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**FEE RECEIVED**  
AUG 13 2009  
**SURFACE  
TRANSPORTATION BOARD**

WRITER'S DIRECT E-MAIL ADDRESS  
BCOLLINS@GKGLAW.COM

WRITER'S DIRECT DIAL NUMBER  
202 342 6793

August 13, 2009



VIA HAND DELIVERY

Anne Quinlan, Acting Secretary  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20024

Re: West Point Relocation, Inc. and Eli Cohen – Petition for Declaratory Order

Dear Ms. Quinlan:

FD 35290

Enclosed for filing is an original and 10 copies of West Point Relocation, Inc. and Eli Cohen – Petition for Declaratory Order and attached exhibits, along with our filing fee in the amount of \$1000.

We have also enclosed a copy of the Petition for date stamp and return to us via our messenger.

Thank you for your assistance with filing.

Very truly yours,

Brendan Collins

ENTERED  
Office of Proceedings

AUG 13 2009

Part of  
Public Record

Enclosures

**FILED**  
AUG 13 2009  
**SURFACE  
TRANSPORTATION BOARD**



An International Association of Independent Law Firms in Major World Centers

BEFORE THE  
SURFACE TRANSPORTATION BOARD

WEST POINT RELOCATION, INC. :  
and ELI COHEN – PETITION FOR :  
DECLARATORY ORDER :

Docket No. FD 35270



PETITION FOR DECLARATORY ORDER

Pursuant to the doctrine of primary jurisdiction, WEST POINT RELOCATION, INC. (“West Point”) and ELI COHEN (“Cohen”), hereby petition for an order declaring that it is an unreasonable practice contrary to 49 U.S.C. § 13701(a) for the tariff rules of HORIZON LINES LLC (“Horizon”) to disregard the existence of corporate structures and to seek to hold officers and directors or corporations personally liable for the actions of the corporation.

In an order entered on July 20, 2009, in *Horizon Lines LLC v. West Point Relocation a/k/a West Point Relocation Inc. and Eli Cohen*, U.S.D.C. C.D. Cal., CV 08-6362 RSWL (JTLx), United States District Court Judge Ronald S.W. Lew referred the issue of the reasonableness of the challenged Horizon tariff rules to the Board under the primary jurisdiction doctrine. A copy of Judge Lew’s Order is attached hereto as Appendix 1.

Also appended to this Petition are copies of the following documents from the Court’s docket:

- Appendix 2: Amended Complaint
- Appendix 3: Eli Cohen’s Answer to Amended Complaint.
- Appendix 4: Defendants’ Notice of Motion and Motion for Referral of Administrative Issues to the Surface Transportation Board
- Appendix 5: Stipulation re Referral of Administrative Issues to the Surface Transportation Board

SURFACE TRANSPORTATION BOARD

**FREE RECEIVED**  
AUG 13 2009

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Office of Proceedings

**AUG 13 2009**

Part of  
Public Record

**FILED**

**AUG 13 2009**

**SURFACE TRANSPORTATION BOARD**

West Point and Cohen suggest adoption of the following procedural schedule.

Day 1: Board institutes declaratory order proceeding  
Day 60: Petitioner's Opening Statement due  
Day 90: Respondent's Statement due  
Day 110: Petitioner's Rebuttal due

WHEREFORE, the Board should institute a proceeding in response to this  
Petition.

Respectfully submitted,



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Brendan Collins  
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Attorneys for Petitioners  
*WEST POINT RELOCATION, INC.*  
*and ELI COHEN*

DATE: August 13, 2009

**CERTIFICATE OF SERVICE**

I do hereby certify that I have delivered a true and correct copy of the foregoing document to the following addressee by depositing same in the United States mail, first class postage prepaid, or by email transmission, this 15<sup>th</sup> day of August 2009:

Stephen M. Uthoff  
THE UTHOFF LAW CORPORATION  
401 East Ocean Boulevard – Suite 710  
Long Beach, CA 90802  
Telephone: 562.437.4301  
Facsimile: 562.437.4341

Attorneys for Petitioner  
HORIZON LINES LLC

*Brandon Allen*

# **APPENDIX 1**

1 Stephen M. Uthoff, State Bar No. 145206  
E-mail: suthoff@uthofflaw.com  
2 The Uthoff Law Corporation  
401 E. Ocean Blvd., Suite 710  
3 Long Beach, California 90802  
Tele: 562-437-4301  
4 Fax: 562-437-4341

