

*Surface Transportation Board
Hearing on
Demurrage and Accessorial Charges
Remarks – Marvin H Weiner
May 22, 2019*

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Members of the Board, please accept my gratitude and appreciation for the opportunity to speak to you today and to share with you my angst, and that of so many others, some of whom are present, and the rail shipper community-at-large.

I appear before you today wearing a couple of hats, that of the President of the nation's largest privately held lessor of 2,200 insulated and mechanically refrigerated cars. I am also the owner of two 375,000 sq foot refrigerated warehouses, one in Perryville, Maryland, the second in Chambersburg, Pennsylvania, each served by the CSX railroad. My associate, Herman Haksteen, has spoken to you earlier today from a car lessor perspective and as President of the Private Railcar and Food and Beverage Association (PRFBA). My appearance here today is not without a great deal of concern. Allow me to explain.

In October Of 2017, my CEO, Mr. Haksteen, spoke before this same Board at a hearing that included testimony from the now departed Hunter Harrison, then Chairman of the CSX, the same railroad that serves my two warehouses. Six months later, in March, 2018, demurrage and detention credit days were reduced from 3 days to 1 day, railcar placement times became erratic, service days were changed and car placement refunds were eliminated. I would hope that further retribution by the CSX against my facilities would not be the result of my participation today at this hearing.

Public Law 96-448 enacted on October 14, 1980, the law that created the Surface Transportation Board, has as one of its stated goals (Section 3, sub (4)) ***"to provide a regulatory process that balances the needs of carriers, shippers, and the public"***. There is nothing fair from the railroads, no balance of the needs of the rail community. There is nothing "reasonable" emanating from the railroads to the needs of the shippers and the public. In Black's Law Dictionary (10th Ed.2014), "reasonable" is defined as fair, proper, or moderate under the circumstances; sensible". There is nothing fair, proper or moderate in the railroad/shipper relationship. 96-448 has created a monopoly that inures to the benefit of the shareholders of the railroad, absent of any financial normalcy in rates/accessorial charges. **"Market Power"** has been created that is unparalleled in other sectors of the economy. **"Market Power"** or **"Monopoly Power"**, creates a duopoly, the ability of a company to heavily influence the price charged for its product. Since the railroads have exclusive franchise domination granted each of them by the STB, absent reciprocal switching, they enjoy unfettered Market Power. Where firms possess Market Power, there exists a danger such power may be abused. For example, the charging of monopolistic pricing to the detriment of its consumers. Such is the state today of the shipper/railroad economic relationship. Railroads, under the protection, not of the Law, but of the STB, are afforded the luxury of market dominance, the cost of which transfers to the distribution system, and ultimately then to the consumer. That cost today is not even quantifiable. Allow me please to offer a couple of personal examples/issues that speak to the subject of today's hearing.

Perryville Cold Storage, Perryville, Maryland is located midway between Baltimore and Philadelphia. There is a railcar delivery track adjacent to the main rail line between Baltimore and Philadelphia on which the Perryville cars

are placed by the CSX. The delivery track is almost a mile from the Perryville facility. The cars are brought to our facility from the delivery track by a third-party switcher. CSX starts the demurrage/detention clock at the time the cars are placed on the delivery track, **NOT**, when the cars are actually delivered to our facility. There is no consideration as to when the facility actually receives the cars for unloading. In order to minimize the exposure to demurrage or detention, we have repeatedly requested that the CSX deliver the cars directly to the facility, which is their obligation under the railroad bill of lading, **NOT**, leave them for the switching service. This then would be fair and reasonable as to when the clock starts in determining charges for detention and demurrage. Not only have we been unsuccessful in our approach, but using the years 2017, 2018 and to-date as an example, Perryville and Chambersburg have paid in excess of \$271,000.00 in demurrage/accessorial charges. Bunching is prevalent and minimal consideration for relief by the CSX is normal. I have in my hand, which I am happy to share with the Board, a document that shows a listing of 20 bunched cars delivered at 11:03 PM at the CSX delivery track at Perryville last Wednesday, May 14th. All but one shipped to Perryville from the same Oregon location. The days in transit range from 11 days to 22 days. Would you not agree that this is ludicrous? **Is this what the railroads refer to as Precision Railroading?**

At our Chambersburg facility, much is the same with the exception that the CSX delivers right to our door. The issue is further compounded by the fact that there is no consistency of delivery times. Deliveries often occur at the end of the work day or, occasionally, when the facility has closed for the day. There is no "free" time allowed for Chambersburg, and bunching of cars is prevalent there as well.

