

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
CHARLESTON DIVISION

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Donald J. Beach, Scott Hansen, Jeffery L. Stoloff,  
Burnetta Nimons, Thomas Scholtens, Natalie  
Trueworthy,

Plaintiffs,

vs.

Atlas Van Lines, Inc., Allied Van Lines, Inc.,  
North American Van Lines, Inc., Mayflower  
Transit, LLC, United Van Lines, LLC, Wheaton  
Van Lines, Inc., American Moving and Storage,  
Inc., John Does I-X,

Defendants.

Civil Action No.: 2:07-764-CWH

ORDER

Gary Moad, Laurel Moad,

Plaintiffs,

vs.

Atlas Van Lines, Inc., Allied Van Lines, Inc.,  
North American Van Lines, Inc., Mayflower  
Transit, LLC, United Van Lines, LLC, Wheaton  
Van Lines, Inc., American Moving and Storage  
Association, Inc.,

Defendants.

Civil Action No.: 2:07-2861-CWH

This matter is before the Court on the defendants' motion to dismiss.

I. Plaintiff's Allegations

The plaintiffs Donald J. Beach, Scott Hansen, Jeffery L. Stoloff, Burnetta Nimons,

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Thomas Scholtens, and Natalie Trueworthy (the "Beach Plaintiffs") are citizens of South Carolina who have used the defendants' services to move household goods. The plaintiffs Gary Moad and Laurel Moad ( the "Moad Plaintiffs") are citizens of Illinois who also used the defendants' services to move household goods. The defendants are a household goods motor carrier industry trade association, American Moving and Storage Association, Inc. ("AMSA"), and seven household goods motor carriers: Atlas Van Lines, Inc., Allied Van Lines, Inc., North American Van Lines, Inc., Mayflower Transit, LLC, United Van Lines, Inc., and Wheaton Van Lines, Inc. The defendants comprise 85% of the national household movers market.

The plaintiffs allege that the defendants violated Section 1 of the Sherman Act when they conspired to impose illegal fuel surcharges on customers in the United States who purchased Household Goods Moving Services for interstate moves. Congress regulates the household goods transportation industry. *See* 49 U.S.C. § 13701, *et seq.* Rates must be reasonable, and carriers must publish their rates in a tariff. 49 U.S.C. §§ 13701(a), 13702(a), (c)(1). A rate is published if it is made available to shippers and the Surface Transportation Board (the "STB"). Antitrust immunity is given to agreements between carriers establishing rates. 49 U.S.C. § 13703. Carriers may submit such an agreement to the STB, which is the successor to the Interstate Commerce Commission ("ICC"), for approval. The STB may approve such an agreement if it is in the public interest and does not result in a nationwide collective ratemaking authority and does not preclude a party to the agreement from establishing independent rates. Pursuant to an agreement, carriers may make rate adjustments provided that the adjustments are "limited to industry average carrier costs." 49 U.S.C. § 13703(a)(1)(G).

The plaintiffs claim that the defendants entered into an agreement to fix prices for their

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services. The defendants published a tariff, known as Tariff 400-N, which computes the total costs of a move as a function of the shipper, weight, mileage, place of origin, destination, and the total "transportation charge," which is also known as a "linehaul charge." The transportation charge includes a charge for fuel.

Tariff 400-N also computes a fuel surcharge to cover fluctuations in gas prices. The fuel surcharge has given rise to this controversy. The plaintiffs claim that the defendants' fuel surcharge exceeds the average industry carrier costs. The plaintiffs also claim that the defendants charged a fuel surcharge that is different from the fuel surcharge in Tariff 400-N disclosed to the public and the STB.<sup>1</sup>

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<sup>1</sup> The defendants disseminated to the public and to the STB the following information concerning the fuel surcharge included in Tariff 400-N:

PROFESSIONAL MOVERS COMMERCIAL RELOCATION TARIFF STB HGB 400-N  
SECTION 1 – RULES AND REGULATIONS – 3RD REVISED PAGE 21 R ITEM 16  
(Concluded)  
FUEL COST PRICE ADJUSTMENT (SURCHARGE)

2. If the first Monday of the calendar month is a Federal holiday, the price will be determined based on the stated DOE price available on the next subsequent business day (Tuesday)

3. The DOE fuel price obtained will then be indexed based on the fuel price/adjustment factor matrix set forth in this item to determine the Fuel Cost Price Adjustment that will become applicable on the fifteenth (15th) day of the same month. The adjustment determined will apply for shipments loaded on the 15th day of the month and remain in effect through the 14th day of the following month starting from the effective date of this item.