5 Attorneys for Plaintiff  
6 HORIZON LINES LLC

7  
8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10

11 HORIZON LINES LLC,

Case No. CV 08-6362 RSWL (JTLx)

12 )  
13 Plaintiff, )

IN ADMIRALTY

14 vs. )

ORDER ON STIPULATION RE:

15 WEST POINT RELOCATION aka )  
16 WEST POINT RELOCATION INC. and )  
ELI COHEN. )

1. REFERRAL OF ADMINISTRATIVE  
ISSUES TO THE SURFACE  
TRANSPORTATION BOARD  
2. STAY OF THE ACTION AS TO ELI  
COHEN

17 Defendants. )  
18

19 WEST POINT RELOCATION, INC. )

Related Motion:

20 Counter Claimant, )

21 vs. )

Date: August 4, 2009

Time: 9:00 a.m.

22 HORIZON LINES, LLC, )

Courtroom: 21

23 Counter Defendant. )  
24

25  
26 The Court having considered the parties' stipulation [29] hereby Orders:

27 1. That Cohen's motion for a referral to the Surface Transportation  
28 Board ("STB") [28] now scheduled for August 4, 2009 is taken off calendar.

1           2.     That Cohen is ordered, within 30 days of the date this Order is entered  
2 pursuant to the parties' Stipulation to file its petition with the STB seeking its  
3 determination of the reasonableness of Horizon's tariff provisions.

4           3.     Provided defendant Cohen files its petition with the STB within  
5 30 days this action shall be stayed as to defendant Cohen only, pending resolution of the  
6 reasonableness issue by the STB.

7           4.     That the remainder of this action against WestPoint shall continue and  
8 shall not be stayed.

9  
10 **IT IS SO ORDERED.**

11 **Dated: July 20, 2009**

  / S /  

Honorable Ronald S.W. Lew  
Senior, United States District Judge

## **APPENDIX 2**

1 Stephen M. Uthoff, State Bar No. 145206  
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2 The Uthoff Law Corporation  
401 E. Ocean Blvd., Suite 710  
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Tele: 562-437-4301  
4 Fax: 562-437-4341

5 Attorneys for Plaintiff  
6 HORIZON LINES LLC

2008 DEC 30 PM 3:14  
CLERK OF DISTRICT COURT  
WESTERN DISTRICT OF CALIFORNIA

FILED

8 UNITED STATES DISTRICT COURT  
9 CENTRAL DISTRICT OF CALIFORNIA  
10 WESTERN DIVISION

12 HORIZON LINES LLC,

14 Plaintiff,

15 vs.

17 WEST POINT RELOCATION aka  
18 WEST POINT RELOCATION INC. and  
ELI COHEN.

20 Defendants.

) Case No. CV 08-6362 RSWL (JTLx)  
)  
) IN ADMIRALTY  
)  
) FIRST AMENDED COMPLAINT FOR  
) MONEY DUE UNDER TARIFF,  
) BREACH OF CONTRACT(S), WORK  
) AND LABOR PERFORMED,  
) ACCOUNT STATED

21  
22  
23  
24  
25 //  
26 //  
27 //  
28 //

1 Horizon Lines LLC alleges that:

2 **FIRST COUNT**

3 **(For Money due Under Tariff)**

4 1. This Court has jurisdiction under 28 U.S.C. §§1331 and 1333. This matter arises  
5 under the laws of the United States, in particular, ICC Termination Act of 1995, 49 U.S.C.  
6 §§13521 et seq. (hereinafter "Act") and involves contract(s) within the jurisdiction or claims  
7 pendent or ancillary to the same. This is an admiralty and maritime claim.

8 2. Horizon Lines LLC (hereinafter "Plaintiff") is a common carrier by water, *inter*  
9 *alia*, in interstate commerce and was such a common carrier for the benefit of defendants in  
10 such commerce as hereinafter set forth. Eli Cohen is, upon information and belief, the  
11 principal of West Point.. Pursuant to the terms and conditions of Horizon Lines tariff, as a  
12 principal of West Point, Cohen is jointly and severally responsible for the payment of all  
13 amounts prayed for herein.

