity rates. Nor is there justification for any commodity rates northbound.

We find that the proposed rates have not been justified but that a carload commodity rate of 30 cents, minimum 20,000 pounds, from Baltimore to Norfolk and Newport News has been justified. The suspended schedules will be required to be canceled and the proceedings discontinued without prejudice to the establishment of the rate in accordance with the findings.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., on the 1st day of March, A. D. 1940

No. 557

BALTIMORE, MD.-VIRGINIA PORTS WINE RATES

It appearing, That by order dated November 17, 1939, the Commission entered upon a hearing concerning the lawfulness of the rates, charges, regulations, and practices stated in the schedules enumerated and described in said order, and suspended the operation of said schedules until March 20, 1940;

It further appearing, That a full investigation of the matters and things involved has been had, and that said Commission, on the date hereof, has made and filed a report containing its conclusions and decision thereon, which said report is hereby referred to and made a part hereof;

It is ordered, That the respondents herein be, and they are hereby, notified and required to cancel said schedules, on or before March 20, 1940, upon notice to this Commission and to the general public by not less than one day's filing and posting in the manner prescribed in section 2 of the Intercoastal Shipping Act, 1933, and that this proceeding be discontinued.

By the Commission.

[SEAL] (Sgd.) R. L. McDONALD,
Assistant Secretary.

UNITED STATES MARITIME COMMISSION

No. 514[1]

Intercoastal Rate Structure

Submitted February 28, 1940. Decided April 9, 1940

1. Minimum reasonable level of rates and charges of common carriers by water in west-bound intercoastal commerce determined and prescribed. Rates and charges of certain respondents which are lower than such minimum reasonable level found unreasonable.
2. Respondents' system of proportional rates found not unlawful without prejudice to future conclusions that may be reached in proceedings involving specific rates.
3. Respondents' port equalization rules found unreasonable.
4. Respondents' practice of absorbing on-carrier costs and divisions of joint through rates not shown to be unlawful.
5. Nos. 514 and 524 assigned for further hearing for the sole purpose of determining a uniform mixing rule.
6. Rednctions in certain west-bound rates proposed in No. 534 found unlawful. Schedules ordered canceled.

Charles S. Belsterling and *Thomas F. Lynch* for Isthmian Steamship Company, respondent in No. 514; *Oliver P. Caldwell* and *R. H. Specker* for Luckenbach Steamship Company, Inc., intervener in No. 524 and respondent in No. 534; *M. G. de Quevedo* for complainants in No. 408; *Harold S. Deming* for defendants in No. 408 and for Shepard Steamship Company, respondent in No. 514 and intervener in No. 534; *R. O. Flood* and *Francis H. Robinson* for Flood Lines, Inc., respondent in No. 514; *Alexander Gawlis* for Merchants and Miners Transportation Company, respondent in No. 514; *Joseph J. Geary* and *Ramond F. Burley* for McCormick Steamship Company, respondent in Nos. 514, 524, and 534; *Chalmers G. Graham* for Shepard Steamship Company, respondent in No. 514; *Robert A. Grantier*, *Reginald S. Laughlin* and *M. J. Buckley* for American

[1] This report also embraces No. 408, American-Hawaiian Steamship Company et al. *v.* Shepard Steamship Company et al., No. 524, Mixed Carload Rule-McCormick Steamship Company and No. 534, Westbound Carload Commodity Rates.

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President Lines, Ltd., complainant in No. 408, respondent in No. 514; intervener in No. 524, and protestant in No. 534; *E. Holzborn*, *Neil S. Laidlaw*, and *James P. O'Kelley* for Swayne & Hoyt, Ltd. (Gulf Pacific Line), respondent in No. 514; *Julian M. King* for Agwilines, Inc. (Clyde Mallory Lines), respondent in No. 514 and for Lykes-Coastwise Line, Inc., Mooremack Gulf Lines, Inc., Pan-Atlantic Steamship Corporation, Southern Pacific Company (Southern Pacific Steamship Lines "Morgan Line"), and Southern Steamship Company, interveners; *F. E. Lovejoy* for Puget Sound Freight Lines, The Border Line Transportation Company, Puget Sound Navigation Company, Puget Sound Freight Lines, and Skagit River Navigation and Trading Company, respondents in No. 514; *Frank Lyon* for American-Hawaiian Steamship Company, complainant in No. 408; *Parker McCollester* for American-Hawaiian Steamship Company, complainant in No. 408, respondent in No. 514, protestant in Nos. 524 and 534, for Luckenbach Steamship Company and Luckenbach Gulf Steamship Company, respondents in No. 514; *H. E. Manghum*, *Allen P. Matthew*, and *F. W. Mielke* for The California Transportation Company and Sacramento & San Joaquin River Lines, Inc., respondents in No. 514; *R. T. Mount*, *H. W. Warley*, and *Edmund J. Karr* for Calmar Steamship Corporation, respondent in No. 514; *R. A. Nicol* for California Eastern Line, Inc., and Pacific-Atlantic Steamship Co. (Quaker Line), respondents in Nos. 514 and 534 and interveners in No. 524; *W. G. Oliphant* for Inland Waterways Corporation, respondent in No. 514; *M. C. Pearson* for Mississippi Valley Barge Line Company, respondent in No. 514; *Clement C. Rinehart* for the Baltimore Mail Steamship Company (Panama Pacific Line), complainant in No. 408, respondent in No. 514 and protestant in Nos. 524 and 534; *W. P. Rudrow* and *J. A. Russell* for (Arrow Line) Sudden & Christenson, respondent in Nos. 514 and 534; *M. Sullivan* for The Bull Steamship Line, respondent in No. 514; *John W. Van Gordon* and *Charles J. Maley* for Pacific Coast Direct Line, Inc., respondent in Nos. 514 and 534; and *Joseph Wyatt* for The Union Sulphur Co., respondent in No. 514.

B. C. Allin, *Joseph M. Arnold*, *Markell C. Baer*, *K. L. R. Baird*, *J. S. Bartley*, *Milton P. Bauman*, *Charles A. Beardsley*, *L. A. Becker*, *Saul C. Billing*, *H. E. Boyd*, *Hugh B. Bradford*, *H. R. Brashear*, *H. S. Brown*, *H. W. Browne*, *J. G. Bruce*, *Walter H. Brusche*, *Paul J. Carey*, *William M. Casselman*, *M. F. Chandler*, *A. J. Chrystal*, *Julius Henry Cohen*, *E. M. Cole*, *W. A. Cox*, *George D. Cron*, *R. G. Curry*, *Robert De Kroyft*, *M. L. Dickerson*, *T. G. Differding*, *F. M. Dolan*, *C. F. Dowd*, *S. S. Eisen*, *Harry S. Elkins*, *Charles J. Fagg*, *R. C. Fels*, *A. H. Ferguson*, *C. D. Flowers*, *N. W. Ford*, *H. M. Frazer*, *J. Freed, R. M. Gaddis, H. H. Gibson, George O. Griffith, William H. Hackett, Robert Hamilton, E. C. Harrop, M. J. Hawkins, J. K. Hiltner, Lloyd B. Hughes, H. Ignatius, John K. Jackson, R. C. Johnston, T. Bernard Jones, W. Reginald Jones, L. H. Kentfield, H. E. Ketner, T. H. Kidd, C. C. Kirkpatrick, Frank Korinek, E. F. Lacey, Wilbur LaRoe, Jr., George M. Leedom, H. A. Lincoln, T. A. L. Loretz, Frank H. Luther, Irving F. Lyons, G. E. Mace, H. E. Manghum, Albert Mansfield, J. F. Marias, W. W. McCoubrey, Jay W. McCune, E. J. McGuire, L. S. McIntyre, C. A. Mitchell, W. A. Moore, William R. Moore, A. H. Nelson, Rex M. Nielson, M. F. Nugent, Milton O'Donnell, W. B. O'Leary, George J. Olsen, C. Pascarella,* W. *H. Pease, Sanford Peters, Linwood L. Pitt, W. F. Price, Frank Rich, Walter A. Rohde, James L. Roney, Joel Rosenson, Harry G. Rowe, Charles R. Seal, Louis A. Schwartz, Ralph L. Sheperd, E. G. Siedle, H. F. Sixtus, C. M. Smith, J. C. Sommers, A. D. Spang, J. W. Stannard, Rene A. Stiegler, W. G. Stone, Oscar Swiedler, G. H. Thompson, W. L. Thornton, Jr., E. H. Thornton, R. T. Titus, J. Richard Townsend, Loyal F. Van Kleeck, Frederick M. Varah, H. J. Wagner, Reginald F. Walker, Paul Weaver, W. W. Weller, A. C. Welsh, Edwin G. Wilcox, B. F. Williams, Samuel H. Williams, C. B. Woods, Elmer Westlake, J. L. Williams,* and *J. D. Youman* for interveners.

David E. Scoll for the Commission.

Report of the Commission

By the Commission:

Exceptions to the examiner's proposed report were filed by certain respondents and interveners to which replies were made.

The issues were orally argued. Our conclusions differ somewhat from those recommended by the examiner.

Complainants in No. 408 are American-Hawaiian Steamship Company, The Baltimore Mail Steamship Company, United States Lines Company, American President Lines, Ltd. (successor to Dollar Steamship Lines, Inc., Ltd.), and Luckenbach Steamship Company, Inc., common carriers by water in intercoastal commerce. Defendants are Shepard Steamship Company, a common carrier by water in intercoastal commerce and on-carriers participating in Shepard rates.[2] By complaint, as amended October 22, 1938, complainants allege that the maintenance by defendant Shepard of rates substantially lower as a whole than those contemporaneously maintained by complainants for similar intercoastal transportation "is for the deliberate purpose, and has the deliberate effect, of diverting traffic

[2] See appendix A.

from the route of each complainant to the route of defendant Shepard Steamship Company, thereby attracting to the route of defendant Shepard Steamship Company a share of the traffic available for intercoastal transportation greater than it is justly entitled to," and that Shepard's rates, charges, classifications, tariffs, and the regulations and practices relating thereto are unjust and unreasonable in violation of section 18 of the Shipping Act, 1916. Just and reasonable minimum rates and charges and reasonable classifications, tariffs, regulations, and practices are sought.

On December 15, 1938, Shepard filed a petition for an order enlarging No. 408 to include a general investigation by us of the entire intercoastal rate structure. Supporting petitions were filed by various port and shipper interests. After hearing in No. 408 we instituted No. 514 in response to these petitions.

No. 514 is an investigation instituted by us upon our own motion concerning the lawfulness of the rates, charges, rules, regulations, and practices of common carriers subject to the Intercoastal Shipping Act, 1933, as amended, for and in connection with the transportation of property in interstate commerce by way of the Panama Canal, with a view to making such order or orders or taking such other action as may be warranted by the record. All canal carriers and participating on-carriers were named respondents. (See appendix B.) We announced that the scope of hearing would include the following subjects:

1. Whether the situation in the intercoastal traffic justifies the establishment of one or more minimum rate levels.
2. The lawfulness of such proportional rates as are now in effect.
3. The lawfulness of such port equalization rates as are now in effect.
4. The lawfulness of absorbing in whole or in part through divisions or otherwise the costs of on-carriage to ports which are never, or seldom, served by vessels of the carrier absorbing such costs.
5. The lawfulness of granting the respective carload rates to various commodities shipped in quantities which are less than carload if the total of the combined commodities so shipped equal a carload minimum.
6. The actual level, or levels, at which the minimum rates should be established.

Nos. 408 and 514 have been consolidated.

In No. 524, McCormick Steamship Company and participating on-carriers[8] by schedules filed to become effective May 8, 1939, proposed to change their existing schedules governing the application of rates, charges, regulations, and practices with respect to the intercoastal

[8] See appendix C.

transportation of commodities in mixed carloads. The purpose of the proposed changes is to meet similar mixed carload provisions maintained by Calmar Steamship Corporation. By order of May 1, 1939, we suspended the operation of the proposed schedules until September 8, 1939. After hearing under special permission granted by us, the operation of the schedules in question was further postponed from September 8 to an indeterminate date.

In No. 534 (Arrow Line) Sudden & Christenson, Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific Coast Direct Line, Inc. (Weyerhaeuser Line), (Quaker Line) Pacific-Atlantic Steamship Co., and States Steamship Company (California Eastern Line) and participating on-carriers[4] by schedules filed to become effective June 15, 1939, proposed reductions in carload rates on 33 commodities from Atlantic to Pacific coast ports. By order of June 6, 1939, we suspended the operation of the proposed schedules until October 15, 1939. Under special permission granted by us the operation of the schedules were further postponed to an indeterminate date. The suspended schedules propose reductions in rates to the basis now maintained by Shepard.

The hearings developed that the major intercoastal problems involve competition between the carriers for west-bound cargo. This report, unless otherwise stated, therefore, will be confined to west-bound rates and services. Intercoastal Steamship Freight Association and numerous port authorities, civic organizations, chambers of commerce, trade and traffic associations, individual shippers, and common carriers by water intervened. The term "respondents" will mean only canal carrier respondents. Rates will be stated in cents per 100 pounds, west-bound only.

For historical background of intercoastal rates, practices, classification of lines into A, B, and C groups, conference organizations, *et cetera*, see *Intercoastal Rates of Nelson Steamship Co.*, 1 U. S. S. B. B. 326 and *Intercoastal Investigation, 1935*, 1 U. S. S. B. B. 400.

There are 14 common carriers regularly engaged in west-bound intercoastal commerce. They are American-Hawaiian Steamship Company, American President Lines, Ltd. (Arrow Line), Sudden & Christenson, The Baltimore Mail Steamship Company (Panama Pacific Line), California Eastern Line, Inc., Calmar Steamship Corporation, Isthmian Steamship Company, Luckenbach Gulf Steamship Company, Inc., Luckenbach Steamship Company, Inc., McCormick Steamship Company, Pacific-Atlantic Steamship Co. (Quaker Line), Pacific Coast Direct Line, Inc., Shepard Steamship Company, and Swayne & Hoyt, Ltd. (managing owners, Gulf Pacific

[4] See appendix D.

Line). Atlantic, Gulf, and Pacific coast ports of call west-bound of each of these carriers are shown in appendix E.

History and the present situation reveal the futility of respondents' attempts to establish and maintain a stabilized and sound west-bound rate structure. This is due to short-sighted policies of steamship principals to secure competitive rate advantages for themselves. A cursory survey of the present west-bound rate structure shows that all respondents are at fault in this respect. Such competitive practices have resulted in utter disorder and confusion in the rate structure. Rate cutting to meet real or imaginary competition of transcontinental rail, rail and water, motor carrier, and other intercoastal carriers have been indulged in by all respondents to secure traffic without due regard to accepted principles of rate making.

PRESENT WEST-BOUND RATE STRUCTURE

Rates for respondents are published in four tariffs issued by Wells, Calmar, Shepard, and Flood. Each will be considered in the order named.