For example, if the reported price of self-service diesel fuel determined on Monday, June 5th is \$1.599 per gallon, a 2.0 percent Fuel Cost Price Adjustment will apply for shipments loaded as of June 15th through July 14th. Then, if the reported price of diesel fuel on Monday, July 3rd increases to \$1.749 per gallon, a three (3.0%) percent Fuel Cost Price Adjustment will apply for shipments loaded as of July 15th through August 14th.

4. Notwithstanding any other provision of the tariff, the Fuel cost adjustment WILL APPLY to the transportation charges applicable on SIT shipments when such shipments are delivered to or removed from the storage-in-transit location

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The plaintiffs claim that the defendants distributed software and instructions among themselves for calculating the fuel surcharge. The defendants' fuel surcharge allegedly violates the ICCA in three ways. First, the software calculates the fuel surcharge, but the software is not published.<sup>2</sup> 49 U.S.C. §13702(c)(2). Second, the defendants collect an unpublished fuel

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during the period that a Fuel Surcharge is in effect.

<sup>2</sup> The software and instructions provide:

**Item 16, Fuel Cost Price Adjustment - Surcharge**

The following percentage Fuel-Related Cost Price Adjustment (Surcharge) will apply on linehaul transportation charges and transportation charges on shipments picked up and delivered into storage-in-transit, as described below:

1. On the first Monday of each calendar month, the "national U.S. average" price of diesel fuel will be determined based on the price stated by the US Department of Energy (DOE), Energy Information Administration's (EIA) survey of "Retail On-Highway Diesel Prices." This price will be obtained by calling the DOE Fuel Hot Line at 202-586-6966 or via the DOE Internet web site at [www.eia.doe.gov](http://www.eia.doe.gov).
2. If the first Monday of the calendar month is a Federal holiday, the price will be determined based on the stated DOE price available on the next subsequent business day (Tuesday).
3. The DOE fuel price obtained will then be indexed based on the fuel price/adjustment factor matrix set forth in this item to determine the Fuel Cost Price Adjustment that will become applicable on the fifteenth (15<sup>th</sup>) day of the same month. The adjustment determined will apply for shipments loaded beginning on the 15<sup>th</sup> day of the month and remain in effect through the 14<sup>th</sup> day of the subsequent following month starting from the effective date of this item.  
  
For example, if the reported price of self-service diesel fuel determined on Monday, June 5, 2000 is \$1.259 per gallon, a two (2.0%) percent Fuel Cost Price Adjustment will apply for shipments loaded as of June 15, 2000 through July 14, 2000. Then, if the reported price of diesel fuel on Monday, July 3, 2000 increases to \$1.379 per gallon, a three (3.0%) percent Fuel Cost Price Adjustment will apply for shipments loaded as of July 15, 2000 through August 14, 2000.
4. To determine the Fuel Cost Adjustment amount to apply, multiply the applicable linehaul

transportation charges as determined in accordance with Sections 3, 5, 6, and 7, and the applicable pickup and delivery transportation charges on Storage-In-Transit shipments as determined in accordance with Items 210 and 410 of this tariff, by the percentage Fuel Cost Adjustment Factor. The resulting charge is in addition to all other applicable transportation charges.

For example, if the applicable linehaul transportation charge is \$5,300, a two (2.0%) percent Fuel Cost Adjustment Factor would be \$106.00.