14 3. Defendants, and each of them, are, and were at all times herein mentioned, a  
15 natural person, firm, association, organization, partnership, corporation, business, trust, or  
16 public entity, with its principal place of business or residence in this district and is and was a  
17 legal entity capable of being sued. Each defendant is believed to be the agent or alter-ego of  
18 each remaining defendant.

19 4. Venue is proper in this judicial district because it is where the claim arose and/or  
20 because defendant(s) resides or does business in the district and/or defendant(s) are aliens.

21 5. Plaintiff has filed a tariff or has otherwise maintained a schedule of its rates and  
22 charges and service contracts for the carriage of cargo, wharfage and dockage.

23 6. Plaintiff transported cargo for the benefit of Defendants during 2007 - 2008. Such  
24 transportation and services provided are evidenced by Plaintiff's bills of lading and/or  
25 freight bills, invoices, credit agreements and freight guarantees, the terms of which are  
26 incorporated herein through this reference (a summary of said bills is attached as Exhibit  
27 "A"). Plaintiff has fully performed its contractual obligations.

28 7. Plaintiff has demanded that defendants pay the full amount due of \$410,207.48.

1 8. Defendants have knowingly and willfully failed and refused to pay Plaintiff the  
2 full amount due.

3 9. Consequently, Defendants are liable to the Plaintiff in the amount of \$410,207.48,  
4 plus reasonable attorneys' fees and interest thereon.

5 **SECOND COUNT**

6 **(For Breach of Written Contract(s))**

7 10. Plaintiff refers to paragraphs 1 through 9 of this complaint and incorporates them  
8 herein by this reference.

9 11. Said transportation was performed pursuant to a written contract of carriage between  
10 plaintiff and defendants, as evidenced by said bills of lading and/or freight bills and tariffs.

11 12. Plaintiff has fully performed its obligations under said contracts except those  
12 obligations, if any, which plaintiff was excused from performing.

13 13. Plaintiff has demanded that defendants pay the amount due under said contracts and  
14 the defendants have refused to pay thereon.

15 14. Consequently, defendants are liable to plaintiff in the amount of \$410,207.48, plus  
16 reasonable attorneys' fees and interest thereon.

17 **THIRD COUNT**

18 **(For Work and Labor Performed)**

19  
20 15. Plaintiff refers to paragraphs 1 through 14 of this complaint and incorporates  
21 them herein by this reference.

22 16. Within the last four (4) years, Defendants became indebted to Plaintiff for work  
23 and labor performed by Plaintiff for the benefit of Defendants as described by Exhibit A, for  
24 which Defendants agreed to pay Plaintiff.

25 17. Despite due demand, the sum of \$410,207.48 is now due, owing and unpaid for  
26 said work and labor performed.

**FOURTH COUNT**

**(For Account Stated)**

18. Plaintiff refers to paragraphs 1 through 12 of this complaint and incorporates them herein by this reference.

19. Within the last four (4) years, an account was stated in writing by and between Plaintiff and Defendants as described by Exhibit A wherein it was agreed that Defendants were indebted to Plaintiff.

20. Despite due demand, the sum of \$410,207.48 is now due, owing and unpaid on said account stated.

WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

1. For the sum of \$410,207.48;
2. For the costs of collection, according to proof;
3. For costs of suit incurred herein, according to proof;
4. For pre-judgment and post-judgment interest;
5. For reasonable attorneys' fees; and
6. For such other and further relief as the Court deems just and proper.

Dated: December 30, 2008

By: 

Stephen M. Uthoff  
The Uthoff Law Corporation  
Attorneys for Plaintiff  
HORIZON LINES LLC

WestPalm Relocation  
Statement of Account - Enclosing Cash Carry - June 16, 2008