At the time of hearing in No. 408, respondents serving the Atlantic coast were members of Intercoastal Steamship Freight Association (agreement No. 5410) with the exception of Shepard. American-Hawaiian has since withdrawn and Luckenbach has filed, but temporarily deferred, its withdrawal. Rates are filed for all members, except Calmar, and for American-Hawaiian by Joseph A. Wells, alternate agent. American-Hawaiian (North Atlantic Service), Luckenbach, Baltimore Mail, and American President are classified in the association agreement and in the Wells tariff, as A lines. All other members and American-Hawaiian (South Atlantic Service) are B lines. A and B line rates are the same except that on specified commodities shown in appendix F so-called handicap rates are published for application by the A lines which are 2.5 cents higher than the B line rates. Both the measure of the handicap rates and the commodities selected for their application have been, and still are, matters of controversy between the A and B lines. The handicap system may be described as an arbitrary basis of rates agreed upon between the lines and designed to divide traffic between them without regard to value of service to the shipping public. It is based upon such considerations as frequency of sailings or time in transit. American-Hawaiian and Luckenbach regard it as a measure of compromise between the lines. Indicating that it is not a satisfactory bargain, witness for McCormick testified that it gives the cream of the traffic to the A lines, leaving the B lines to "live on the crumbs of the trade." Prior to the inauguration of service by

Baltimore Mail at Baltimore in 1938, A line service was confined to ports north thereof. The B lines serving Baltimore consider Baltimore Mail is now making serious inroads on traffic hitherto considered as theirs, thus lessening the value of the consideration upon which the handicap rates were based.

The Wells tariff names proportional rates applicable to certain commodities shown in appendix G originating at specified interior points. They are lower than port-to-port rates on the same commodities, and are designed to be competitive with rail rates. Proportional rates apply to carload quantities only. Calmar is the only respondent opposed to proportional rates.

On commodities shown in appendix H originating at interior points generally in Central Freight Association territory, Wells provides that on carload shipments transported by continuous rail movement to New York and Philadelphia for movement to Pacific coast ports, differentials of 3 and 1 cents, respectively, are deductible from the carload rates named in the tariff. This is called port equalization, the purpose of which is to offset rail Atlantic port differentials thus equalizing the total charges for transportation of the selected commodities from interior points through Baltimore, Philadelphia, and New York to the Pacific coast. Port equalization is a source of discord among respondents and has long been used by them as a bargaining factor, some adopting the system merely to be competitive with others.

The rates published by Wells are blanketed from and to the ports shown in appendix I. Between other ports combination rates made by adding the canal and on-carrier factors apply. American President and Baltimore Mail do not call direct at ports north of San Francisco but transship cargo to such ports at the published rates. Other respondents frequently transship to ports seldom or never served by them at the regular rates in competition with lines regularly serving such ports by direct call service. This practice is another disturbing factor in the trade.

Due to railroad competition the Wells tariff, as well as all others, publishes intercoastal rates on carload and less-than-carload bases with carload minima. To meet rail competition, the conference lines originally followed the railroad practice of providing mixed carload rules. Later Wells modified the mixing provisions to meet certain departures from the standard mixing rules published by Calmar to be competitive with Calmar on certain traffic. The present general mixing provisions in Wells' tariff and its definition of a carload shipment are shown in appendix J. Exceptions to the general mixing provisions found in individual rate items are numerous.

In general, Calmar maintains the B line rates, with certain exceptions, from and to the ports shown in appendix K. It does not publish proportional rates but names the B line proportional rates as port-to-port rates. Since it does not load west-bound cargo at New York it applies port equalization only at Philadelphia by deducting a differential of 1 cent, carload or less-than-carload, on any cargo moving under its own power or by private, pubic, or Government-owned dray, rail, truck, lighter, or barge to Philadelphia and there loaded into Calmar's vessels for transportation to the Pacific coast, provided such traffic originates in the same interior territory previously described in application of the Wells port equalization system. Another radical departure from the Wells tariff is Calmar's mixing provision shown in appendix L. The A and B lines contend that the Calmar mixing rule contributes to the breaking down of the less-than-carload rate structure. McCormick's action to meet it is evidence that other lines are likely to adopt competitive measures if Calmar's rule is found lawful in these proceedings.

Appendix M shows the ports between which Shepard publishes west-bound rates. Because it claims to provide inferior service as campared to its competitors, Shepard maintains, for the most part, rates lower than the association lines. This has always been one of the major sources of contention between respondents.

The advent of Flood as a common carrier in intercoastal commerce during the pendency of these proceedings has had no apparent effect on the rate structure as a whole and will not be further considered herein.

Rates from the Gulf of Mexico to the Pacific coast are published in one tariff by Isthmian Steamship Company, Luckenbach Gulf Steamship Company, Inc., and Swayne & Hoyt, Ltd. (Gulf Pacific Line), members of Gulf Intercoastal Conference (agreement No. 5910). There are no other common carriers in that trade. Gulf Pacific Mail Line, Ltd., maintains a membership in the conference but has no voting power. The port-to-port rates are generally the same as the B line rates. In contrast to the Atlantic lines, Gulf respondents maintain joint through rail-barge-ocean and barge-ocean rates from interior points which are less than the combination of factors to and from Gulf ports. According to an exhibit of record about 23 percent of all west-bound cargo handled by Gulf Pacific in 1938 moved under joint rail or barge rates. With the exception of Alameda, Oakland, Seattle, and Tacoma, rates of Gulf lines apply on cargo handled in direct call service. Cargo from Gulf ports to Stockton and Sacramento is transshipped at San Francisco Harbor and is charged an arbitrary over the San Francisco rate. Rail and truck competition for traffic to the Pacific coast is more keen from the Gulf than from the Atlantic coast.

Some shippers testified that as the result of real or imaginary competition, rates maintained by all respondents are lower on many commodities than necessary to hold cargo. While treatment of individual rates on particular commodities is not within the scope of No. 514, a serious threat to important carrier revenue is revealed by intervener Pacific Coast Steel Fabricators' Association whose witness demonstrated by undisputed testimony how west-bound rates on fabricated iron and steel articles were being forced down in a "vicious cycle" by shippers who play the railroads against respondents and *vice versa*, using both transportation agencies as pawns in an effort to break down an important part of the rate structure.

ANALYSIS OF FINANCIAL POSITION OF PRINCIPAL RESPONDENTS AND RESULTS OF OPERATIONS

Evidence respecting the financial position of respondents and the results of their operations consisted of data in our Economic Survey of Coastwise and Intercoastal Shipping submitted to the Congress March 15, 1939, which was stipulated into this record by reference, and in exhibits introduced by a witness for the Commission. Evidence respecting its net income from intercoastal operations for the year 1938 was introduced by a witness for respondent Isthmian.

The unsatisfactory financial position of the intercoastal carriers as of December 31, 1937, their resulting inability to replace old tonnage without additional capital and the major factors which have contributed to the present difficulties are set forth in the above-mentioned survey. Among the major factors shown to have contributed to the present unsatisfactory condition are: (1) Increased operating expenses; (2) insufficient net revenues to meet capital charges, depreciation, and provide reserves for replacement. Evidence bearing on these two factors will be discussed hereinafter.

The principal respondents at December 31, 1938, and the percentage of their total vessel operating revenue derived from intercoastal service is shown in the following tabulation. The percentages are based on five years' revenue to December 31, 1938, except as otherwise shown.

	Period	*Percent*
American-Hawaiian		98.71
Baltimore Mail	Aug. 2, 1938, to Dec. 31, 1938	100.00
California Eastern Line	Year 1938	100.00
Calmar		100.00
Christenson S. S. Co.		98.61
Luckenbach		99.89
Luckenbach Gulf		100.00
McCormick		68.63
Pacific-Atlantic		92.89
Seekonk Corporation		100.00
Shepard		99.21
Swayne & Hoyt		98.15
Weyerhaeuser		100.00
Pacific Coast Direct		98.60

Other respondents at December 31, 1938, the greater portion of whose revenues was derived from other trade routes, are shown below, together with the percentage of their total vessel operating revenue received from intercoastal service for the periods stated.

	Period	Percentage
American President (successor to Dollar)	4 years to December 31, 1937	15.46
Isthmian	Year 1938	24.46
Northland Transportation Co.	4 years to December 31, 1938	5.95
States	5 years to December 31, 1938	18.79

Operations of the Gulf Pacific Mail Line Ltd., in 1936 and 1937 included revenues from intercoastal services that represented 18.45 and 80.24 percent, respectively, of its total vessel operating revenue. During 1938 its vessels were operated in the intercoastal trade by Swayne & Hoyt under charter.

Financial position of the carriers.—The following statement of the financial position of the 14 principal common carriers listed in the first tabulation above, at December 31, 1938, shows their inability as of that date to replace their property without additional capital funds. The details from which the statement is prepared are shown in appendix N.

Current working assets	$11,523,627
Less current working liabilities	6,152,027
Net current working assets	5,371,600
Property and equipment:	
Floating equipment, vessels	57,939,790
Less reserve for amortization and depreciation	(38,781,179)
Other shipping property and equipment	1,040,563
Less reserve for amortization and depreciation	(683,802)
Nonshipping property and equipment	869,487
Less reserve for amortization and depreciation	(399,533)
Net book value of property and equipment	19,985,326
Less long-term debt	10,468,421
Net equity in property and equipment, book value	9,516,905
Special funds and deposits	1,163,063
Investments	3,676,772
Other liabilities less other assets	(3,621,550)
Deferred credits and voyages in progress less deferred charges	(462,797)
Total	15,643,993
Less sundry operating reserves	1,305,649
Leaving a net worth, per books of	14,338,344

Property and equipment—Continued.

Net worth is represented by:		
Capital stock		$16,490,134
Surplus (deficit):		
Capital surplus	$3,983,377	
Appreciation surplus	944,241	
Earned surplus (deficit)	(7,079,408)	
		(2,151,790)
		14,338,344

The vessels owned by these carriers as of December 31, 1938, aggregated 1,293,658 deadweight tons. The average book cost per deadweight ton is $44.79. The current replacement cost of new vessels would range from $200 to $239 per deadweight ton for cargo vessels and from $269 to $301 for combination cargo and passenger vessels. The carriers' aggregate net worth of $14,338,344 is equivalent to $11.08 per deadweight ton. If the net book equity of $9,506,905 in property and equipment be excluded the net assets remaining aggregate $4,821,439, which is equivalent to $3.73 per deadweight ton. A break-down of these figures for each of the carriers is shown in appendix O.

The accruals for amortization and depreciation of property and equipment which aggregate $39,864,514 exceed the net worth of $14,338,344 by $25,526,170. The nonexistence of assets representing this excess indicates the major portion of the reserves created out of revenue has been disbursed in dividends or to meet operating deficits. It is clear that no provision has been made for replacement of the earning assets represented by property and equipment.

The net worth of 11 of these carriers decreased $3,221,204 during the 5-year period ended December 31, 1938, despite an increase of $3,444,200 in capital investment. Our Survey of Coastwise and Intercoastal Shipping, *supra*, at page 15 shows that net cash, or its equivalent, of the intercoastal carriers decreased by $13,517,000 during the 10 years ended December 31, 1937.

Analysis of surplus.—The surplus of the 14 principal intercoastal carriers as at December 31, 1938, discloses a deficiency of $2,151,790, made up as follows:

Capital surplus	$3,983,377
Appreciation surplus	944,241
Earned surplus (deficit)	(7,079,408)
Total surplus (deficit)	(2,151,790)

Changes in surplus during the 5-year period to December 31, 1938, detailed by carriers in appendix P, are shown by the following summary:

	Balance at beginning of period	Balance at end of period	Changes during the period
Capital surplus	$3,597,774	$3,983,377	$385,603
Appreciation surplus	451,122	944,241	493,119
Earned surplus (or deficit)	[1] 1,394,172	[1] (7,079,408)	(8,473,580)
Total surplus (or deficit)	[1] 5,443,068	[1] (2,151,790)	(7,594,858)

[1] Withdrawals of $7,690,644 by sole stockholder and member of family, carried on the books as an asset, have been treated in this report as a dividend disbursement chargeable against surplus. Of the total $7,534,167 was disbursed prior to Jan. 1, 1934, and the balance of $156,477 since that date.

The following analysis of the changes in surplus includes the results of corporate operations of 11 of the carriers for the 5-year period ended December 31, 1938. It includes the operations of California Eastern for the period August 5, 1937, to December 31, 1938, and of Baltimore Mail and Pacific Coast Direct for the year 1938. The last named company operated in the intercoastal service during the 5-year period, but filed no financial reports with us except for the year 1938.

Capital surplus:	
Contributions by stockholders	$476,350
Capital stock reacquired and retired	4,197
Adjustment of opening entries	112,122
Dividend payment transferred from earned surplus	(207,066)
Net increase in capital surplus	385,603
Appreciation surplus:	
Appreciation on vessels acquired	871,228
Depreciation on appreciation of vessels	(140,235)
Adjustment of appreciation surplus	(57,524)
Capital loss in associated companies	(180,350)
Net increase in appreciation surplus	493,119
Earned surplus (or deficit):	
Extraordinary profits and losses resulting from dissolution of and writing off advances to subsidiaries, profits and losses on sale of vessels, investment securities, etc	(2,459,355)
Transfers to capital surplus	283,975
Transfers to capital stock and reserve accounts	(434,200)
Adjustments applicable to other than current year	(385,407)
Net profit (or loss) from operations transferred from income:	
Trans-Atlantic service of Baltimore Mail	(495,101)
All other	366,005
Net decrease in earned surplus before dividends	(3,124,083)
Dividend appropriations, cash [1]	(5,349,497)
Net decrease in earned surplus	(8,473,580)
Net decrease in total surplus	(7,594,858)

[1] Includes withdrawals of $156,477 by sole stockholder treated as a dividend in this analysis.

Analysis of earned surplus of individual carriers is shown in appendix Q.

None of the carriers that declared dividends fully earned them during the period, as shown by the following comparison:

	Net increase (or decrease) in earned surplus *before dividends*	Dividends
American-Hawaiian	($39,663)	$2,438,845
Calmar	2,042,063	2,250,000
Christenson	90,293	100,000
McCormick	(417,518)	149,175
Shepard	(125,849)	15,000
Weyerhaeuser	168,943	240,000
Luckenbach	(2,739,930)	156,477
Total dividends		5,349,497

Analysis of income.—The combined results of operations of the 14 principal carriers in intercoastal service December 31, 1938, for the 5 years ended on that date, is shown by the condensed income statement in appendix S. Appendix T shows a condensed statement, by carriers, of income for the year 1938. The condensed statement for the 5 years includes operations of California Eastern from August 5, 1937, to December 31, 1938, of Pacific Coast Direct for the year 1938, and of Baltimore Mail from August to December 31, 1938. The operations of Williams from January 1, 1934, to November 30, 1936, at which date it was merged with American-Hawaiian are not included.

Intercoastal service accounted for 96.35 percent of the $236,996,824 total voyage revenue for the 5 years ended December 31, 1938, shown in appendix S. This total includes approximately $5,751,300 of Pacific coastwise revenue of McCormick and $1,557,032 nearby and overseas foreign revenue of Pacific-Atlantic.