<b>When the DOE Fuel Price Per Gallon reported on the first Monday of the month is:</b>	<b>The Fuel Cost Adjustment Factor that becomes effective on the 15th day of the same month is:</b>
Less than \$1.137	0%
From \$1.137 to \$1.235	1.0%
From \$1.236 to \$1.334	2.0%
From \$1.335 to \$1.434	3.0%
From \$1.435 to \$1.533	4.0%
From \$1.534 to \$1.632	5.0%
From \$1.633 to \$1.732	6.0%
From \$1.733 to \$1.831	7.0%
From \$1.832 to \$1.930	8.0%
From \$1.931 to \$2.029	9.0%
From \$2.030 to \$2.130	10.0%
From \$2.131 to \$2.230	11.0%
From \$2.231 to \$2.330	12.0%
From \$2.331 to \$2.430	13.0%
From \$2.431 to \$2.530	14.0%
From \$2.531 to \$2.630	15.0%
Over \$2.630	(See Note 1)

Note 1: If the DOE fuel price per gallon exceeds \$2.630, the 15% fuel surcharge, subject to

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surcharge calculated by software rather than the fuel surcharge published in Tariff 400N. Third, the fuel surcharge is a rate adjustment,<sup>3</sup> which grossly exceeds industry average carrier costs,<sup>4</sup> in violation of 49 U.S.C. § 13703(a)(1)(G).

## II. Defendants' Allegations

According to the defendants, their published tariff, Tariff 400-N, has two parts: the printed rules portion and the software portion. The defendants allege that these two portions calculate the rate in the same way. The defendants claim that they made the charges as calculated by the software available to each shipper. The defendants admit that they determine the fuel surcharge as a percentage of the linehaul charge. However, the defendants allege that the fuel surcharge is reasonable and lawful.

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paragraphs 1 through 4 herein, will be increased by an additional 1% for every 10 (\$0.10) cents, or fraction thereof, per gallon increase in the price above \$2.630 per gallon.

Note 2: Notwithstanding any other provisions of the tariff, the Fuel Cost Adjustment Factor WILL APPLY to transportation charges applicable on storage-in-transit shipments when such shipments are delivered to or removed from the storage-in-transit location during the period that the Fuel Cost Adjustment Factor is in effect.

Note 3: The Fuel Cost Adjustment Factor WILL BE SHOWN SEPARATELY from the linehaul revenue on carrier transportation documents for the purpose of identifying the amount as special fuel-related revenue.

Note 4: Fractions obtained in the calculation of the Fuel Cost Adjustment Factor will be disposed of as provided in Item 21 of this tariff.

<sup>3</sup> 49 U.S.C. § 13703(a)(1)(G) allows carriers to enter into agreements for "rate adjustments of general applications based on industry average carrier costs (as long as there is no discussion of individual markets or particular single-line rates)."

<sup>4</sup> The plaintiffs claim that the defendants' software and instructions determined the fuel surcharge by multiplying the applicable linehaul charge by a percentage fuel adjustment factor. Therefore, the defendants computed a fuel surcharge as a percentage of the entire linehaul charge, which has no relationship to the actual increased cost of fuel associated with the movement of goods. According to the plaintiffs, the fuel surcharge was simply a secret revenue enhancer.

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### III. Procedural History

On March 19, 2007, the Beach Plaintiffs filed a complaint in South Carolina asserting claims for antitrust violations pursuant to 15 U.S.C. § 1 and for exceeding the lawful tariff. On August 17, 2007, the Moad Plaintiffs filed a complaint in the Eastern Division of Illinois asserting claims for violations of the Racketeer Influenced and Corrupt Organizations Act (RICO), antitrust violations, exceeding the lawful tariff, breach of the covenant of good faith and fair dealing, consumer fraud, and unjust enrichment. On August 17, 2007, the United States Judicial Panel on Multidistrict Litigation transferred the Moad action to this district for coordinated and consolidated pretrial proceedings pursuant to 28 U.S.C. § 1407.

The Beach and Moad plaintiffs have voluntarily dismissed all claims except for their claim for antitrust violation pursuant to 15 U.S.C. § 1. The plaintiffs seek to recover treble damages, the costs of this suit, and reasonable attorneys fees for the damages sustained by the class members by reason of the defendants' alleged violations of the Sherman Act, 15 U.S.C. § 1. Section 1 of the Sherman Act provides that "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States, or with foreign nations, is declared to be illegal." 15 U.S.C. § 1. To establish a conspiracy in restraint of trade in violation of Section 1 of the Sherman Act, the plaintiffs must show: (1) a contract, combination, or conspiracy; (2) that imposed an unreasonable restraint of trade. Hall v. Am. Airlines, Inc., 118 Fed. Appx. 680, \*2 (4th Cir. 2004).