RECEIVABLE	DATE	DATE	AMOUNT	SUM OF	SUM OF	AMOUNT	DAYS	CONTAINER	VND	INVOICE	ORIGIN	DEST	SHIPPER REF	AR
			BILLED	PAYMENTS	ADJUSTMENTS	DUE	LATE							CODE
472956912-P	10/31/07	11/20/07	\$6,911.29	\$	\$	(2,661.37)	199	TINUD098254	EN230S	157715	PUO	HON		
472868833-P	11/10/07	12/10/07	\$ 880.52	\$	\$	(94.49)	189	SEAL065247	RG182S	1582044	LAC	KWH		
472891527-P	12/12/07	01/11/08	\$6,697.06	\$ 1,069.50	\$	6,697.06	157	HRZU045082	RG184N	1583950	LAC	KWH		
300404900-C	12/14/07	01/13/08	\$ 975.00	\$ 1,950.00	\$	6,911.29	154	MSKU045613	RG184N	1583536	PUO	OAK	OWNER: DARLENE WAREH	RU
472898584-P	12/15/07	01/14/08	\$3,643.26	\$	\$	6,911.29	154	MSKU045613	RG184N	1583536	PUO	HON		
472898700-P	12/18/07	01/16/08	\$6,800.44	\$	\$	3,952.23	90	MSKU045613	RG184N	1583536	PUO	HON		
472898814-P	12/18/07	01/16/08	\$7,042.79	\$	\$	3,952.23	90	MSKU045613	RG184N	1583536	PUO	HON		
473001935-P	12/23/07	01/22/08	\$7,331.73	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473003092-P	12/24/07	01/23/08	\$9,515.87	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300405884-P	12/28/07	01/27/08	\$3,755.16	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473004692-P	12/29/07	01/28/08	\$7,152.84	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473007303-P	01/02/08	02/01/08	\$7,074.04	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300405884-C	01/04/08	02/03/08	\$4,330.58	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473009989-P	01/05/08	02/04/08	\$ 978.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473009989-P	01/05/08	02/04/08	\$ 978.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473010914-P	01/08/08	02/07/08	\$7,152.84	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473012454-P	01/08/08	02/07/08	\$1,258.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473012454-P	01/08/08	02/07/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300406073-P	01/11/08	02/10/08	\$4,330.58	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473014775-P	01/12/08	02/11/08	\$7,224.79	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473017777-P	01/12/08	02/11/08	\$7,224.79	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473018107-P	01/16/08	02/15/08	\$7,074.04	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473020988-P	01/19/08	02/18/08	\$7,152.84	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473022847-P	01/22/08	02/21/08	\$7,152.84	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473023321-P	01/23/08	02/22/08	\$7,145.99	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300408924-C	01/23/08	02/22/08	\$4,330.58	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300408726-C	01/23/08	02/22/08	\$4,330.58	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473026395-P	01/26/08	02/25/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473026394-P	01/26/08	02/25/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473029123-P	01/29/08	02/28/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300407071-C	02/01/08	03/02/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473031235-P	02/02/08	03/03/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473031251-P	02/02/08	03/03/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473031830-P	02/02/08	03/03/08	\$7,152.84	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473033323-P	02/05/08	03/04/08	\$7,273.02	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473036814-P	02/08/08	03/07/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473038315-P	02/08/08	03/07/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473038782-P	02/10/08	03/09/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
300407445-C	02/12/08	03/11/08	\$2,678.69	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473040633-P	02/13/08	03/11/08	\$7,273.02	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473040633-P	02/13/08	03/11/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473043522-P	02/18/08	03/17/08	\$7,345.57	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473044334-P	02/17/08	03/16/08	\$3,952.23	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473046325-P	02/23/08	03/21/08	\$7,273.02	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473046335-P	02/23/08	03/21/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473048908-P	02/27/08	03/25/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473052346-P	02/27/08	03/25/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473052350-P	02/27/08	03/25/08	\$1,058.00	\$	\$	7,273.02	84	MSKU045613	RG184N	1583536	PUO	HON		
473051548-P	02/27/08	03/25/08	\$7,091.62	\$	\$	7,091.62	80	PNWU0304293	PS238S	1622067	PUO	HON		

WestPacit Relocation  
Statement of Account - Excluding Cash Cargo - June 16, 2008