For the 5-year period the net profit from operations transferred to surplus was $366,005. The operations for 1934 and 1935 resulted in losses of $1,864,472 and $473,975, respectively. For the years 1936, 1937, and 1938 operations showed profits of $1,383,606, $234,914, and $1,085,392, respectively. If the net loss of $386,973 of Baltimore Mail, which operated only for part of the year 1938, be excluded, the net profit of the remaining carriers would amount to $1,472,905 for that year. Reference to appendix R indicates that, for most of the carriers, the year 1938 showed the most favorable operating results.

The capital investment (or deficiency) of the carriers as of December 31, 1938, the net profit (or loss) from operations for that year, and the rate of return on the capital investment are shown by the following tabulation. Further details are shown in appendix U.

	Capital investment (or deficiency)	Profit (or loss) from operations	Rate of return
			Percent
American-Hawaiian	$7,499,361	$568,160	7.58
California Eastern	288,301	22,002	7.63
Calmar	3,477,540	338,317	9.73
Christenson	322,721	(61,810)	None
Luckenbach / Luckenbach Gulf	1,215,317	441,017	36.29
McCormick	1,109,200	(29,637)	None
Pacific-Atlantic	258,145	(40,394)	None
Pacific Coast Direct	68,013	19,486	28.65
Seekonk Corporation	244,425	6,111	2.50
Shepard	(223,939)	28,890	----
Swayne & Hoyt	1,136,383	159,928	14.07
Weyerhaeuser	1,234,594	20,835	1.69
Total	16,630,061	1,472,905	8.86
Baltimore Mail	(3,235,958)	(388,973)	None
Total	13,394,103	1,085,932	8.11

Evidence respecting the results of intercoastal operations of Isthmian for the year ended December 31, 1938, shows total vessel operating revenue of $3,548,756.50 and estimated net loss of $52,989.17 after all deductions. The record contains no evidence of the results of the intercoastal operations of American President for the year 1938. The intercoastal operations of its predecessor, Dollar, for the year 1937, resulted in total vessel operating revenue of $2,268,262.75 and direct profit from vessel operations of $116,713.58 before overheads and other deductions of which there is no evidence respecting the portion assignable to intercoastal operations.

Comparison of increases in operating revenues and expenses.—A comparison of the intercoastal operating revenues and expenses and other deductions, and net profit (or loss), of 10 of the carriers for the years 1934 and 1938 is shown in appendix V. The results are expressed in units of miles traveled and revenue tons carried. The comparison on the basis of revenue tons carried shows the following results:

	Per revenue ton carried			
	Year 1934	Year 1938	Increase from 1934	
			Per ton	Percent
Operating revenue:				
Freight:				
East-bound	$7.57	$9.60	$2.03	26.82
West-bound	10.53	12.60	2.07	19.66
Intermediate	4.30	7.74	3.44	80.00
Total	8.47	10.73	2.26	26.68
All other	.23	.47	.24	104.35
Total operating revenue	8.70	11.20	2.50	28.74
Operating expense:				
Wages	.68	1.19	.51	75.00
Fuel	.86	1.00	.14	16.28
Repairs	.45	.52	.07	15.56
Canal tolls	.82	.72	(.10)	(12.20)
Stevedoring and other cargo expenses	2.40	3.28	.88	36.67
All other	1.87	2.01	.14	7.49
Total operating expense	7.08	8.72	1.64	23.16
Direct profit	1.62	2.48	.86	53.09
Overheads, net	1.17	1.21	.04	3.42
Depreciation	.49	.39	(.10)	(20.41)
Other deductions, net	.50	.60	.10	20.00
Net profit (or loss)	(.54)	.28	.82	151.85

While wages, stevedoring, and other cargo expenses and other operating expense items increased substantially during the period, the comparison shows that increases in operating revenues exceeded the increases in operating expenses by 86 cents per revenue ton.

The subjects announced to be within the scope of hearing will now be considered.

1. WHETHER THE SITUATION IN THE INTERCOASTAL TRAFFIC JUSTIFIES THE ESTABLISHMENT OF ONE OR MORE MINIMUM RATE LEVELS

In determining this question, consideration must be given to the policy of our shipping legislation and the purpose of the Congress in vesting the Commission with minimum rate power.

The Shipping Act, 1916, the Merchant Marine Act, 1920, and the Merchant Marine Act, 1936, declare that the policy of the United States through the Commission is to foster the development and encourage the maintenance of a merchant marine "sufficient to carry its domestic water-borne commerce and * * * to provide shipping service on all routes essential for maintaining the flow of such domestic * * * commerce at all times, * * * composed of the best equipped, safest, and most suitable types of vessels." These mandates of the Congress place upon us the duty to do whatever may be necessary to develop and encourage the maintenance of such a merchant marine. These acts were designed for practical ends, and objects sought to be obtained must be considered in interpreting the powers which were granted to us and in our administration of those acts.

The Congress found that the efforts of carriers to maintain ships and services had been handicapped and the efforts of the Commission to build up a merchant marine in line with the national policy had been hampered by the lack of authority in the Commission to fix reasonable rates. The Congress also found that the interests of carriers and the shipping public concerned with the intercoastal trade would best be served by rate stability which, in turn, could best be secured by giving the Commission power to fix maximum and minimum rates. The Congress, therefore, granted such power to the Commission by the amendment of June 23, 1938, to the Intercoastal Shipping Act, 1933. Nos. 408 and 514 are the first proceedings before us involving the question whether minimum rates should be prescribed throughout an entire rate structure.

The A lines contend that there is an emergency in the intercoastal trade, that proposed reductions in the rates to the Shepard level and McCormick's mixing proposals are evidence of a new rate war and that a minimum rate order is necessary to prevent collapse of the whole rate structure and consequent loss of carrier revenue. They urge us to prescribe a uniform minimum rate level not lower than the B line rates for all of the carriers in the Atlantic-Pacific and Gulf-Pacific trades, below which no carrier in either trade should be permitted to publish rates without our approval. They maintain that differences in speed and frequency of service do not justify an order requiring different minimum rates for different lines unless such differences in services are measurable in differences in charges which shippers will pay and reflect corresponding differences in service costs to the lines. They contend that one minimum rate level would insure greater rate stability than more than one, and that differentials in favor of inferior services encourage inferiority, whereas, the declared policy of the law is to encourage a superior merchant marine.

Shepard, and the B lines, with the exception of Isthmian, oppose any minimum rate order. Isthmian favors a minimum rate order at the B line level. Calmar desires approval of the present A and B rates with Shepard classified as a B line. Pacific Coast Direct opposes any minimum rate order, but urges that two levels are essential to the trade from both carrier and shipper standpoints. McCormick fears that a one minimum rate level would give the A lines a "strange hold" on their intercoastal competitors and favors not more than two minimum rate levels. Shepard fears being forced out of business if its rates are raised to the A or B level.

At the time of the hearing in docket No. 408, there was a threatened break-down of the conference, which apparently was prevented by the present proceedings. Notwithstanding a conflict of evidence, there is a continuing threat that competition, unrestrained by minimum rates, will tend to bring the intercoastal rates to unremunerative levels. This would be prevented by the prescription by the Commission of minimum rates. It is generally conceded that stability in rates is an advantage to shippers as well as carriers and is necessary for the preservation of carrier revenues. The inability of the 14 principal carriers in the intercoastal trade as of December 31, 1938, to replace their fleets (with an average age then of slightly over 20 years) without additional capital funds is apparent when it is considered that their aggregate net worth was equivalent only to \$11.08 per deadweight ton for replacement of vessels which cost an average of \$44.79 per deadweight ton and would cost currently from \$200 to \$300 per deadweight ton. If the book value of the fleet, \$7.35 per deadweight ton, is excluded there remains only \$3.73 available for replacement.

As of December 31, 1938, the accruals for amortization and depreciation of property and equipment, created through charges to income or surplus, aggregated \$39,864,514. On the same date the net book assets aggregated only \$14,338,344. The nonexistence of any assets representing the differences of \$25,526,170 indicates that the reserve funds ostensibly created to replace property and equipment have been disbursed to meet operating deficits or to pay dividends which were not earned. It is significant that during the 5-year period ended December 31, 1938, cash dividends aggregating \$5,349,497 were paid when net profits from operations were only \$366,005. It is evident that no provision has been made for replacement of the property and equipment.

The net profits or losses from operations for each of the 5 years to December 31, 1938, were as follows:

1934 (loss)	\$1,864,472
1935 (loss)	473,975
1936 (profit)	1,383,606
1937 (profit)	234,914
1938 (profit)	1,085,932
Total (net profit)	366,005

The above figures show that the revenues of the intercoastal carriers generally have been inadequate and have furnished no promise of replacements of the tonnage employed in the trade. A study of the history of the intercoastal trade shows that reductions in rates, due to unfair competitive practices and rate wars, have not been uncommon. We believe that these practices can be stopped and the purposes of the law can be furthered by prescribing a minimum level, below which rates may not be reduced. The financial statements of record show the lack of adequate revenue. They show, for example, that the net profits or losses of Shepard Steamship Co. for the years 1934 to 1938, inclusive, were as follows:

1934 (loss)	$144,719
1935 (loss)	5,272
1936 (profit)	43,552
1937 (loss)	99,012
1938 (profit)	28,890
Total (net loss)	176,561

As of December 31, 1938, the surplus account of Shepard SS. Co. recorded a net deficit of $333,088, consisting of $423,939 deficit in earned surplus less $90,851 balance in appreciation surplus. During the 5 years ended on that date the deficit in earned surplus increased by $140,849 and appreciation surplus decreased by $57,524, a total increase of $198,373 in the deficit. A cash dividend of $15,000 was paid in 1936. The proprietary investment in Shepard at December 31, 1938, aggregated $1,049,223, consisting of $200,000 par value of capital stock and advances of $849,223 from the parent company. Considered solely from the standpoint of an independent investment the financial result of operations has not been successful.

Figures of record also show that revenues of most of the other carriers in the trade have been inadequate. Notwithstanding this fact, reductions in rates have been proposed, which would further deplete their revenues, and which are the subject of consideration in docket No. 534. Such a low basis of rates cannot be justified on this record. We conclude therefore that the Shepard rate level and the proposed reductions now under suspension are unreasonably low. On this record it is doubtful that the present B line level of rates is adequate. Certainly it is not too high. However, for the present we will prescribe B line rates as a minimum. It is not our purpose to freeze rates at that level or specifically to approve individual rates. If an individual rate as prescribed appears unreasonably high to any shipper, the matter may be presented for our consideration by the filing of a formal complaint; and if respondents are of the view that any existing individual rate should be reduced below the level here prescribed, the matter may be presented by a petition for amendment or modification of our order. It should be noted that our order contains no prohibition against increasing individual rates to higher levels which are not unreasonable.

(1) We find that many of the rates, charges, rules, regulations, and practices of respondents Shepard and Calmar are unjust and unreasonable and tend to prevent respondents from developing and maintaining a merchant marine sufficient to carry our west-bound intercoastal commerce, and to provide shipping service essential for maintaining the flow of such commerce.

(2) We further find that unrestricted competition in rate making as practiced by respondents in the west-bound intercoastal trade has resulted and is resulting in rate wars, in unduly low and depreciated rates and charges, and in instability and unsound economic conditions in the trade.

(3) We further find that there is a continuing threat that competition, unrestrained by minimum rates, will tend to bring the intercoastal rates to unremunerative levels.

(4) We further find that the foregoing conditions have impaired respondents' capacity to provide service and facilities and to make necessary replacements, and that as a whole respondents are now conducting their operations in the west-bound intercoastal trade at a substantial operating loss.

(5) We further find that an order of this Commission prescribing the minimum rates and charges to be charged and rules and regulations to be observed by respondents is necessary and desirable in the public interest and is necessary to enable respondents to provide safe and adequate service, facilities, and equipment for the transportation of property in the west-bound intercoastal trade.

(6) We further find that the rates, charges, rules and regulations, except rules for mixed carload rates and rules for port equalization, published in Alternate Agent Joseph A. Wells' Tariff, SB-I No. 6, for application via B lines, as on file with this Commission on July 12, 1939, will provide reasonable minimum charges for the transportation of property by respondents in the west-bound intercoastal trade.

(7) We further find that the schedules suspended in No. 534 are unreasonable.

2. THE LAWFULNESS OF SUCH PROPORTIONAL RATES AS ARE NOW IN EFFECT

Calmar is the only respondent opposed to proportional rates as being unlawful *per se*. Its view is that from the standpoint of ship operation cost of service is the same with respect to transportation of a given commodity regardless of interior point of origin and therefore it is unreasonable and unjustly discriminatory to charge different rates on a given commodity depending upon its interior point of origin. Witnesses for the port interests indorsed respondents' proportional rates. Some shippers called attention to possibilities of rate discrimination between competing industries.

Proportional rates have existed with approval in railroad and water transportation for many years. Calmar's position is unique. It is sufficient to observe that cost of service is only one of the factors of reasonableness. There is, of course, the possibility of unlawfulness in this or any other general scheme of rate making and where found it can be disposed of in appropriate proceedings.

(8) We find that respondents' system of proportional rates is not unlawful, without prejudice, however, to any future conclusions that may be reached in proceedings involving specific rates.

3. THE LAWFULNESS OF SUCH PORT EQUALIZATION RATES AS ARE NOW IN EFFECT

As heretofore stated, the Wells tariff provides that on carload shipments of commodities shown in appendix H transported by continuous rail movement to New York and Philadelphia for movement to Pacific coast ports, differentials of 3 and 1 cents, respectively, are deductible from the carload rates named in the tariff on traffic originating generally in central territory. Calmar deducts 1 cent on any cargo, carload or less than carload, moving under its own power or by private, public, or Government-owned dray, rail, truck, lighter, or barge from central territory to Philadelphia and there loaded into Calmar's vessels for transportation to the Pacific coast. Shepard has no so-called port equalization rule.

The stated purpose of these rules so far as parties to the Wells tariff are concerned is to offset rail Atlantic port differentials, thus equalizing the total charges for transportation of the selected commodities from interior points through Baltimore, Philadelphia, and New York to the Pacific coast. Calmar's purpose is to meet the competition of the other carriers.

The railroad Atlantic port differential application to all freight originating in central territory, with certain iron and steel articles excepted, and moving beyond the ports by water, originated April 5, 1877, when an agreement between the railroads serving the North Atlantic ports was executed. Its purpose was "To avoid all future misunderstandings in respect to the geographical advantages or disadvantages of the cities of Baltimore, Philadelphia, and New York, as affected by rail-and-ocean transportation, and with the view of effecting an equalization of the aggregate cost of rail-and-ocean transportation between all competitive points in the West, Northwest, and Southwest, and all domestic or foreign ports reached through the above cities." At that time the cost of ocean transportation from Baltimore and Philadelphia was estimated to approximate 3 and 2 cents, respectively, more than from New York. Fixed rail differentials on traffic from central territory of 3 cents less to Baltimore and 2 cents less to Philadelphia "than the agreed rates established from time to time to New York" were established.

Today the situation has changed materially. The rail rates from central territory to the North Atlantic ports on intercoastal traffic are 1 cent more to Philadelphia and 3 cents more to New York than to Baltimore. Boston takes the same rail rate as New York, and Norfolk is on the same basis as Baltimore. Albany, as a North Atlantic port, has been accorded the same general basis as Philadelphia.