On June 8, 2007, the defendants filed a joint motion to dismiss or, in the alternative, to stay these proceedings pending the STB's resolution of the issues of fact. In support of their motion to dismiss, the defendants argue that: 1) the Filed Rate Doctrine precludes the plaintiff's

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claim for an antitrust conspiracy; 2) the defendants are immune from antitrust liability for the alleged conduct; 3) the plaintiffs fail to allege an antitrust conspiracy; and 4) this action is not timely.

#### IV. Standard for Deciding a 12(b)(6) Motion to Dismiss

When considering a motion to dismiss a complaint for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, a court must accept all well-pleaded allegations in the complaint as true and view them in the light most favorable to the plaintiff. Republican Party of N.C. v. Martin, 980 F.2d 943, 952 (4th Cir. 1992). It is well settled that a pleading is sufficient if it contains a "short and plain statement of the claim showing that the pleader is entitled to relief." Fed. R. Civ. P. 8(a)(2). A complaint is not required to set forth heightened fact pleading of specifics, "but only enough facts to state a claim for relief that is plausible on its face. [Where] the plaintiffs [fail to nudge] their claims across the line from conceivable to plausible, [the] complaint must be dismissed." Bell Atlantic v. Twombly, 127 S.Ct. 1955, 1974 (2007).

#### V. Filed Rate Doctrine

The defendants allege that they published the fuel surcharge in issue and that pursuant to the filed rate doctrine they cannot charge any other price under the filed rate doctrine. 49 U.S.C. § 13702(c)(3). According to the defendants, the filed rate doctrine protects the rates attacked by the plaintiffs.

##### A. Definition of the Filed Rate Doctrine

The filed rate doctrine provides that tariffs filed with the ICC are lawful for all purposes and binding with the force of law unless the ICC declares the tariff to be unlawful or

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unreasonable. Keogh v. Chicago & N.W. Ry. Co., 260 U.S. 156, 163 (1922); *see also* Amer. Telegraph & Telephone Co. v. Central Office Tel., Inc., 524 U.S. 214, 222 (1998) (applying the filed rate doctrine to the telecommunications industry) (“The rate of the carrier duly filed is the only lawful charge. Deviation from it is not permitted upon any pretext.”). The filed rate doctrine bars collateral attack on tariffs subject to ICC regulation. Keogh v. Chicago & N.W. Ry. Co., 260 U.S. at 161-62 (1922) (holding that the regulations on railway carriers provided remedies for persons aggrieved by regulated carrier rate making, thus barring antitrust liability.) “No court may substitute its own judgment for the judgment of the” ICC. Ark. La. Gas Co. v. Hall, 453 U.S. 571, 577 (1987). The filed rate doctrine applies even if the market participants are not required to file their rates with the agency and even when set rates are based on fraudulent information. Tex. Comm. Energy v. TXU Energy, Inc., 413 F.3d 503, 509 (5th Cir. 2005); Lifeshultz Fast Freight v. Consol. Freightways, 805 F.Supp. 1277, 1295 (D.S.C. 1992). The dual purpose of the doctrine is to prevent discrimination among consumers and to preserve the rate making authority of federal agencies.

#### B. Applicability of the Filed Rate Doctrine after the ICCTA

The parties dispute whether the Filed Rate Doctrine is applicable after the passage of the ICCTA. Prior to the ICCTA, carriers were required to file rates, also called tariffs, with the ICC thirty days before the tariffs became effective. Once the ICC approved the tariff, the filed rate doctrine applied; the tariff was lawful for all purposes, and the carrier could not charge a different rate.

Today, household goods carriers are not required to file their tariffs or to secure approval of their tariffs before their tariffs are effective. Instead, the ICCTA requires carriers to maintain

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rates and related rules and practices in a published tariff and prohibits carriers from charging any rate other than that contained in the published tariff. 49 U.S.C. §§ 13702(a), (c)(1), 13704(a)(2). The tariff must be available for inspection by shippers upon request and for inspection by the STB. *Id.* The law does not require the STB to approve a tariff before it becomes effective; however, the STB may invalidate a published tariff that violates 49 U.S.C. § 13702. 49 U.S.C. § 13702(d). The STB has authority to determine whether rates are reasonable. 49 U.S.C. § 13710(a)(2)

The United States Court of Appeals for the District of Columbia Circuit noted that the ICCTA “enacted a new statutory scheme under which a carrier need file tariffs only for the transportation of household goods, as to which preferential treatment is still prohibited.” Munitions Carriers Conference, Inc. v. United States, 147 F.3d 1027, 1029 (D.C. Cir. 1998) (*citing* 49 U.S.C. § 13704(a)(2) (“Any rate established under this section must be available on a nonpreferential basis to shippers and must not result in charges to shippers which are predatory.”)).