473031552-P	02/27/08	02/28/08	\$7,183.57	7,183.57	80	APN10244489	PST215	1822087	PUD	H.O	
473052732-P	02/27/08	02/28/08	\$4,140.38	4,140.38	80	NOH10201171	PST235	1823092	OAK	RWH	
473052731-P	02/27/08	02/28/08	\$4,140.38	4,140.38	80	NOH10201610	PST245	1823082	OAK	RWH	
473052706-P	02/27/08	02/28/08	\$7,186.82	7,186.82	80	HRZ10873923	PST245	1824312	HON	RWH	
300406024-C	02/28/08	02/28/08	\$4,401.78	4,401.78	78	SEAL0875590	JBO80N	1822263	SJC	HON	
300408141-C	02/28/08	02/28/08	\$1,058.00	1,058.00	78	HRZ104300512	JBO80N	1822510	PUD	RWH	
473055763-P	02/01/08	02/31/08	\$7,273.62	7,273.62	77	APN10482338	REG205	1822638	PUD	HON	
473056413-P	02/01/08	02/31/08	\$1,058.00	1,058.00	77	POH10720048	REG205	1824439	LBC	RWH	
473050308-P	02/02/08	04/01/08	\$7,014.33	7,014.33	76	MAE109458117	EVZ235	1828001	VUS	H.O	
473057418-P	02/03/08	04/01/08	\$7,380.82	7,380.82	73	HRZ10440298	EVZ235	1824718	APV	RWH	
473058327-P	02/03/08	04/01/08	\$1,058.00	1,058.00	73	SEAL0884042	EVZ235	1825230	OAK	RWH	
473058328-P	02/03/08	04/01/08	\$1,058.00	1,058.00	73	SEAL0884042	EVZ235	1825230	OAK	RWH	
473058325-P	02/03/08	04/01/08	\$1,058.00	1,058.00	73	NDI10401472	EVZ235	1825230	OAK	RWH	
300408303-C	02/07/08	04/07/08	\$2,773.38	2,773.38	71	MSK10214715	REG20N	1825163	HON	PUD	
473061804-P	02/08/08	04/07/08	\$1,058.00	1,058.00	70	MSK10081439	JBO87S	1825668	LAC	RWH	
473063849-P	02/08/08	04/07/08	\$6,907.70	6,907.70	70	MSK10081439	JBO87S	1825668	LAC	RWH	
473067854-P	02/08/08	04/07/08	\$6,907.70	6,907.70	70	MSK10081439	JBO87S	1825668	LAC	RWH	
473068424-P	02/13/08	04/10/08	\$4,583.38	4,583.38	65	MSK10214924	REG21S	1827841	EDR	RWH	
473067777-P	02/15/08	04/14/08	\$7,273.62	7,273.62	63	SEAL0873167	REG21S	1828214	LAC	RWH	
473070105-P	02/18/08	04/16/08	\$6,981.18	6,981.18	59	SEAL0872776	REG21S	1830418	SJC	HON	
473073888-P	02/22/08	04/21/08	\$1,288.00	1,288.00	58	SEAL0872776	REG21S	1830418	SJC	HON	
473078103-P	02/28/08	04/28/08	\$7,348.57	7,348.57	49	SEAL0872776	REG21S	1830418	SJC	HON	
473078821-P	02/28/08	04/28/08	\$1,058.00	1,058.00	49	POH10183167	REG20N	1834778	LAC	RWH	
473078825-P	02/28/08	04/28/08	\$1,058.00	1,058.00	48	POH10183167	REG20N	1834778	LAC	RWH	
300409401-C	02/04/08	02/04/08	\$4,401.78	4,401.78	43	HRZ10481187	REG20N	1835880	HON	PUD	
300409408-C	02/04/08	02/04/08	\$4,401.78	4,401.78	43	MSK10451027	REG20N	1835880	HON	PUD	
300409581-C	02/07/08	02/07/08	\$4,188.38	4,188.38	40	HRZ10481187	REG20N	1837181	KUH	HON	
473087629-P	02/08/08	02/08/08	\$7,318.01	7,318.01	39	MAE109458117	REG21S	1837181	MJB	HON	
473089456-P	02/18/08	02/18/08	\$1,058.00	1,058.00	29	SEAL0872776	REG20N	1840082	HON	PUD	
300410084-C	02/18/08	02/18/08	\$4,382.88	4,382.88	28	POH10090954	REG20N	1842806	PUD	HON	
473097887-P	02/18/08	02/18/08	\$7,482.83	7,482.83	27	HRZ10481187	REG20N	1842806	TAC	RWH	
300410078-C	02/25/08	02/25/08	\$1,058.00	1,058.00	22	HRZ10481187	REG20N	1842806	PUD	HON	
300410237-C	02/25/08	02/25/08	\$1,058.00	1,058.00	22	HRZ10481187	REG20N	1842806	PUD	HON	
473108808-P	02/28/08	02/28/08	\$7,425.83	7,425.83	21	TR10488874	JBO80N	1843883	HON	PUD	
473108809-P	02/28/08	02/28/08	\$4,982.88	4,982.88	17	MSK10633333	REG20S	1845725	LAC	RWH	
473108810-P	02/28/08	02/28/08	\$4,982.88	4,982.88	17	MSK10633333	REG20S	1845725	LAC	RWH	
473108811-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	GWS10480000	REG20N	1846487	HON	PUD	
473108812-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108813-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108814-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108815-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108816-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108817-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108818-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108819-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108820-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108821-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108822-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108823-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108824-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108825-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108826-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108827-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108828-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108829-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108830-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108831-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108832-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108833-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108834-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108835-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108836-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108837-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108838-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
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473108840-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108841-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108842-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108843-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108844-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108845-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108846-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108847-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108848-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108849-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108850-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108851-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108852-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108853-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108854-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108855-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108856-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108857-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108858-P	02/28/08	02/28/08	\$1,058.00	1,058.00	14	MSK10633333	JBO87S	1847833	LAC	RWH	
473108859-P	02										



PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
COUNTY OF LOS ANGELES )

ss.

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 401 E. Ocean Blvd., Suite 710, Long Beach CA 90802

On December 30, 2008, I served the foregoing document described as **FIRST AMENDED COMPLAINT FOR MONEY DUE UNDER TARIFF, BREACH OF CONTRACT(S), WORK AND LABOR PERFORMED, ACCOUNT STATED**

on the interested parties as follows:

Shalem Shem-Tov, Esq.  
NETZAH & JANKIELEWICZ, INC.  
16601 Ventura Blvd., 4th Floor  
Encino, CA 91436  
Counsel for Defendants

**BY MAIL:** I caused such envelope to be deposited in the mail at Long Beach, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**VIA CM/ECF:** Pursuant to General Order 08-02 the forgoing document was served on opposing counsel via the Court's CM/ECF system.

**Federal:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on December 30, 2008 at Long Beach, California.

  
\_\_\_\_\_  
Stephen M. Uthoff

## **APPENDIX 3**

1 Shalem Shem-Tov, Esq.  
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5 Telephone: (818) 995-4200  
6 Facsimile: (818) 783-6775  
7 shalem@netjanlaw.com  
8 State Bar No. 257243

9 Attorneys for Defendants,  
10 WEST POINT RELOCATION, INC.  
11 (erroneously sued as WEST POINT  
12 RELOCATION) and ELI COHEN

13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15 WESTERN DIVISION

16 HORIZON LINES LLC )  
17 )  
18 Plaintiff, )  
19 vs. )  
20 )  
21 WEST POINT RELOCATION, INC., and ELI )  
22 COHEN, )  
23 )  
24 Defendants. )  
25 )  
26 )  
27 )  
28 )

CASE NO.: 08-CV-06362-RSWL-JTL  
**AMENDED ANSWER OF ELI  
COHEN TO PLAINTIFF'S FIRST  
AMENDED COMPLAINT**

29 Defendant ELI COHEN answers Plaintiff's First Amended Complaint (hereinafter "FAC")  
30 as follows:

31 **ADMISSIONS AND DENIALS**

- 32 1. Defendant admits the allegations of paragraph 1 of plaintiff's FAC.  
33 2. In the first sentence of paragraph 2 of the FAC, Plaintiff claims that it provided  
34 transportation services " for the benefit of defendants". Defendant denies that  
35 Plaintiff provided transportation services to him, that is, to Eli Cohen. Defendant  
36 admits that Plaintiff provided services for the benefit of co-defendant West Point  
37 Relocation, Inc. Defendant admits the second sentence of paragraph 2. Defendant

1 lacks sufficient information or belief to determine, at this stage of the proceedings,  
2 whether the allegations of the last sentence of paragraph 2 of plaintiff's FAC are true  
3 or not.

4 3. Defendant admits that it is a natural person with his residence in this District, but  
5 denies each and every remaining allegation of paragraph 3 of the FAC.

6 4. Defendant admits the allegations of paragraph 4 of plaintiff's FAC.