Neither the Wells nor Calmar port equalization system bears an exact relationship to the rail differentials. Wells limits its application to few commodities, ignores Boston and Albany, and apparently has extended the eastern boundary beyond rail differential territory. Some of the commodities upon which port equalization is applied by Wells are on the list of commodities shown in appendix G on which proportional rates apply from certain points of origin, for example toys, games, and children's vehicles. Certain other commodities shown in appendix H are not listed in appendix G. With the exception of glass, iron and steel, paper, tinware and related articles, with exceptions, none of the port equalized commodities is on the handicap list shown in appendix F. Calmar applies its equalization on all freight regardless of whether it moves by rail and has extended its western differential boundary beyond the rail territory.

This situation appears to be the result of competitive bids for certain traffic rather than a careful attempt at port equalization. American President is the leading advocate of this system. It points out that the practice makes that line competitive with lines serving Baltimore for traffic originating in central territory and calls attention to shipper testimony to the effect that port equalization affords inland shippers a maximum number of gateways. It urges on brief the value of a broad program of port equalization as a means of reducing the number of ports at which each line needs to call. The other A lines favor port equalization but are willing to eliminate it if necessary to effect a single minimum rate level.

Witness for McCormick, whose principal Atlantic port for westbound cargo is Baltimore, testified that the 3-cent deduction at New York diverts traffic from Baltimore to New York and that port equalization nullifies the results of opinions of the Interstate Commerce Commission dealing with Atlantic port differentials. Calmar recognizes certain advantages of equalization as now practiced but is opposed to it for the same reason that it opposes proportional rates. On brief it asserts that equalization benefits the A lines at the expense of the B lines. No party of record objected to the failure of Shepard to recognze port equalization.

Intervening port interests are divided on the subject, The Port of New York Authority, Boston Port Authority, Joint Executive Transportation Committee of Philadelphia Commercial Organizations, New Bedford Board of Commerce, The New England Traffic League, Chamber of Commerce of City of Newark, N. J., and New Jersey Industrial Traffic League all support the system. Baltimore Association of Commerce, Albany Port District Commission and Norfolk Port Traffic Commission oppose it.

The testimony and position of the various port interests supporting equalization may be briefly summarized as follows. They stress the economic soundness of equalizing gateways and the long history of rate regulation favoring it. Figures are given purporting to show that the claim of Baltimore interests that the system diverts traffic from Baltimore is unfounded. They express the hope that we will not permit selfish interests to outweigh the advantages, both to shippers and carriers, of the flexibility afforded by equalization. New England interests desire that the system be enlarged to include their ports. Boston points to the fact that no respondent could explain why it should not be placed on a parity with New York. New York criticizes respondents because present equalization is limited to certain specific commodities. Philadelphia stands with New York.

In support of its contention that equalization gives New York and Philadelphia unnatural and unfair advantages over Baltimore, Baltimore Association of Commerce directs attention to the fact that with the exception of the selected port equalized commodities, respondents' rates are made without regard to rail rates to the ports. It offers figures to show that the practice diverts high grade traffic through Philadelphia and New York. It stresses Baltimore's natural advantage of being close to interior producing points. Albany Port District Commission bases its opposition on the grounds that equalization as now practiced is unduly prejudicial to Albany and preferential of New York and Philadelphia as well as being in violation of section 205 of the Merchant Marine Act, 1936. Some shippers support and others condemn port equalization.

Neither the Wells nor the Calmar port equalization rates operate exclusively to equalize the rail differentials. The Wells Tariff permits the application of port equalization to a few commodities only. It completely ignores Boston and Albany. From the tariff it appears that the present port equalization rates are primarily designed by the various respondents to entice a larger share of the business away from their competitors. The question put before us is not the lawfulness of port equalization as a rate-making principle, but whether the present port equalization rates are reasonable. The record in this proceeding shows that the present rates are ambiguous in their application and may be unjustly discriminatory as between commodities and localities. To this extent, they further confuse an already complicated competitive struggle and should be declared unreasonable.

We find, therefore, that the port equalization rules published by Wells and Calmar are unreasonable. This finding is without prejudice to the establishment of reasonable rules designed only to equalize rates where necessary in view of the applicable rail rates to the ports.

4. THE LAWFULNESS OF ABSORBING IN WHOLE OR IN PART THROUGH DIVISIONS OR OTHERWISE THE COSTS OF ON-CARRIAGE TO PORTS WHICH ARE NEVER, OR SELDOM, SERVED BY VESSELS OF THE CARRIER ABSORBING SUCH COSTS

The record does not warrant a detailed analysis of testimony and positions of parties of record with respect to disposition of point No. 4. The general situation with respect to it has been described above. There can be no question of the lawfulness of carriers' practices of making absorptions for legitimate competitive reasons nor is there any question of lawfulness of their right to maintain joint rates with reasonable divisions between them. There is no testimony of record demonstrating that any such absorptions or divisions now operative are unreasonable or otherwise unlawful. It is sufficient to observe that any aggrieved party may file complaint. There may be an undue shrinkage of revenue in certain cases, but each such case should be carefully analyzed before condemned.

(10) We find that respondents' practice of absorbing in whole or in part through divisions or otherwise the costs of on-carriage to ports which are never, or seldom, served by vessels of the carrier absorbing such costs has not been shown on this record to be unlawful.

5. THE LAWFULNESS OF GRANTING THE RESPECTIVE CARLOAD RATES TO VARIOUS COMMODITIES SHIPPED IN QUANTITIES WHICH ARE LESS THAN CARLOAD IF THE TOTAL OF THE COMBINED COMMODITIES SO SHIPPED EQUAL A CARLOAD MINIMUM

As long as there are railroad mixing rules it is clear that respondents must of necessity maintain fair competitive mixing rules, and as the rail rules change it is axiomatic that intercoastal rules must follow suit. No party assails the practice of mixing provisions as being unlawful. The whole question here centers about the Calmar mixing provisions as contrasted to the Wells rules and methods. There is not a more severe clash of interests in the trade, including shippers and carriers alike, than as to this problem, nor is anything more confusing in the rate structure than the present mixing provisions applied by Wells and Calmar. This is the result of intense competition and disregard of sound principles of rate making.

In *Armstrong Cork Co.* v. *American-Hawaiian Steamship Co.*, 1 U. S. M. C. 719, we condemned a particular mixing rule and made the following observations on mixing provisions which should govern here:

> The general mixing provision contained in rule 10 of the governing classification originated in railroad transportation and has had the sanction of the Interstate Commerce Commission over a long period of years. The general rule of defendants also is of long standing. Where the specific provision differs from the general mixing rule maintained by defendants, special justification for it should be shown.

Nothing would be gained by a complete description of the many mixing provisions, and the numerous exceptions to general mixing rules in the intercoastal rate structure. The testimony divided into support and condemnation of both tariffs. What is needed in this regard is a uniform mixing rule applicable over all intercoastal carriers with exceptions to meet the general needs of the shipping public. Use of mixing provisions as an instrument of competitive bargaining between the lines does violence to intelligent rate making, opens the door for wide variations of prejudice and preference, and deprives carriers of needed revenue from less-than-carload shipments. Testimony of record is only valuable in that it demonstrates convincingly the need of uniformity. It is not useful in the light of contributing to a proper general rule with necessary exceptions.

Nos. 514 and 524 will be set for further hearing for the sole purpose of determining a uniform general mixing rule with proper exceptions to it for future application over all respondents' lines.

The findings and order herein are without prejudice to the rights of respondents or any of them, or of any interested party to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation. The proceedings will be held open for the purposes indicated in our conclusions and findings herein.

Appropriate orders will be issued.

TRUITT, *Commissioner*, concurring:

I concur in the report.

Question was raised in oral argument as to the authority of the Commission to establish minimum rates without considering each individual commodity in the tariff. Because of the seriousness with which the argument on the lack of competent evidence was put forward I desire to offer a few remarks in support of the record. It is clear to me that section 4 of the Intercoastal Shipping Act, 1933, as amended, gives the Commission authority to establish minimum rates, without the necessity of a detailed inquiry into all of the rates in the tariff. The section reads as follows:

SEC. 4. Whenever the Commission finds that any rate, fare, charge, classification, tariff, regulation, or practice demanded, charged, collected, or observed by any carrier subject to the provisions of this Act is unjust or unreasonable, it may determine, prescribe, and order enforced a just and reasonable maximum or minimum, or maximum and minimum rate, fare, or charge, or a just and reasonable classification, tariff, regulation, or practice: * * *

This language is similar to that contained in the Motor Carrier Act of 1935 (49 U. S. C. 316) and the Transportation Act, 1920 (49 U. S. C. 15 (1)). In all three acts Congress used the words "individual or joint rate, fare, or charge." The Supreme Court has interpreted the Transportation Act, 1920, as giving the Interstate Commerce Commission authority to establish a general level of railroad rates in broad group proceedings: *New England Divisions Case*, 261 U. S. 184, 198.[5] In administering the provisions of the Motor Carrier Act, the Interstate Commerce Commission has likewise acted on groups of rates under its minimum rate authority, and established a level of minimum rates. *New England Motor Carrier Rates*, 8 M. C. C. 287; *Rates Over Freight Forwarders, Inc.*, 4 M. C. C. 68; *Mid-Western Motor Freight Tariff Bureau, Inc.*, v. *Eichholz*, 4 M. C. C. 755; *Central Territory Motor Carrier Rates*, 8 M. C. C. 233. With this background of I. C. C. practice and the precedent of the Supreme Court, the authority of this Commission under section 4 of the Intercoastal Shipping Act to establish a general level of minimum rates seems to be assured.

Certain of the respondents contend that the record does not contain sufficient evidence *upon which to base* an order establishing minimum rates. In addition to over 4,000 pages of transcript covering 26 days of hearings and the testimony of nearly all of the carriers in the trade and many of the shippers, there were 131 exhibits covering every possible aspect of the case. The Commission's own staff prepared a study of the financial condition of the carriers in the trade and an analysis of the traffic and services in the trade. An economic study of the principal commodities in the west-bound movement was also made. These studies of the Commission were

[5] The Court quoted the following language from *Rates on Grain*, etc., 66 I. C. C. 203: "In all such general rate cases we have realized and have held that if we were required to consider the justness and reasonableness of each individual rate, the law would in effect be nullified and the Commission reduced to a state of administrative paralysis."

introduced into the record early in the proceeding. They provide a complete economic and financial analysis of the problem. The carriers were given ample opportunity to cross-examine on the basis of these studies and to introduce evidence of their own. In the light of the mass of competent relevant evidence accumulated in this proceeding, the argument that the record is incomplete is not well taken.

It has been contended by certain respondents that rate differentials are justified by differences in speed and frequency of service, and there is some testimony by shippers to this effect. The record discloses, however, that the transit time from an Atlantic port to a Pacific port depends not only on the speed of the vessel but also on the number of calls made. Likewise, the speed of a vessel is not an absolute thing, there being frequently a difference between the actual and potential speed. The difficulty of applying a rate differential based on a speed and frequency formula is illustrated by the fact that the respondents favoring such a differential do not agree on the formula for determining what it should be. Finally, if the Commission were to establish such a formula for rate differentials based on speed and frequency, it would be continually faced with controversies over the application of such a formula and its enforcement.

Looking at the question of minimum rates from the standpoint of attaining a satisfactory intercoastal service that will be available during both good times and bad, a finding by the Commission in this case that no order is justified might freeze the present differentials for a long time to come. This would have an unfortunate effect on future replacements because those vessels which now require rate differentials to attract traffic because of their otherwise inferior service, would tend to be replaced by similar vessels. Since the record shows that fast and efficient vessels cannot be purchased and maintained on existing revenues, it is reasonable to assume that the service on all of the lines will tend to deteriorate to the level of those which operate at the lowest level of rates, and similarly all the rates will go down to that level. Since the B line rates are the rates under which the greater volume of the traffic moves and some of the lines have made profits at these rates, the B line rate level would seem to be a reasonable minimum.

The minimum rate question is, of course, the focal point of the controversy, but even if the establishment of minimum rates would relieve the competitive pressure which reduces the revenues of the carriers as a group, I perceive no assurance that our order will result in the replacement of the existing obsolete World War tonnage with new suitable vessels. The Economic Survey of Coastwise and Intercoastal Shipping, which we transmitted to Congress on March 15, 1939, and which was stipulated into the record in this proceeding, disclosed that while the intercoastal fleet should be replaced with new vessels, the obstacles in the way of such replacements are formidable. The investigation in this proceeding has not, in my opinion, shown a clear way toward removing these obstacles, for it shows that cut-throat competition alone is not responsible for the financial plight of the lines. Depletion of assets through unwise disposition of earnings has been an important contributing cause. This Commission has no authority to prevent these respondents from pursuing unsound financial policies. Perhaps such authority should reside within some regulatory agency of the Government. The absence of such authority should not prevent us from exercising the regulatory powers we have been directed by Congress to use to outlaw unsound competitive practices as a basis for other future reforms and improvements in the service. It is on this basis that I find common ground with my colleagues and support the majority view in favor of the establishment of a minimum rate level as called for in the decision of the Commission this day announced.

MORAN, *Commissioner*, dissenting in part:

The recent turn of events, notably the war and consequent removal of tonnage from the intercoastal trade, has rendered the question of minimum rates in this proceeding academic. Certainly, there is no urgent necessity now for the drastic minimum rate order issued herein. Even though the necessity were apparent, I would hesitate, on this record, to approve the order issued herein, mainly for two reasons.

First, section 4 of the Intercoastal Shipping Act, 1933, in plain terms, requires that minimum rates must be based upon a *finding of unreasonableness*. There is not a shred of evidence here that the rates ordered increased are *per se* unreasonably low. Indeed, the Commission announced prior to the hearings that evidence relating to individual rates would not be received.

Second, the record points clearly to the almost inevitable result of a one rate level—a gradual mastery of the trade by carriers furnishing the better service. We should not ignore the fundamental fact that shippers will pay only in proportion to the value of the service rendered. In recognition of this principle the carriers have always found it necessary to establish differentials in order to bring about a fair distribution of intercoastal traffic. When these differentials have been narrowed or abolished the traffic has invariably gravitated to the better equipped lines.

The question posed therefore is whether a merchant marine is best promoted and encouraged by a few strong lines with a monopoly of the traffic, or a larger number offering a variety of services at rates based on the value and cost of such services. In common with most of the carriers involved and practically all of the shippers affected, I would choose the latter alternative.

A word about the B level prescribed as the minimum. The majority admit that it is in a state of "utter disorder and confusion." It has never been critically examined by the Commission or its predecessors as to its reasonableness. The financial plight of respondents is given as the urgent reason for prescribing the B level as minima. But the raising of the rates to the B level would not substantially assist the trade from a revenue standpoint. Unsound financial practices, costly labor difficulties, and business depression—not the measure of rates alone—have contributed greatly to the carriers' financial condition.