The Court need not decide whether the ICCTA has changed or nullified the filed rate doctrine because the filed rate doctrine, if operative, does not preclude this action. The plaintiffs claim that the defendants have not published their rates in a tariff in accordance with 49 U.S.C. § 13702(c)(1). Instead, the defendants used unpublished software to hide their indefinite rates. Because the rates were not fixed, the defendants were not bound by their tariffs in accordance with 49 U.S.C. § 13702(c)(3). In addition, the plaintiffs claim that the fuel surcharge is a rate adjustment that exceeds the industry average carrier costs. 49 U.S.C. §§ 13702(a), 13703(a)(1)(G). The filed rate doctrine does not preclude the plaintiffs’ claims.

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## VI. Antitrust Immunity

### A. Statutory Immunity

The plaintiffs allege that the defendants engaged in a conspiracy to fix prices for the transportation of household goods for four years prior to the filing of the complaint. The ICCTA provides that carriers may enter into agreements to establish “rates for the transportation of household goods.” 49 U.S.C. § 13703(a)(1). The defendants argue that their agreement is immune from antitrust liability pursuant to 49 U.S.C. §13703(a)(6), which provides:

(6) Effect of approval— If the Board approves the agreement or renews approval of the agreement, it may be made and carried out under its terms and under the conditions required by the Board, and the antitrust laws . . . do not apply to parties and other persons with respect to making or carrying out the agreement.

The defendants filed an agreement called the Household Goods Carriers Bureau Committee Collective Ratemaking Agreement (“Agreement”) with the ICC. The ICC approved the Agreement, and the STB renewed its approval.<sup>5</sup>

The plaintiffs claim that the STB lacked statutory authority to approve the agreement because the defendants’ agreement exceeded the bounds of antitrust immunity. According to the plaintiffs, the agreement includes a fuel surcharge rate adjustment which grossly exceeded industry average carrier costs in violation of 49 U.S.C. § 13703(a)(1)(G) because the fuel surcharge is computed as a percentage of the linehaul charge- the total cost of the move. It does not appear from the facts alleged in the complaint that the defendants are immune from antitrust

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<sup>5</sup> The parties agree that in May of 2007, the STB made a prospective decision to “terminate our approval of the agreements of all remaining motor carriers” and that this decision included the defendants’ Agreement. The complaint states that the defendants engaged in an ongoing conspiracy to fix prices for four years prior to the filing of the complaint. The plaintiffs filed their complaint on March 19, 2007- two months prior to the STB’s ruling.

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liability.

B. Immunity for a Fuel Surcharge Calculated as a Percentage

The defendants claim that they enjoy antitrust immunity because the ICC has approved its fuel surcharge method in the late 1970s. In 1979, in response to rapidly escalating fuel costs, which led to the disruption of the trucking industry, the ICC implemented expedited procedures, known as Ex Parte 311, for the recovery of increased fuel costs. Fisher v. Fleming-Babcock, Inc., 745 F.2d 513, (8th Cir. 1984). The ICC authorized a percentage surcharge for fuel-based increases in freight charges. Id.; 44 Fed. Reg. 33232 (1979). The surcharge was based on price data derived from an ICC fuel index<sup>6</sup> and from a national average of the percentage of fuel expenses of total operating revenues from transportation performed by owner operators. 44 Fed. Reg. 37427 (1979). The ICC approved “an increase in freight charges for linehaul transportation . . . by means of a percentage surcharge” in the amount of 6%. Id.

The relevance of the validity of a 6% fuel surcharge in the trucking industry in 1979 would be more appropriately addressed at the summary judgment phase. At this stage of the litigation, it is premature to decide that the ICC’s decision immunizes the defendants from antitrust liability for an alleged unpublished fuel surcharge reaching 15% or more.

The plaintiffs allege that the defendants’ agreement did not comply with the ICCTA and that the fuel surcharge is a rate adjustment not based on industry average carrier costs. The plaintiffs have set forth sufficient facts to allege a plausible antitrust claim. Therefore, the defendants are not entitled to dismissal on the basis of antitrust immunity.