7 5. Defendant lacks sufficient information or belief to determine, at this stage of the  
8 proceedings, whether the allegations of paragraph 5 of plaintiff's FAC are true or not.

9 6. In the first sentence of paragraph 6 of the FAC, Plaintiff claims that it provided  
10 transportation services "for the benefit of defendants". Defendant denies that  
11 Plaintiff provided transportation services to him, that is, to Eli Cohen. Defendant  
12 admits that Plaintiff provided services for the benefit of co-defendant West Point  
13 Relocation, Inc. Defendant lacks sufficient information or belief to determine, at this  
14 stage of the proceedings, whether the allegations of the second sentence of paragraph  
15 6 are true or not. Plaintiff has failed to attach any contracts or agreements to its FAC,  
16 nor has it pled the terms of such agreements anywhere in the FAC. All Plaintiff  
17 attached was an alleged summary of bills. Plaintiff attempts to incorporate by  
18 reference terms of these alleged agreements without providing such terms.  
19 Defendant denies the last sentence of paragraph 6.

20 7. Defendant admits the allegations of paragraph 7 of plaintiff's FAC.

21 8. Defendant denies each and every allegation of paragraphs 8 and 9 of the FAC.

22 9. Defendant lacks sufficient information or belief to determine, at this stage of the  
23 proceedings, whether the allegations of paragraph 11 are true or not. Plaintiff has  
24 failed to attach any contracts or agreements to its FAC, nor has it pled the terms of  
25 such agreements anywhere in the FAC. Plaintiff has further failed to attach any of  
26 the alleged bills of lading, freight bills or tariffs upon which it is attempting to rely,  
27 nor has it pled the terms of any such document in the FAC. All Plaintiff attached was  
28 an alleged summary of bills. Plaintiff attempts to incorporate by reference terms of

1 these alleged agreements without providing such terms.

- 2 10. Defendant denies each and every allegation of paragraphs 12 through 20 of  
3 Plaintiff's FAC.

4 ***AFFIRMATIVE DEFENSES***

5 As and for affirmative defenses to the claims in Plaintiff's Original FAC, and based on the  
6 knowledge and information available to it to date, Defendant is informed and believes and based  
7 thereon alleges as follows:

8 ***First Affirmative Defense***

- 9 1. Plaintiff's claims for monetary damages is at least partially barred by Plaintiff's own  
10 negligent actions, causing damage to Defendant's property while in Plaintiff's  
11 possession. As such, Defendant is owed a setoff for the damages it suffered due to  
12 Plaintiff's actions.

13 ***Second Affirmative Defense***

- 14 2. Plaintiff's claims against defendant Eli Cohen in his personal capacity are  
15 unfounded, as said defendant was merely an agent of co-defendant West Point  
16 Relocation, Inc. As such, said defendant is not personally liable for damages caused  
17 by said co-defendant.

18 ***Third Affirmative Defense***

- 19 3. Plaintiff has come into this Court with unclean hands and should therefore be  
20 estopped from obtaining any relief. Plaintiff's claims are barred by the doctrine of  
21 unclean hands.

22 ***Fourth Affirmative Defense***

- 23 4. Plaintiff's claims are barred under the doctrine of laches.

24 ***Fifth Affirmative Defense***

- 25 5. The tariff language upon which Horizon relies is subject to the primary and exclusive  
26 jurisdiction of the Surface Transportation Board.

27 ***Sixth Affirmative Defense***

- 28 6. The language that purports to make Eli Cohen, as principal, liable for freight charges

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is unjust and unreasonable and violates 49 U.S.C. § 13701.

***PRAYER***

Defendant prays judgment:

- A. That plaintiff take nothing by its First Amended Complaint in this actions.
- B. That judgment be entered for the defendants in this action.
- C. That this defendant be awarded its costs of suit.
- D. That this defendant be granted any and all other relief to which it may be justly entitled.

Dated: February 3, 2009

NETZAH & JANKIELEWICZ, INC.