The financial statistics set forth in another part of this report reveal that the respondent carriers have been most imprudent in matters of financial management. It appears to have been their policy to pay dividends whether or not earned and to ignore replacement needs. Some have made up operating losses through loans from proprietary affiliates. Others have made inordinately large loans and payments to stockholders and affiliates. One of the latter shows on its books loans of nearly $8,000,000 to one stockholder, though it has failed to make provision for replacing its vessels. Unless the Federal Government has some authority to prevent the intercoastal operators from withdrawing profits as fast as they are earned, no order directed solely toward regulating competition in order to increase revenues can be of any lasting benefit. What purpose is served by raising rates if the increased revenues go directly into the pockets of the stockholders and no provision is made for assuring adequate replacements to carry on the service?

The mere issuance of a minimum rate order for the correction of competitive abuses will not accomplish any improvement in the intercoastal situation until the power is lodged somewhere in the Federal Government to prescribe accounts for these respondents, require complete reports of their financial operations, and supervise the issuance of securities. It is obvious that some of these carriers are still living in the happy-go-lucky-boom-and-bust era and have learned none of the bitter lessons of the past decade. Without conservative financial management, any effort to improve revenues through regulation of rates is bound to fail, and since some of these carriers do not seem to be capable of pursuing sound financial policies on their own, Congress should provide sufficient authority to compel them to do so.

The desirability of any minimum level or levels in the trade is questionable. Transcontinental rail rates fix the ceiling of intercoastal rates. The present rates are at their permissible ceiling, where they are frozen by this order. Flexibility in adjusting rates is necessary to meet changing competitive rail rates, as well as the needs of shippers in particular instances; with the rates in a strait jacket this advantage will be lost.

Unsatisfactory as the rate structure is, the rates and classification of lines, subject to the findings herein as to port equalization and mixing rules, should not be disturbed by the Commission at this time. Through voluntary association and individual action, and in the light of the Commission's disposition of the primary controversies in these proceedings, respondents should be able to build up a stable structure based on sound principles of rate making. Failing this, the Commission's power of suspension, and minimum rate jurisdiction, plus the continuing right of parties to file complaints would be ample assurance against destructive rate wars and instability of rates.

ORDER

At a Session of the UNITED STATES MARITIME COMMISSION, held at its office in Washington, D. C., this 9th day of April, A. D. 1940.

No. 408

AMERICAN-HAWAIIAN STEAMSHIP COMPANY ET AL.

v.

SHEPARD STEAMSHIP COMPANY ET AL.

No. 514

INTERCOASTAL RATE STRUCTURE

No. 524

MIXED CARLOAD RULE—MCCORMICK STEAMSHIP COMPANY

No. 534

WEST-BOUND CARLOAD COMMODITY RATES

These cases being at issue upon complaint and answer on file, or having been instituted by the Commission on its own motion and without formal pleading, or on orders of suspension of tariff schedules, and having been duly heard and submitted by the parties, and full investigation of the matters and things involved having been had; and the Commission, on the date hereof, having made and entered of record a report stating its conclusions and decision thereon, which report is hereby referred to and made a part hereof;

It is ordered, That respondents in No. 514, according as they participate in the transportation, be, and they are hereby, notified and required to cease and desist, on or before June 15, 1940, and thereafter to abstain, from publishing, demanding, or collecting for the transportation of property in west-bound intercoastal commerce, rates which shall be less than the minimum rates prescribed in the next succeeding paragraph hereof;

It is further ordered, That the rates, charges, rules, and regulations, except rules for mixed carload rates and rules for port equalization, published in Alternate Agent Joseph A. Wells' Tariff SB–I No. 6, for application via B lines, as on file with this Commission on July 12, 1939, shall be the minimum reasonable rates and charges to be charged and the reasonable rules and regulations to be observed by all said respondents for the transportation of aforesaid property;

It is further ordered, That said respondents, according as they participate in the transportation, be, and they are hereby, notified and required to establish, on or before June 15, 1940, upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in the Intercoastal Shipping Act, 1933, as amended, and thereafter to maintain and apply to the transportation of said property, rates which shall not be less than the rates provided in the tariff designated in the next preceding paragraph hereof;

It is further ordered, That respondents in No. 514 be, and they are hereby, notified and required to cease and desist, on or before June 15, 1940, from port equalization practices herein found unlawful;

It is further ordered, That No. 514 and No. 524 be assigned for further hearing at such times and places as the Commission may hereafter direct for the sole purpose of determining a uniform mixing rule and exceptions thereto to apply to the transportation of property shipped in less-than-carload quantities at carload rates to be observed by each carrier by water subject to the Intercoastal Shipping Act, 1933;

It is further ordered, That respondents in No. 534 be, and they are hereby, notified and required to cancel, effective on or before June 15, 1940, the suspended schedules found unlawful herein upon notice to this Commission and to the general public by not less than 10 days' filing and posting in the manner prescribed in the Intercoastal Shipping Act, 1933, as amended;

It is further ordered, That these proceedings shall be held open and that the order herein be without prejudice to the rights of respondents, or any of them, or of any interested party, to apply in the proper manner for a modification as to any specified rate, charge, rule, or regulation; and

It is further ordered, That this order shall continue in force until otherwise ordered.

By the Commission.

[SEAL] (Sgd.) W. C. PEET, JR.,
Secretary.

APPENDIX A

Defendants in No. 408

Bay Cities Transportation Company.
Berkeley Transportation Company.
Border Line Transportation Company.
California Transportation Company.
Crowley Launch & Tugboat Company.
Marine Service Corporation.
Pacific Steamship Lines, Ltd.
Puget Sound Freight Lines.
Puget Sound Navigation Company.
Richmond Navigation and Improvement Company.
Sacramento and San Joaquin River Line, Inc.
Shaver Forwarding Company.
Shepard Steamship Company.
Skagit River Navigation Company.

APPENDIX B

Respondents in No. 514

Agwilines, Inc. (Clyde Mallory Lines).
Alaska Southern Packing Co.
American Foreign Steamship Corporation.
American-Hawaiian Steamship Company.
American President Lines, Ltd.
(Arrow Line) Sudden & Christenson.
Babbidge & Holt, Inc.
The Baltimore Mail S. S. Company (Panama Pacific Line).
Bay Cities Transportation Co.
Berkeley Transportation Company.
The Border Line Transportation Company.
The Bull Steamship Line.
California Eastern Line, Inc.
The California Transportation Company.
Calmar Steamship Corporation.
Coast Transportation Co., Inc.
Coastwise Line.
Consolidated Steamship Companies.
The Consolidated-Olympic Line (Consolidated Steamship Cos., Olympic S. S. Co., Inc.).
Crowley Launch & Tugboat Co.
Erikson Navigation Company.
Hammond Shipping Co., Ltd.
Inland Waterways Corporation.
Isthmian Steamship Company.
A. B. Johnson Lumber Company.
Luckenbach Gulf Steamship Company, Inc.
Luckenbach Steamship Company, Inc.
Marine Service Corporation.
McCormick Steamship Company.
Merchants and Miners Transportation Company.
Mississippi Valley Barge Line Company.
Napa Transportation Company.
Northland Transportation Co.
Pacific-Atlantic Steamship Co.
Pacific Coast Direct Line, Inc.
Prudential Steamship Corporation.
Puget Sound Freight Lines.
Puget Sound Navigation Company.
Red River Barge Line.
Richmond Navigation & Improvement Co.
Roamer Tug & Lighterage Company.
Sacramento & San Joaquin River Lines, Inc.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company, Inc.
Shepard Steamship Company.
Skagit River Navigation & Trading Company.

States Steamship Company (California-Eastern Line).
Swayne & Hoyt, Ltd. (Managing Owners, Gulf Pacific Line).
Thames River Lines, Inc.
The Union Sulphur Company.
United Boat Lines.
West Pass Transportation Co.
Western Transportation Co.
Weyerhaeuser Steamship Co.
Mallory Transport Lines, Inc.
Flood Lines, Inc.
Christenson Steamship Company.
Seekonk Corporation.

APPENDIX C

Respondents in No. 524

Babbidge & Holt, Inc.
Bay Cities Transportation Company.
Berkeley Transportation Co.
The Border Line Transportation Company.
The California Transportation Company
Crowley Launch & Tugboat Co.
Hammond Shipping Co., Ltd.
McCormick Steamship Company.
Puget Sound Navigation Company.
Puget Sound Freight Lines.
Richmond Navigation & Improvement Co.
Sacramento & San Joaquin River Lines, Inc.
Skagit River Navigation & Trading Company.

APPENDIX D

Respondents in No. 534

(Arrow Line) Sudden & Christenson.
Babbidge & Holt, Inc.
Bay Cities Transportation Company.
Berkeley Transportation Company.
The Border Line Transportation Company.
California Eastern Line, Inc. (California-Eastern Line).
Coastwise Line.
The Consolidated-Olympic Line (Consolidated Steamship Cos.).
Crowley Launch & Tugboat Co.
Erikson Navigation Company.
A. B. Johnson Lumber Company.
Luckenbach Steamship Company, Inc.
McCormick Steamship Company.
Marine Service Corporation.
Puget Sound Navigation Company.
Puget Sound Freight Lines.
(Quaker Line) Pacific-Atlantic Steamship Co.
Richmond Navigation & Improvement Co.
Roamer Tug & Lighterage Company.
Sacramento & San Joaquin River Lines, Inc.
Schafer Bros. Steamship Lines.
Shaver Forwarding Company.
Skagit River Navigation & Trading Company.
States Steamship Company (California-Eastern Line).
Pacific Coast Direct Line, Inc. (Weyerhaeuser Line).

APPENDIX E

Atlantic, Gulf, and Pacific coast ports of call, westbound [1]

Ports served	S. S. No. 1 [2]	S. S. No. 2 [2]	S. S. No. 3 [2]	S. S. No. 4 [2]	S. S. No. 5 [2]	S. S. No. 6 [2]	S. S. No. 7 [2]	S. S. No. 8 [2]	S. S. No. 9 [2]	S. S. No. 10 [2]	S. S. No. 11 [2]	S. S. No. 12 [2]	S. S. No. 13 [2]	S. S. No. 14 [2]
Atlantic coast:														
Jacksonville, Fla	D		D	D										
Savannah, Ga	D		D	D			D							
Charleston, S. C.	D													
Wilmington, N. C.										D				
Hopewell, Va										D				
Newport News, Va				D							D			
Norfolk, Va	D		D	D			D			D	D	D		
Portsmouth, Va												D		
Baltimore, Md	D		D	D	D		D			D	D	D	D	
Sparrows Point, Md					D						D			
Chester, Pa	D			D	D					D	D	D		
Eddystone, Pa	D									D		D		
Marcus Hook, Pa	D			D						D	D	D		
Philadelphia, Pa	D		D	D	D		D	D		D	D	D		D
Wilmington, Del										D		D		
Bayonne, N. J	D		D							D	D	D		D
Bayway, N. J											D	D		
Camden, N. J	D			D				D		D	D	D		
Edgewater, N. J	D									D				
Jersey City, N. J	D	D						D						
Paulsboro, N. J										D	D	D		
Port Newark, N. J	D									D	D	D		
Trenton, N. J				D						D	D	D		
Warners, N. J							D			D		D		
Albany, N. Y										D	D	D		D
Brooklyn, N. Y	D						D	D		D	D	D		
New York (Manhattan)	D							D					D	D
Bridgeport, Conn	D											D		
New London, Conn												D		
Portsmouth, R. I												D		
Providence, R. I								D						
Boston, Mass	D	D						D				D		D
New Bedford, Mass														D
Portland, Maine							D							
Gulf coast:														
Panama City, Fla						D			D					
Port St. Jo, Fla									D					
Tampa, Fla						D			D					
Mobile, Ala						D	D		D					
Lake Charles, La						D								
New Orleans, La						D			D					
Beaumont, Tex						D								
Brownsville, Tex						D								
Corpus Christi, Tex						D								
Galveston, Tex						D								
Houston, Tex						D			D					
Port Arthur, Tex						D								
Pacific coast:														
Alameda, Calif	O	O	D-O	D-O	D	D-O	D	D-O	D-O	D-O	D-O	D-O	O	D-O
Avon, Calif	D-O													
California City, Calif		O												O
Eureka, Calif					O									
Long Beach, Calif						D	D		D	D		D		
Los Angeles Harbor, Calif		D	D	D	D	D	D	D	D	D	D		D	D
Mare Island, Calif			O	D	O						D			
Martinez, Calif	D-O											D		
Oakland, Calif	D-O	O	D-O	D-O	D-O	D-O	D-O	D-O	D	D-O	D-O	D-O	O	D-O
Oleum, Calif												D		
Richmond, Calif	D-O	O	D-O	D-O	D-O	O	O	O	D-O	D-O	D-O	D-O	O	D-O
Sacramento, Calif	O	O	O	O	O	O	O	O		O	O	O	O	O
San Diego, Calif	D			D		D	D		D	D	D	D		
San Francisco, Calif	D	D	D	D	D	D	D	D	D	D	D	D	D	D
San Pedro, Calif				D							D			D
Stockton, Calif	O	O	O	O	O	O	O	D-O		D-O	O	O	O	O
Terminal Island, Calif				D		D		D	D		D	D	D	D
Wilmington, Calif	D		D		D		D			D			D	
Astoria, Oreg	D	O	O	O	D-O		O	O		O	O	O	O	
Portland, Oreg	D	O	D	D	D	D	D	D	D	D	D	D-O	O	D
Aberdeen, Wash		O												
Anacortes, Wash	O	O					O	O		O		O	O	

[1] Letter abbreviations D (direct) and O (on-carrier) after each port indicates that one or both services were rendered by the carrier named at the top of the column.
[2] The SS numbers shown at the top of each column indicate that one or more calls were made during 1938 by the carrier as numbered in the legend.

Atlantic, Gulf, and Pacific coast ports of call, westbound—Continued

Ports served	S.S. No. 1	S.S. No. 2	S.S. No. 3	S.S. No. 4	S.S. No. 5	S.S. No. 6	S.S. No. 7	S.S. No. 8	S.S. No. 9	S.S. No. 10	S.S. No. 11	S.S. No. 12	S.S. No. 13	S.S. No. 14
Pacific coast—Continued.														
Bellingham, Wash	O	O	O	-----	O	-----	O	O	D	O	-----	O	O	O
Bremerton, Wash	-----	-----	O	O	O	-----	-----	-----	-----	-----	O	-----	-----	-----
Dupont, Wash	O	O	-----	-----	O	-----	O	O	-----	D	-----	-----	-----	D-O
Everett, Wash	O	O	D	D-O	O	-----	D-O	O	-----	O	D-O	D-O	O	-----
Friday Harbor, Wash	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	O
Hoquiam, Wash	-----	O	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----	-----
Longview, Wash	D	O	D-O	O	O	-----	O	O	-----	O	O	D-O	O	-----
Mount Vernon, Wash	-----	-----	-----	-----	O	-----	-----	-----	-----	-----	-----	-----	-----	-----
Olympia, Wash	O	O	O	-----	O	-----	O	O	-----	O	-----	O	O	O
Port Angeles, Wash	O	O	-----	O	O	-----	O	O	-----	O	O	O	O	-----
Port Townsend, Wash	O	O	-----	-----	O	-----	O	O	-----	-----	-----	O	O	-----
Seattle, Wash	D	O	D	D	D	D	D	D	D	D	D	D	O	D
Tacoma, Wash	D-O	O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	D-O	O	D
Vancouver, Wash	O	O	-----	-----	O	-----	-----	O	-----	O	-----	-----	-----	-----

LEGEND

S. S. No.	Name	S. S. No.	Name
1	American-Hawaiian.	8	Luckenbach.
2	American President.	9	Luckenbach Gulf.
3	Arrow Line.	10	McCormick.
4	California Eastern.	11	Quaker Line.
5	Calmar.	12	Pacific Coast Direct.
6	Gulf Pacific.	13	Panama Pacific.
7	Isthmian.	14	Shepard.