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<sup>6</sup> The fuel index was derived from a weekly national average of fuel prices at selected truck stops.

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#### VII. The Sufficiency of the Plaintiffs' Allegations of an Antitrust Conspiracy

The defendants claim that the plaintiffs have not alleged enough facts to suggest that an agreement was made and that this Court should dismiss the complaint pursuant to Bell Atlantic v. Twombly, 127 S.Ct. 1955, 1974 (2007). Liability under the Sherman Act requires a contract, combination, or conspiracy in restraint of trade or commerce. 15 U.S.C. § 1. In Bell Atlantic, the complaint alleged that the defendants conspired to restrain trade by engaging in certain parallel conduct such as inflating prices and by refraining from competing with one another. The Supreme Court held that the plaintiffs failed to include enough factual allegations to raise a right to relief above a speculative level. The Fourth Circuit Court of Appeals has held that in order to adequately allege an antitrust conspiracy, "the pleader must provide, whenever possible, some details of the time, place, and alleged conspiracy; it is not enough merely to state that a conspiracy has taken place." Estate Constr. Co. v. Miller & Smith Holding Co., 14 F.3d 213, 221 (4th Cir. 1994).

In this case, the plaintiffs allege that the defendants developed unpublished software, which they used to collect a fuel surcharge that was not published or disclosed in Tariff 400-N and to collect a rate adjustment that exceeded industry average carrier costs. The plaintiffs provide some details of the time of the conspiracy and of the conspiracy itself. The plaintiffs have alleged enough factual matter to suggest that an agreement was made. The plaintiffs have set forth sufficient facts to plausibly allege an antitrust conspiracy.

#### IX. Timeliness of this Action

The defendants claim that the plaintiffs can only recover for those acts that occurred in the eighteenth months prior to the action's commencement. According to the defendants, a

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person must bring a civil action to recover overcharges within 18 months after the claim accrues, and a claim accrues on delivery or tender of delivery by the carrier. 49 U.S.C. § 14705 (a), (g). The plaintiffs allege that the defendants' conspiracy began in 2003 and lasted until 2007. The plaintiffs do not allege when the defendants delivered the plaintiffs' household goods. Therefore, it is not clear when the plaintiff's action accrued. However, because the alleged conspiracy began in 2003 and lasted until 2007, it appears that at least some of the plaintiff's claims are not time barred.

#### X. Transfer to the STB

The doctrine of primary jurisdiction concerns the proper relationship between the courts and administrative agencies charged with their regulatory duties. United States v. W. Pac. R. Co., 352 U.S. 59, 63-66 (1956). Primary jurisdiction exists whenever enforcement of a claim originally cognizable in the courts requires the resolution of issues which have been placed within the competency of an administrative body. In such a case, the court should suspend its proceedings until the appropriate agency resolves the issues raised in an administrative claim filed by the shipper.

No fixed formula exists for applying the doctrine of primary jurisdiction. In every case the question is whether the reasons for the existence of the doctrine are present and whether the purposes it serves will be aided by its application in the particular litigation. These reasons are: (1) the desirable uniformity which is obtained only if the proper agency passes on the pending administrative questions and (2) the specialized knowledge of the agency involved.

Where the construction of the tariff is at issue and the issue is solely one of law, primary jurisdiction does not apply. However, when the words in the tariff are used in a peculiar or


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technical sense so that the issue of construction is one of fact and one of discretion in technical matters, the issue of the tariff application must first go to the STB. Only the STB can determine whether a fee is reasonable. 49 U.S.C. § 13710(a)(2); United States v. W. Pac. R. Co., 352 U.S. at 65 (holding that courts must refrain from making and construing tariffs).

If such issues arise in the course of this litigation, the Court will refer this matter to the STB. In the meantime, whether the defendants violated certain statutes is in issue. Therefore, it appears prudent to proceed with discovery. The Court may revisit the issue of primary jurisdiction later in the course of these proceedings.

The defendants' motion to dismiss is denied.

**AND IT IS SO ORDERED.**

  
C. WESTON HOUCK  
UNITED STATES DISTRICT JUDGE

March 31, 2008  
Charleston, South Carolina

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