In closing, members of the Board, we are here today because the STB has "not yet" addressed its mandate of providing a regulatory process that balances the needs of carriers, shippers, and the public. The Railroads must be held accountable to not only the Board, but the shipping and receiving arms of the rail transportation system. Until the STB takes a firm position in protecting the public from the arrogance and monopolistic posture of today's railroad system, the result will continue to be the same, a deteriorating service level and a push by the railroads to pass on to the consumer the costs associated with the inefficiencies of the system. I join in respectfully requesting that the STB consider the plight of the Associations represented here, shippers, receivers and private rail equipment lessees, by crafting a firm policy of reasonableness by the railroads of its charges to the rail community-at-large. Absent such a policy by the STB would be a monumental economic tragedy.

Thank you again for affording me the opportunity to be a part of this hearing today.

Respectfully Submitted

Marvin H. Weiner
President and Chairman
Cryo-Trans, Inc.
Managing Member
Perryville Cold Storage
Chambersburg Cold Storage
mhweiner@mhwgroup.com

PERRYVILLE COLD STORAGE
 Delivery Track Placement
 By CSX May 14, 2019 23.03 PM

Car		Origin	Destination		Placed		Days in
Prefix	Car #	Warehouse	Ship Date	City	State	Date	Transit
ARMN	110822	Port of Morrow	4/22/19	Perryville	MD	5/14/19 23.03	22
ARMN	110908	Americold Clearfield	4/23/19	Perryville	MD	5/14/19 23.03	21
ARMN	111454	Port of Morrow	5/1/19	Perryville	MD	5/14/19 23.03	13
ARMN	170196	Port of Morrow	4/30/19	Perryville	MD	5/14/19 23.03	15
ARMN	170480	Port of Morrow	5/3/19	Perryville	MD	5/14/19 23.03	11
ARMN	170758	Port of Morrow	5/3/19	Perryville	MD	5/14/19 23.03	11
ARMN	170521	Port of Morrow	4/30/19	Perryville	MD	5/14/19 23.03	15
ARMN	110230	Port of Morrow	5/1/19	Perryville	MD	5/14/19 23.03	13
ARMN	170642	Port of Morrow	4/27/19	Perryville	MD	5/14/19 23.03	17
ARMN	170407	Port of Morrow	4/27/19	Perryville	MD	5/14/19 23.03	17
ARMN	170097	Port of Morrow	5/1/19	Perryville	MD	5/14/19 23.03	13
ARMN	170689	Port of Morrow	4/27/19	Perryville	MD	5/14/19 23.03	17
ARMN	170419	Port of Morrow	4/27/19	Perryville	MD	5/14/19 23.03	17
ARMN	110276	Port of Morrow	5/1/19	Perryville	MD	5/14/19 23.03	13
ARMN	170626	Port of Morrow	5/1/19	Perryville	MD	5/14/19 23.03	13
ARMN	170468	Port of Morrow	4/30/19	Perryville	MD	5/14/19 23.03	14
ARMN	170786	Port of Morrow	4/27/19	Perryville	MD	5/14/19 23.03	17
ARMN	110128	Port of Morrow	5/3/19	Perryville	MD	5/14/19 23.03	11
ARMN	170602	Port of Morrow	4/27/19	Perryville	MD	5/14/19 23.03	17
ARMN	170357	Port of Morrow	4/29/19	Perryville	MD	5/14/19 23.03	16