APPENDIX F

Commodities Upon Which A Lines Apply

HANDICAP RATES

Alumina, sulphate of.
Ammonia, sulphate of.
Ammonia, anhydrous.
Antimony, metal.
Asphalt.
Asphaltum.
Barium, sulphate of.
Barium, carbonate.
Barytes, limestone.
Braces.
Fire clay.
Fire box or furnace linings.
Fire brick.
Calcium, carbide of.
Cement.
Cement sulphur compound.
Grain products.
Charcoal briquettes.
Charcoal.
Clay.
Feldspar.
Coal.
Coke.
Fertilizing compounds.
Foil.
Meat scrap and feeding tankage.
Glass and glassware.
Glycerine.
Boilers, etc.
Apparatus and parts.
Furnace heating pipe.
Iron and steel.
Ivory meal scrap or shavings.
Wood flour.
Wood pulp.
Shells, ground peanut.
Rags.
Sheet lead.
Lead, antimonial.
Lead, pig.
Lime.
Lime crystals.
Lumber and logs.
Manhole covers.

Material, enameling.
Copper, sulphate of.
Copper matte.
Cobbings.
Speiss.
Refinery mud room cleanings.
Fullers' earth.
Nitro-cellulose.
Fertilizers.
Phosphate rock.
Plaster.
Fixtures, bathroom.
Plumbers goods.
Potash, nitrate of.
Railway material.
Cast iron sections.
Salt.
Slate.
Sand, gravel, slag, etc.
Wood sawdust and shavings.
Mica schist.
Ore, chrome, iron, etc.
Pyrites screenings.
Paper and paper articles.
Acid phosphate.
Ammoniated phosphate.
Shells.
Starch.
Stone.
Asphalt rock.
Marble.
Sugar.
Talc.
Soapstone refuse.
Tinware.
Sheet steel ware.
Tile.
Tobacco dust and stems.
Automobile frame parts.
Springs, automobile.
Weights, sash.
Wire cable.
Xanthrite.
Zinc dust.
Zinc.

NOTE.—The commodities listed above include carload and less-than-carload lots and are subject to the following uniform differential: 2.5 cents per 100 pounds; 50 cents per ton; or 56 cents per gross ton.

APPENDIX G

Commodities on which proportional rates apply and points of origin

Commodity:	*Point of origin*
Acetone, in iron or steel drums or barrels	South Charleston, W. Va.
Trunks, bags, etc	Petersburg, Va.
Bowling alley material and accessories, boxed or crated.	Cleveland, Ohio.
	Muskegon, Mich.
	St. Johnsbury, Vt.
Carpet lining, hair felt, etc	Detroit, Mich.
Food preparations	Buffalo, N. Y.
	Cereal, Pa.
	Niagara Falls, N. Y.
	Pittsburgh, Pa.
Electrical appliances, machinery, and supplies	Cleveland, Ohio.
	Fremont, Ohio.
	Suspension Bridge, N. Y.
Fire extinguishers, etc	Elmira, N. Y.
Glass and glassware	Cleveland, Ohio.
	Pittsburgh, Pa.
	Jeannette, Pa.
	Beaver Falls, Pa.
	Corning, N. Y.

Commodities on which proportional rates apply and points of origin—**Continued**

Commodity—Continued.	Point of origin
Stoves	Ironton, Ohio.
	Kalamazoo, Mich.
Machinery, paper mill or pulp mill, and parts thereof, K. D.	Hamilton, Ohio.
	Middletown, Ohio.
Pianos, player pianos, boxed	Buffalo, N. Y.
	East Rochester, N. Y.
	Rochester, N. Y.
Acetate, alcohol, ispropanol, etc	South Charleston, W. Va.
	Wyandotte, Mich.
Paper and articles of paper, etc	Herkimer, N. Y.
	Lincoln, N. H.
	Newark, N. J.
	Old Towne, Maine.
	Plattsburg, N. Y.
	Rochester, N. Y.
	Wallomsac, N. Y.
	Waterville, Maine.
Seats	Grand Rapids, Mich.
Sewing machines and sewing-machine parts	Cleveland, Ohio.
Stone	Atlanta, Ga.
	Berkeley, Ga.
	Crab Orchard, Tenn.
	Nelson, Ga.
	Tate, Ga.
	Marietta, Ga.
	Elberton, Ga.
	Knoxville, Tenn.
Billiard tables, billiard table accessories	Cleveland, Ohio.
	Muskegon, Mich.
Cigarettes, in pkgs	Durham, N. C.
	Petersburg, Va.
	Reidsville, N. C.
	Richmond, Va.
	Winston-Salem, N. C.
Tobacco	Durham, N. C.
	Petersburg, Va.
	Reidsville, N. C.
	Richmond, Va.
	Winston-Salem, N. C.
Toys, games, and children's vehicles	Akron, Ohio.
	Barberton, Ohio.
	Bryan, Ohio.
	Cleveland, Ohio.
	Elyria, Ohio
	Girard, Pa.
	Muncie, Ind.
	No. Tonawanda, N. Y.
	Pittsburgh, Pa.
	Toledo, Ohio.
	Wyandotte, Mich.

Commodities on which proportional rates apply and points of origin—Continued

Commodities—Continued.	*Point of origin*
Vehicles, self-propelling, and parts thereof------	Auburn, Ind.
	Buffalo, N. Y.
	Butler, Pa.
	Connersville, Ind.
	Kenosha, Wis.
	Lansing, Mich.
	Grand Rapids, Mich.
	South Bend, Ind.
	Flint, Mich.
	Milwaukee, Wis.
	Racine, Wis.
	Syracuse, N. Y.
	Detroit, Mich.
	Pontiac, Mich.
	Toledo, Ohio.
	Cleveland, Ohio.

Source: Exhibit of record.

APPENDIX H

COMMODITIES UPON WHICH PORT EQUALIZATION IS APPLIED

Aluminum and aluminum articles, with exceptions.
Boots, shoes, and slippers.
Burial cases, vaults, shelves.
Canned goods and related articles.
Carpets or carpeting and related articles.
Food preparations, cereals, etc.
Coffee and coffee substitutes.
Drugs, medicines, and chemicals and related articles.
Electrical appliances, machinery, and related articles.
Pole line construction material.
Furniture, with exceptions.
Glass and related articles, with exceptions.
Hardware, tools, etc.
Eating and cooking apparatus, with exceptions.
Insulators, electric wire.
Iron and steel and articles of iron and steel, with exceptions.
Machines, voting.
Matches.
Oil, petroleum, and its products.
Paints and paint compounds.
Paper and paper articles, with exceptions.
Refrigerators and related articles.
Sewing machines and parts.
Soap, cleaning compounds, etc.
Sodas and chemicals, with exceptions.
Tinware, sheet ironware, sheet steelware, with exceptions.
Toys, games, and children's vehicles, with exceptions.
Vehicles, self-propelling, and parts thereof, with exceptions.
Wire and wire goods, with exceptions.

NOTE.—Carload rates subject to deduction are marked "P. E." in the Wells tariff. While points of origin lie generally in Central Freight Association territory port equalization applies on commodities originating at Johnstown and Jersey Shore, Pa., and Cumberland, Md., east of C. F. A. territory.

APPENDIX I

Ports Between Which Wells Publishes Blanket Rates Westbound

ATLANTIC COAST	PACIFIC COAST
Albany, N. Y.	Alameda, Calif.
Baltimore, Md.	Anacortes, Wash.
Bayonne, N. J.	Astoria, Oreg.
Bayway, N. J.	Bellingham, Wash.
Boston, Mass.	Bremerton, Wash.
Bridgeport, Conn.	California City, Calif.
Brooklyn, N. Y.	Dupont, Wash.
Camden, N. J.	Everett, Wash.
Carteret, N. J.	Hoquiam, Wash.
Charleston, S. C.	Long Beach, Calif.
Chester, Pa.	Long View, Calif.
Edgewater, N. J.	Los Angeles Harbor, Calif.
Eddystone, Pa.	Mare Island, Calif.
Georgetown, S. C.	Martinez, Calif.
Hopewell, Va.	Oakland, Calif.
Jacksonville, Fla.	Oleum, Calif.
Marcus Hook, Pa.	Olympia, Wash.
New Bedford, Mass.	Port Angeles, Wash.
New London, Conn.	Portland, Oreg.
Newport News, Va.	Port Townsend, Wash.
New York Harbor, N. Y.	Richmond, Calif.
Norfolk, Va.	Sacramento, Calif.
Paulsboro, N. J.	San Diego, Calif.
Philadelphia, Pa.	San Francisco, Calif.
Portland, Me.	Seattle, Wash.
Port Newark, N. J.	Stockton, Calif.
Portsmouth, R. I.	Tacoma, Wash.
Providence, R. I.	Vancouver, Wash.
Rensselaer, N. Y.	
Savannah, Ga.	
Sparrows Point, Md.	
Trenton, N. J.	
Warners, N. J.	
Wilmington, Del.	
Wilmington, N. C.	

APPENDIX J

The Wells Mixing Provisions

Rule 30. *Application of rate on mixtures of commodities in different items at respective rates.*—Where a mixture of commodities in different items is permitted at the respective rates and the aggregate of the weights fails to make up the carload minimum, the shortage in the weight shall be apportioned proportionately over the commodities at the rate applicable to each one. Where no provision for a mixed carload minimum weight is made in the individual rate items herein authorizing such mixed carloads, the highest minimum weight applicable to any article in the mixed carload will be applied.

Where a mixed carload rating is provided herein on articles at owner's risk or limited liability, which are lower than the ship's risk rate on the same articles, such articles may be shipped in mixed carloads at the respective carload rate, whether owner's risk, limited liability, or ship's risk as declared at the time of shipment, subject to the highest carload minimum weight applicable to any article in the carload. Any shortage in the minimum weight shall be apportioned proportionately over the commodities at the rate applicable to each.

RULE 31. *Application of mixed carload rates.*—Rates published in this tariff on articles immediately followed in the same entry by reference to another rate item in this tariff apply on mixed carloads only, except that rates do not apply on mixed carloads consisting only of articles so followed by reference to the same rate item number. Where articles are followed by reference to another rate item in this tariff, see item referred to for rates on such articles in straight carloads, mixed carloads, or less carloads (in the absence of less carload rate in any item referred to, apply class rates).

RULE 32. *Minimum carload weight for mixed carloads.*—Unless otherwise specified, where commodities carried in separate items are permitted to be shipped in mixed carloads, the carload minimum weight for the shipment shall be the higher or highest mixed carload minimum weight as specified in the items.

RULE 33. *Straight or mixed carloads—Straight carloads.*—Carload rates named in this tariff apply on straight carloads of articles named unless otherwise specifically provided in individual rate items.

Mixed carloads.—Carload rates named in this tariff apply on mixed carloads under the following conditions only, viz:

(*a*) Of two or more articles named in one item not containing alternating sections.

(*b*) Of two or more articles named in the same section of an item containing alternating sections.

(*c*) As otherwise specifically provided in individual rate items.

RULE 4. *Definition of carload shipment.*—Except as otherwise provided in this tariff, carload rates apply only when a carload of freight is shipped from one loading pier, by one shipper, on one ship, to be delivered to one consignee at one destination. Except as otherwise provided, only one bill of lading from one loading port shall be issued for such carload shipment. The minimum weight provided is the lowest weight on which the carload rate will apply.

APPENDIX K

PORTS BETWEEN WHICH CALMAR PUBLISHES RATES WESTBOUND

ATLANTIC COAST	PACIFIC COAST
Albany, N. Y.	Aberdeen, Wash.
Baltimore, Md.	Alameda, Calif.
Boston, Mass.	Anacortes, Wash.
Bridgeport, Conn.	Arcata Wharf, Calif.
Brooklyn, N. Y.	Astoria, Oreg.
Camden, N. J.	Bellingham, Wash.
Chester, Pa.	Bremerton, Wash.
Edgewater, N. J.	California City, Calif.
Eddystone, Pa.	Chuckanut, Wash.

ATLANTIC COAST

Hoboken, N. J.
Jersey City, N. J.
Marcus Hook, Pa.
New Bedford, Mass.
Newburg, N. Y.
New London, Conn.
Newport News, Va.
New York Harbor, N. Y.
Norfolk, Va.
Paulsboro, N. J.
Philadelphia, Pa.
Port Newark, N. J.
Portsmouth, Va.
Providence, R. I.
Rensselaer, N. Y.
Sparrows Point, Md.
Trenton, N. J.
Weehawken, N. J.
Wilmington, Del.

PACIFIC COAST

Dupont, Wash.
Everett, Wash.
Hoquiam, Wash.
Long Beach, Calif.
Long View, Calif.
Los Angeles Harbor, Calif.
Mare Island, Calif.
Oakland, Calif.
Olympia, Wash.
Port Angeles, Wash.
Portland, Oreg.
Port Townsend, Wash.
Richmond, Calif.
Sacramento, Calif.
San Diego, Calif.
San Francisco, Calif.
San Pedro, Calif
Seattle, Wash.
Selby, Calif.
Stockton, Calif.
Tacoma, Wash.
Terminal Island, Calif.
Westport, Oreg.
Wilmington, Calif.

APPENDIX L

Calmar's Mixing Rule

RULE 29

(*a*) Except as otherwise specifically provided in this tariff, when a number of different commodities, for each of which carload rates are provided in this tariff, are shipped at one time in a carload lot, the applicable carload rate will be assessed on the weight of each such commodity.

(*b*) In the application of this rule, the minimum carload weight for mixed commodities will be that provided in this tariff, for the commodity in the carload lot which takes the highest minimum carload weight.

(*c*) When the total weight of the mixed commodities does not equal the required minimum carload weight provided for in (*b*) of this rule, the difference between the actual weight and the required minimum carload weight shall be divided proportionately between the individual commodities making up the shipment and the applicable carload rate will be assessed on the weight of each commodity as so determined.

APPENDIX M

Ports Between Which Shepard Publishes West-bound Rates

ATLANTIC COAST	PACIFIC COAST
Albany, N. Y.	Alameda, Calif.
Bayonne, N. J.	Avon, Calif.
Boston, Mass.	Bellingham, Wash.
Bridgeport, Conn.	California City, Calif.
Camden, N. J.	Dupont, Wash.
Charleston, S. C.	Everett, Wash.
Chester, Pa.	Hoquiam, Wash.
Hopewell, Va.	Long Beach, Calif.
New Bedford, Mass.	Los Angeles Harbor, Calif.
Newburgh, N. Y.	Mare Island, Calif.
New London, Conn.	Martinez, Calif.
New York Harbor, N. Y.	Oakland, Calif.
Norfolk, Va.	Oleum, Calif.
Perth Amboy, N. J.	Olympia, Wash.
Philadelphia, Pa.	Port Angeles, Wash.
Portland, Me.	Portland, Oreg.
Port Newark, N. J.	Port Townsend, Wash.
Providence, R. I.	Richmond, Calif.
Thompsons Point, N. J.	Sacramento, Calif.
Trenton, N. J.	San Francisco, Calif.
Warners, N. J.	Seattle, Wash.
Wilmington, Del.	Stockton, Calif.
	Tacoma, Wash.

APPENDIX N

Condensed balance sheets of intercoastal common carriers as at Dec. 31, 1938

	American-Hawaiian S. S. Co.	Baltimore Mail S. S. Co.	California Eastern Line, Inc.	Calmar S. S. Corp.	Christenson S. S. Co.	Luckenbach S. S. Co., Inc.[1]	Luckenbach Gulf S. S. Co., Inc.
ASSETS							
Current working assets	$3,104,626	$491,065	$40,723	$2,553,349	$112,402	$2,019,759	$367,197
Voyages in progress—debit balance							
Special funds and deposits	1,150,000	3,418				425	15
Investments	195,000				400	2,080,848	1,800
Property and equipment:							
Floating equipment, vessels	21,604,817	9,421,477	400,950	2,312,815	720,224	14,047,991	
Less depreciation reserve	(16,184,882)	(3,366,023)	(47,101)	(995,889)	(475,316)	(12,914,829)	
Other shipping property and equipment	165,529	26,427				366,252	58,009
Less depreciation reserve	(99,063)	(9,775)				(293,099)	(15,209)
Nonshipping property and equipment	426,134					408,897	24,809
Less depreciation reserve	(208,680)					(177,623)	(11,785)
Net book value	5,703,855	6,072,106	353,849	1,316,926	244,918	1,447,589	55,824
Other assets	2,153,174	102,312	336			6,855	31,185
Deferred charges and prepaid expenses	188,027	507,308	28,724		32,982	76,728	1,301
Total	12,494,682	7,176,208	432,632	3,870,275	390,702	6,632,204	457,322
LIABILITIES AND CAPITAL							
Current working liabilities	581,240	1,181,199	77,738	224,034	18,987	1,911,634	125,086
Advance ticket sales and deposits		94,465					
Voyages in progress—credit balance	429,574	102,654	1,593	168,701	39,345	509,739	164,711
Long-term debt due after 1 year		8,576,152				608,190	
Other liabilities	2,103,514	411,526	85,000		9,649	1,543,593	971,383
Deferred credits		833				4,871	
Sundry operating reserves	1,150,000	45,397				25,000	20,000
Capital stock	4,370,000	5,500	275,300	3,000,000	400,000	6,228,250	25,000
Surplus (or deficit)	3,860,354	(3,241,458)	13,001	477,540	(77,279)	[1](3,199,675)	(838,858)
Total	12,494,682	7,176,208	432,632	3,870,275	390,702	6,632,204	457,322

[1] Withdrawals of $7,690,644 by sole stockholder and member of his family carried on books as an asset is treated here as a dividend disbursement chargeable against surplus. $7,534,167 was disbursed prior to Jan. 1, 1934, and the balance of $156,477, after that date.

	McCormick S. S. Co.	Pacific-Atlantic S. S. Co.	Pacific Coast Direct Line, Inc.	Seekonk Corp.	Shepard S. S. Co.	Swayne & Hoyt, Ltd.	Weyerhaeuser S. S. Co.	Total sheets Nos. 1 and 2
ASSETS								
Current working assets	$1, 079, 543	$460, 626	$287, 807	$157, 257	$81, 256	$476, 729	$282, 288	$11, 523, 627
Voyages in progress—debit balance			916				220, 120	221, 036
Special funds and deposits	*8, 607*	*600*						*1, 163, 063*
Investments	347, 459	1, 615				49, 650		3, 676, 772
Property and equipment:								
Floating equipment vessels	1, 381, 529	3, 417, 551		235, 000	1, 112, 415	1, 545, 471	1, 739, 540	57, 939, 790
Less depreciation reserve	(570, 394)	(2, 230, 473)		(154, 719)	(437, 216)	(522, 281)	(882, 056)	(38, 781, 179)
Other shipping property and equipment	336, 340	7, 836	4, 222	543	2, 291	73, 114		1, 040, 563
Less depreciation reserve	*(225, 925)*	*(2, 006)*	*(666)*	*(543)*	*(1, 427)*	*(46, 089)*		*(683, 802)*
Nonshipping property and equipment	7, 918						1, 729	869, 487
Less depreciation reserve	(989)						(456)	(399, 533)
Net book value	928, 479	1, 192, 908	3, 556	80, 281	676, 063	1, 050, 215	858, 757	19, 985, 326
Other assets	128, 270					39, 322	55, 886	2, 517, 340
Deferred charges and prepaid expenses	97, 863	105, 883		6, 887	41, 354	81, 048	55, 600	1, 223, 706
Total	2, 590, 221	1, 761, 632	292, 279	244, 425	798, 673	1, 696, 964	1, 472, 651	40, 310, 870
LIABILITIES AND CAPITAL								
Current working liabilities	681, 406	391, 929	224, 266		57, 364	439, 147	238, 057	6, 152, 027
Advance ticket sales and deposits								94, 465
Voyages in progress—credit balance	207, 143	55, 908			25, 174	112, 828		1, 807, 370
Long-term debt due after 1 year	328, 429	955, 650						10, 468, 421
Other liabilities	85, 000	100, 000			849, 223			6, 138, 890
Deferred credits								5, 704
Sundry operating reserves	*56, 646*					8, 606		*1, 305, 649*
Capital stock	500, 000	627, 720	750	110, 000	200, 000	947, 614	800, 000	16, 490, 134
Surplus (or deficit)	731, 597	(369, 575)	67, 263	134, 425	(333, 088)	188, 769	434, 594	(2, 151, 790)
Total	2, 590, 221	1, 761, 632	292, 279	244, 425	798, 673	1, 696, 964	1, 472, 651	40, 310, 870

APPENDIX O

Net book assets as at Dec. 31, 1938, per deadweight ton of vessels owned

	Deadweight tons owned Dec. 31, 1938	Net assets		Net assets, less net book equity in property and equipment	
		Amount	Per deadweight ton	Amount	Per deadweight ton
American-Hawaiian S. S. Co.	408, 225	$8, 230, 354	20. 16	$2, 526, 499	6. 19
Baltimore Mail S. S. Co.	67, 525	(3, 235, 958)	(47. 85)	(731, 912)	(10. 82)
California Eastern Line, Inc.	17, 286	288, 301	16. 68	(65, 548)	(3. 79)
Calmar S. S. Corporation	128, 771	3, 477, 540	27. 01	2, 160, 614	16. 78
Christenson S. S. Co.	25, 904	322, 721	12. 46	77, 803	3. 00
Luckenbach S. S. Co.	254, 076	2, 029, 175	4. 78	1, 189, 776	1. 26
Luckenbach Gulf S. S. Co.		(813, 858)		(869, 682)	
McCormick S. S. Co.	80, 550	1, 231, 597	15. 29	631, 547	7. 84
Pacific Atlantic S. S. Co.	118, 341	258, 145	2. 18	20, 887	. 18
Seekonk Corporation	7, 825	244, 425	31. 24	164, 144	20. 98
Shepard S. S. Co.	43, 672	(133, 088)	(3. 05)	(809, 151)	(18. 53)
Swayne & Hoyt, Ltd.	75, 483	1, 136, 383	15. 05	86, 168	1. 14
Weyerhaeuser S. S. Co.	65, 900	1, 234, 594	19. 77	375, 837	6. 68
Pacific Coast Direct Line, Inc.		68, 013		64, 457	
As a whole	1, 203, 658	14, 338, 344	11. 08	4, 821, 439	3. 73

Amounts enclosed in parentheses indicate deficiency.

APPENDIX P

Balances in surplus at beginning and end of period and increases (or decreases) during the period Jan. 1, 1934, to Dec. 31, 1938, except as indicated

	Balances at beginning of period				Balances at end of period				Increases (or decreases) during the period			
	Capital surplus	Appreciation surplus	Earned surplus (or deficit)	Total surplus (or deficit)	Capital surplus (or deficit)	Appreciation surplus	Earned surplus (or deficit)	Total surplus (or deficit)	Capital surplus (or deficit)	Appreciation surplus	Earned surplus (or deficit)	Total surplus (or deficit)
American-Hawaiian S. S. Co.			$5,607,869	$5,607,869		$730,993	$3,129,361	$3,860,354		$730,993	($2,478,508)	($1,747,515)
Baltimore Mail S. S. Co.[1]			(2,294,820)	(2,294,820)	$19,500		(3,260,958)	(3,241,458)	$19,500		(966,138)	(946,638)
California Eastern Line, Inc.[2]							13,001	13,001			13,001	13,001
Calmar S. S. Corp.			685,477	685,477			477,540	477,540			(207,937)	(207,937)
Christenson S. S. Co.			(67,572)	(67,572)			(77,279)	(77,279)			(9,707)	(9,707)
Luckenbach S. S. Co., Inc.[3]			(302,668)	(302,668)			(3,199,075)	(3,199,075)			(2,896,407)	(2,896,407)
Luckenbach Gulf S. S. Co., Inc.			(274,159)	(274,159)			(838,858)	(838,858)			(564,699)	(564,699)
McCormick S. S. Co.		$302,747	699,543	1,002,290	476,350	122,397	132,850	731,597	476,350	(180,350)	(566,693)	(270,693)
Pacific Atlantic S. S. Co.	$2,979,406		(2,653,608)	325,798	2,979,406		(3,348,981)	(369,575)			(695,373)	(695,373)
Pacific Coast Direct Line, Inc.[4]			63,080	63,080	(15,303)		82,566	67,263	(15,303)		19,486	4,183
Seekonk Corp.			122,173	122,173			134,425	134,425			12,252	12,252
Shepard S. S. Co.		148,375	(283,090)	(134,715)		90,851	(423,939)	(333,088)		(57,524)	(140,849)	(198,373)
Swayne & Hoyt, Ltd.	44,788		64,932	109,720	44,788		143,981	188,769			79,049	79,049
Weyerhaeuser S. S. Co.	573,580		27,015	600,595	478,636		(44,042)	434,594	(94,944)		(71,057)	(166,001)
Total	3,597,774	451,122	1,394,172	5,443,068	3,983,377	944,241	(7,079,408)	(2,151,790)	385,603	493,119	(8,473,580)	(7,594,858)

[1] Operations for year 1938.
[2] Operations from Aug. 5, 1937.
[3] Withdrawals of $7,690,644 by sole stockholder and member of family carried on books as an asset is treated herein as a dividend disbursement chargeable against surplus. $7,534,167 was disbursed prior to Jan. 1, 1934, and the balance, $156,477, after that date.
[4] Operations for year 1938.

APPENDIX Q

Changes in earned surplus (or deficit) Jan. 1, 1934, to Dec. 31, 1938, except as indicated

	Extraordinary profits (or losses)	Transfers to capital surplus or appreciation surplus	Transfers to capital stock account or reserves	Adjustments applicable to other than current year (net)	Net profit (or loss) from operations transferred from income	Net increase (or decrease) before dividends	Cash dividend appropriations	Net increase (or decrease) in earned surplus
American-Hawaiian S. S. Co.	($846, 265)	$140, 235		$36, 279	$630, 088	($39, 663)	($2, 438, 845)	($2, 478, 508)
Baltimore Mail S. S. Co. (year 1938)			($110, 000)	25, 935	[1](882, 073)	(966, 138)		(966, 138)
California Eastern Line, Inc. (from Aug. 5, 1937)				2, 522	10, 479	13, 001		13, 001
Calmar S. S. Corporation					2, 042, 063	2, 042, 063	(2, 250, 000)	(207, 937)
Christenson S. S. Co.	189, 057			1, 604	100, 368	90, 293	(100, 000)	(9, 707)
Luckenbach S. S. Co., Inc.	(1, 538, 798)		300	(109, 699)	(1, 091, 733)	(2, 739, 930)	[2](156, 477)	(2, 896, 407)
Luckenbach Gulf S. S. Co., Inc.				(98, 726)	(465, 973)	(564, 699)		(564, 699)
McCormick S. S. Co.	(71, 719)		(324, 500)	1, 222	(22, 521)	(417, 518)	(149, 175)	(566, 693)
Pacific-Atlantic S. S. Co.	(147, 377)			(103, 721)	(444, 275)	(695, 373)		(695, 373)
Pacific Coast Direct Line, Inc. (year 1938)					19, 486	19, 486		19, 486
Seekonk Corporation	(2, 172)			(15, 046)	29, 470	12, 252		12, 252
Shepard S. S. Co.		48, 796		1, 916	(176, 561)	(125, 849)	(15, 000)	(140, 849)
Swayne & Hoyt, Ltd.	(42, 081)			(130, 727)	251, 657	79, 049		79, 049
Weyerhaeuser S. S. Co.		94, 944		3, 034	70, 965	168, 943	(240, 000)	(71, 057)
Total	(2, 459, 355)	283, 975	(434, 200)	(385, 407)	[3](129, 096)	(3, 124, 083)	[4](5, 349, 497)	(8, 473, 580)

[1] Trans-Atlantic service ($495,101); intercoastal service ($386,972).
[2] Withdrawals by sole stockholder or family treated here as a dividend.
[3] If the loss of $495,101 from trans-Atlantic service be deducted the total would be a net profit of $366,005. See appendix R for analysis by carriers and by years.
[4] See appendix R for analysis by carriers and by years.

APPENDIX R

Net profit (or loss) from operations transferred to surplus—cash dividend appropriations of surplus

	1934	1935	1936	1937	1938	Total
Net profit (or loss) from operations transferred to surplus:						
American-Hawaiian S. S. Co.	($328, 939)	($36, 724)	$296, 512	$129, 110	$568, 159	$630, 088
Baltimore Mail S. S. Co. *(intercoastal service)*					(386, 972)	(386, 972)
California Eastern Line, Inc.				(11, 523)	22, 002	10, 479
Calmar S. S. Corp.	225, 420	333, 680	703, 389	441, 257	338, 317	2, 042, 063
Christenson S. S. Co.	(25, 744)	1, 255	65, 889	(79, 958)	(61, 810)	(100, 368)
Luckenbach S. S. Co.	(1, 247, 782)	(383, 543)	228, 487	(56, 939)	368, 044	(1, 091, 733)
Luckenbach Gulf S. S. Co.	(221, 065)	(71, 085)	(4, 297)	(242, 498)	72, 972	(465, 973)
McCormick S. S. Co.	(70, 926)	(9, 999)	(41, 440)	129, 481	(29, 637)	(22, 521)
Pacific-Atlantic S. S. Co.	(319, 829)	(349, 979)	61, 332	204, 594	(40, 393)	(444, 275)
Pacific Coast Direct Line, Inc.					19, 486	19, 486
Seekonk Corp.	26, 824	9, 622	(4, 235)	(8, 852)	6, 111	29, 470
Shepard S. S. Co.	(144, 719)	(5, 272)	43, 552	(99, 012)	28, 890	(176, 561)
Swayne & Hoyt, Ltd.	199, 849	7, 204	1, 483	(116, 607)	159, 928	251, 857
Weyerhaeuser S. S. Co.	40, 469	30, 866	32, 934	(54, 139)	20, 835	70, 965
Total	(1, 864, 472)	(473, 975)	1, 383, 606	234, 914	1, 085, 932	366, 005
Baltimore Mail S. S. Co. (trans-Atlantic service)					(495, 101)	(495, 101)
Total transferred to surplus	(1, 864, 472)	(473, 975)	1, 383, 606	234, 914	590, 831	(129, 096)
Cash dividend appropriations:						
American-Hawaiian S. S. Co.	455, 000	455, 000	455, 000	636, 220	437, 625	2, 438, 845
Calmar S. S. Corp.		1, 150, 000	680, 000	420, 000		2, 250, 000
Christenson S. S. Co.				100, 000		100, 000
McCormick S. S. Co.			149, 175			149, 175
Shepard S. S. Co.			15, 000			15, 000
Weyerhaeuser S. S. Co.	200, 000		40, 000			240, 000
Total	655, 000	1, 605, 000	1, 339, 175	1, 156, 220	437, 625	5, 193, 020
Luckenbach S. S. Co. (withdrawals)						156, 477
Total						5, 349, 497

APPENDIX S

Condensed income statement of 14 principal intercoastal common carriers Jan. 1, 1934, to Dec. 31, 1938

	1934	1935	1936	1937	1938	Total
Terminated voyage results:						
Revenue	$34, 985, 753	$42, 143, 803	$45, 672, 614	$54, 143, 999	$60, 050, 655	$236, 996, 824
Expense	28, 672, 099	34, 908, 977	36, 178, 317	44, 909, 249	47, 792, 382	192, 461, 024
Net	6, 313, 654	7, 234, 826	9, 494, 297	9, 234, 750	12, 258, 273	44, 535, 800
Inactive vessels expense	247, 156	245, 486	143, 744	132, 408	858, 387	1, 627, 181
Gross profit from vessel operations	6, 066, 498	6, 989, 340	9, 350, 553	9, 102, 342	11, 399, 886	42, 908, 619
Terminal operations, net	(172, 974)	2, 788	(1, 227, 724)	(1, 427, 959)	(1, 376, 458)	(4, 202, 327)
Other shipping operations, net	74, 212	62, 827	83, 263	141, 991	(13, 222)	349, 071
Gross profit from shipping operations before overhead and depreciation	5, 967, 736	7, 054, 955	8, 206, 092	7, 816, 374	10, 010, 206	39, 055, 363
Overhead:						
Administrative and general less agency fees, commissions, and brokerage earned	4, 321, 432	5, 016, 306	4, 349, 802	4, 754, 007	5, 057, 974	23, 499, 521
Other	286, 892	208, 886	274, 781	476, 526	1, 201, 397	2, 448, 482
Total overhead	4, 608, 324	5, 225, 192	4, 624, 583	5, 230, 533	6, 259, 371	25, 948, 003
Gross profit from shipping operations before depreciation	1, 359, 412	1, 829, 763	3, 581, 509	2, 585, 841	3, 750, 835	13, 107, 360
Depreciation, shipping property	1, 944, 386	1, 976, 080	1, 786, 558	1, 936, 965	2, 201, 785	9, 845, 774
Gross profit (or loss) from shipping operations	(584, 974)	(146, 317)	1, 794, 951	648, 876	1, 549, 050	3, 261, 586
Other income: Interest, dividends, etc.	137, 491	147, 985	322, 627	242, 841	197, 476	1, 048, 420
Other deductions from income:						
Interest	216, 307	201, 393	256, 041	181, 907	314, 517	1, 170, 165
Maritime strike expense	1, 122, 187	135, 299	280, 446	256, 904		1, 794, 836
Miscellaneous	544	23, 525	6, 987	42	46, 086	77, 184
Total other deductions	1, 339, 038	360, 217	543, 474	438, 853	360, 603	3, 042, 185
Net profit (or loss), shipping operations	(1, 786, 521)	(358, 549)	1, 574, 104	452, 864	1, 385, 923	1, 267, 821
Nonshipping operations, net					(1, 910)	(1, 910)
Provisions for Federal income tax	77, 951	115, 426	190, 498	217, 950	298, 081	899, 906
Net profit (or loss) transferred to surplus	(1, 864, 472)	(473, 975)	1, 383, 606	234, 914	1, 085, 932	366, 005

APPENDIX T

Condensed income statement of 14 principal intercoastal common carriers for the year ended Dec. 31, 1938

	American-Hawaiian S. S. Co.	Baltimore Mail S. S. Co.[1]	California Eastern Line, Inc.	Calmar S. S. Corp.	Christenson S. S. Co.	Luckenbach S. S. Co.	Luckenbach Gulf S. S. Co.
Terminated voyage results:							
Revenue	$17,231,658	$2,233,375	$839,802	$4,343,645	$898,527	$10,388,843	$3,356,460
Expense	11,780,250	1,951,155	737,978	3,534,158	847,359	7,844,217	2,751,490
Net	5,451,408	282,220	101,824	809,487	51,168	2,544,626	604,970
Inactive vessel expense	346,094	33,819		80,308		242,650	
Gross profit (or loss) vessel operations	5,105,314	248,401	101,824	729,179	51,168	2,301,976	604,970
Terminal operations, net	(1,455,115)	43				(91,424)	(2,139)
Other shipping operations, net	37,640	(93)		(4,028)		(43,748)	(9,165)
Gross profit (or loss) before overhead and depreciation	*3,687,839*	*248,351*	*101,824*	*725,151*	*51,168*	*2,166,804*	*593,666*
Overhead:							
Administrative and general less agency fees, commissions and brokerage earned	1,983,070	24,291	8,835	214,064	646	1,275,135	225,108
Other	156,729	215,868	23,123	10,350	55,613	229,189	272,605
Total overhead	2,139,799	240,159	31,958	224,434	56,259	1,504,324	497,713
Gross profit (or loss), shipping operations before depreciation	1,548,040	8,192	69,866	500,717	(5,091)	662,480	95,953
Depreciation, shipping property	925,270	230,672	40,601	78,276	56,650	231,880	11,019
Gross profit (or loss) shipping operations	622,770	(220,480)	29,265	422,441	(61,741)	430,600	84,934
Other income: Interest, dividends, etc.	100,390	664			25	35,890	4,450
Other deductions from income: Interest, etc.		165,157	3,137		94	98,446	665
Net profit (or loss) shipping operations	723,160	(386,973)	26,128	422,441	(61,810)	368,044	88,719
Nonshipping operations, net							
Provision for Federal income tax	155,000		4,126	84,124			15,746
Net profit (or loss) transferred to surplus	568,160	(386,973)	22,002	338,317	(61,810)	368,044	72,973

[1] Intercoastal operations from Aug. 2, 1938.

Condensed income statement of 14 principal intercoastal com mon carriers for the year ended Dec. 31, 1938—Continued

	McCormick S. S. Co.	Pacific-Atlantic S. S. Co.	Pacific Coast Direct Line, Inc.	Seekonk Corp.	Shepard S. S. Co.	Swayne & Hoyt, Ltd.	Weyer-haeuser S. S. Co.	Totals sheets 1 and 2
Terminated voyage results:								
Revenue	$5, 366, 017	$4, 365, 330	$1, 338, 555	$335, 355	$2, 101, 420	$4, 105, 928	$3, 145, 740	$60, 050, 655
Expense	4, 988, 044	3, 972, 910	1, 016, 964	294, 971	1, 877, 322	3, 253, 334	2, 942, 230	47, 792, 382
Net	377, 973	392, 420	321, 591	40, 384	224, 098	852, 594	203, 510	12, 258, 273
Inactive vessel expense	9, 518	47, 397			14, 912	82, 354	1, 335	858, 387
Gross profit (or loss) vessel operations	368, 455	345, 023	321, 591	40, 384	209, 186	770, 240	202, 175	11, 399, 886
Terminal operations, net	194, 901					(22, 724)		(1, 376, 458)
Other shipping operations, net	(9, 538)					15, 710		(13, 222)
Gross profit (or loss) before overhead and depreciation	553, 818	345, 023	321, 591	40, 384	209, 186	763, 226	202, 175	10, 010, 206
Overhead:								
Administrative and general less agency fees, commissions, and brokerage earned	356, 230	158, 125	162, 617	20, 899	100, 767	451, 064	77, 103	5, 057, 974
Other	66, 721	19, 734	133, 080		7, 644	7, 215	3, 526	1, 201, 397
Total overhead	422, 951	177, 859	295, 697	20, 899	108, 411	458, 279	80, 629	6, 259, 371
Gross profit (or loss), shipping operations, before depreciation	130, 867	167, 164	25, 894	19, 485	100, 775	304, 947	121, 546	3, 750, 835
Depreciation, shipping property	189, 585	181, 512	322	13, 434	57, 382	86, 450	98, 732	2, 201, 785
Gross profit (or loss) shipping operations	(58, 718)	(14, 348)	25, 572	6, 051	43, 393	218, 497	22, 814	1, 549, 050
Other income: Interest, dividends, etc	51, 152	87		60		1, 456	3, 302	197, 476
Other deductions from income: Interest, etc	20, 434	26, 133	9		14, 503	32, 025		360, 603
Net profit (or loss) shipping operations	(28, 000)	(40, 394)	25, 563	6, 111	28, 890	187, 928	26, 116	1, 385, 923
Nonshipping operations, net	(1, 637)						(273)	(1, 910)
Provision for Federal income tax			6, 077			28, 000	5, 008	298, 081
Net profit (or loss) transferred to surplus	(29, 637)	(40, 394)	19, 486	6, 111	28, 890	159, 928	20, 835	1, 085, 932

APPENDIX U

Capital investment at Dec. 31, 1938, net profit (or loss) from operations for the year 1938 and rate of return on capital investment

	Capital stock	Surplus (or deficit)	Net worth (or deficiency)	Deduct appreciation surplus	Capital investment (or deficiency)	Net profit (or loss) from operations	Rate of return on capital investment
American-Hawaiian S. S. Co.	$4,370,000	$3,860,354	$8,230,354	$730,993	$7,499,361	$568,160	$7.58
California Eastern Line, Inc.	275,300	13,001	288,301		288,301	22,002	7.63
Calmar S. S. Corporation	3,000,000	477,540	3,477,540		3,477,540	338,317	9.73
Christenson S. S. Co.	400,000	(77,279)	322,721		322,721	(61,810)	None
Luckenbach S. S. Co.	5,228,250	(3,199,075)	2,029,175		2,029,175	368,044	36.29
Luckenbach Gulf S. S. Co.	25,000	(838,858)	(813,858)		(813,858)	72,973	
McCormick S. S. Co.	500,000	731,597	1,231,597	122,397	1,109,200	(29,637)	None
Pacific-Atlantic S. S. Co.	627,720	(369,575)	258,145		258,145	(40,394)	None
Pacific Coast Direct Line, Inc.	750	67,263	68,013		68,013	19,486	28.65
Seekonk Corporation	110,000	134,425	244,425		244,425	6,111	2.50
Shepard S. S. Co.	200,000	(333,088)	(133,088)	90,851	(223,939)	28,890	
Swayne & Hoyt, Ltd.	947,614	188,769	1,136,383		1,136,383	159,928	14.07
Weyerhaeuser S. S. Co.	500,000	434,594	1,234,594		1,234,594	20,835	1.69
Subtotal	16,484,634	1,089,668	17,574,302	944,241	16,630,061	1,472,905	8.86
Baltimore Mail S. S. Co.	5,000	(3,241,458)	(3,235,958)		(3,235,958)	(386,973)	None
Total	16,490,134	(2,151,790)	14,338,344	944,241	13,394,103	1,085,932	8.11

APPENDIX V

Comparison of intercoastal operating revenues, operating expenses, deductions, and net income (or loss) of 10 common carriers for the years 1934 and 1938 [1]

	Total		Per mile traveled				Per revenue ton carried			
	1938	1934	1938	1934	Increase from 1934		1938	1934	Increase from 1934	
					Amount	Percent			Amount	Percent
Nautical miles traveled	4,755,704	4,724,068								
Revenue tons cargo carried:										
East-bound	2,714,463	2,578,430								
West-bound	1,694,634	1,258,173								
Intermediate	33,202	63,151								
Total tons	4,442,299	3,899,754								
Number of terminated voyages	361	369½								
Average miles per voyage	13,174	12,785								
Average tons cargo per voyage	12,306	10,554								
Operating revenue:										
Freight:										
East-bound	$26,061,497	$19,517,779					$9.60	$7.57	$2.03	26.82
West-bound	21,360,012	13,248,000					12.60	10.53	2.07	19.66
Intermediate	256,953	271,790					7.74	4.30	3.44	80.00
Total	47,678,462	33,037,569	$10.03	$6.99	$3.04	43.49	10.73	8.47	2.26	26.68
All other	2,093,217	881,979	.44	.19	.25	131.58	.47	.23	.24	104.35
Total operating revenue	49,771,679	33,919,548	10.47	7.18	3.29	45.82	11.20	8.70	2.50	28.74
Operating expense:										
Wages	5,276,785	2,666,401	1.11	.56	.55	98.21	1.19	.68	.51	75.00
Fuel	4,436,922	3,362,249	.93	.71	.22	30.99	1.00	.86	.14	16.28
Repairs	2,300,041	1,763,113	.49	.37	.12	32.43	.52	.45	.07	15.56
Canal tolls	3,190,076	3,211,222	.67	.68	(.01)	(1.47)	.72	.82	(.10)	(12.20)
Stevedoring and other cargo expense	14,569,070	9,336,809	3.06	1.98	1.08	54.55	3.28	2.40	.88	36.67
All other	8,968,096	7,268,754	1.89	1.54	.35	22.73	2.01	1.87	.14	7.49
Total operating expense	38,740,990	27,608,548	8.15	5.84	2.31	39.55	8.72	7.08	1.64	23.16
Direct profit	11,030,689	6,311,000	2.32	1.34	.98	73.14	2.48	1.62	.86	53.09

Overheads (net)	5,376,639	4,552,633	1.13	.96	.17	17.71	1.21	1.17	.04	3.42
Depreciation	1,717,046	1,917,032	.36	.41	(.05)	(12.19)	.39	.49	(.10)	(20.41)
All other deductions (net)	2,410,858	1,902,678	.51	.40	.11	27.50	.54	.49	.05	10.20
Provision for income taxes	282,870	36,500	.06	.01	.05	500.00	.06	.01	.05	500.00
Net profit (or loss)	1,243,276	(2,097,843)	.26	(.44)	.70	159.09	.28	(.54)	.82	151.85

[1] Companies included in computations: American-Hawaiian S. S. Co. (including Williams S. S. Co. for 1934); Calmar S. S. Corp; Christenson S. S. Co.; Luckenbach S. S. Co.; Luckenbach Gulf S. S. Co.; McCormick S. S. Co. (intercoastal operations only); Pacific-Atlantic S. S. Co. (intercoastal operations only); Seekonk Corporation; Shepard S. S. Co.; Swayne & Hoyt, Ltd.