By: /S/ Shalem Shem-Tov  
SHALEM SHEM-TOV  
Attorney for Defendants,  
WEST POINT RELOCATION, INC.  
(erroneously sued as WEST POINT  
RELOCATION) and ELI COHEN

## **APPENDIX 4**

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 State Bar No. 257243

5 Attorneys for Defendants,  
 6 WEST POINT RELOCATION, INC.  
 7 (erroneously sued as WEST POINT  
 RELOCATION) and ELI COHEN

8 UNITED STATES DISTRICT COURT  
 9 CENTRAL DISTRICT OF CALIFORNIA  
 WESTERN DIVISION

10 HORIZON LINES LLC	)	CASE NO.:08-CV-06362-RSWL-JTLx
	)	
11 Plaintiff,	)	
	)	IN ADMIRALTY
12 vs.	)	
	)	DEFENDANTS' NOTICE OF
13 WEST POINT RELOCATION, INC., and ELI	)	MOTION AND MOTION FOR
14 COHEN,	)	REFERRAL OF
	)	ADMINISTRATIVE ISSUES TO
15 Defendants.	)	THE SURFACE
	)	TRANSPORTATION BOARD

16  
 17 Date: August 4, 2009  
 18 Courtroom: 21  
 19 Judge: Hon. Ronald S. W. Lew

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**TO PLAINTIFF HORIZON LINES LLC AND ITS ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on August 4, 2009 at 9:00 a.m., or as soon thereafter as the matter may be heard in the above-entitled Court, located at 312 N. Spring Street, Los Angeles, California, in Court Room 21, Defendants, West Point Relocation, Inc. and Eli Cohen, by their undersigned counsel, will and hereby do move the Court to refer an issue regarding the reasonableness of Horizon Lines LLC's ("Horizon's") tariff to the Surface Transportation Board ("STB" or "Board") pursuant to the doctrine of primary jurisdiction.

Specifically, Defendants seek to refer to the STB the issue of whether it is a reasonable practice for Horizon's tariff rules to disregard the existence of corporate structures and to seek to hold officers and directors or corporations personally liable for the actions of the corporation.

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. STATEMENT OF ISSUES**

- 3 1. Whether the issue regarding the reasonableness of Horizon's tariff rules should be  
4 referred to the Surface Transportation Board.

5  
6 **II. INTRODUCTION AND SUMMARY OF ARGUMENT**

7 Horizon brought this action pursuant to the ICC Termination Act of 1995, 49 U.S.C. §13521  
8 *et seq.* (the "Act"), alleging that West Point failed to pay certain transportation charges provided on  
9 its behalf pursuant to the terms of Horizon's tariff. *See* Plaintiff's First Amended Complaint, Count

10 I. Horizon also seeks recovery from Cohen; however, based upon the fact that "[p]ursuant to the  
11 terms and conditions of Horizon Lines tariff, as a principal of West Point, Cohen is jointly and  
12 severally responsible for the payment of all amounts prayed for herein." *Id.* Defendants argue that  
13 this language is unreasonable. Further, the question of whether such language in the tariff is  
14 reasonable or not is for the Surface Transportation Board to decide.

15  
16 The transportation at issue involved shipment of goods via water from Hawaii to the United  
17 States. Thus it falls within the scope of Section 13701 of the Act governing the movement of goods  
18 by a water carrier in noncontiguous domestic trade.

19  
20 **V. ARGUMENT: STB Has Primary Jurisdiction Over the Reasonableness of Horizon's**  
21 **Tariff and the Terms and Conditions Set Forth Therein.**

22 Section 13701(a) of the Act provides in relevant part that a rate classification, rule or practice  
23 related to transportation or service provided by a carrier involving a rate for a movement by or with a  
24 water carrier in noncontiguous domestic trade . . . must be reasonable. Subsection (b) of Section 13701  
25 provides that when the Board finds it necessary to stop or prevent a violation of subsection (a), the  
26 Board shall prescribe the rate, classification, rule, practice, through rate, or division of joint rates to be  
27 applied for such transportation or service. Subsection (c) provides that "a complaint that a rate,  
28

1 classification, rule or practice in noncontiguous domestic trade violates subsection (a) may be filed with  
2 the Board.

3 The doctrine of primary jurisdiction permits a court to refer an issue to an agency for  
4 determination when it would impact the uniformity of the regulated field and involve the agency's  
5 special expertise. See *DeBruce Grain, Inc. v. Union Pac. R.R.*, 149 F.3d 787, 790 (8<sup>th</sup> Cir. 1998); see  
6 also, *Pejepscot Industrial Park, Inc. v. Maine Central R.R. Co.*, 215 F.3d 195, 206 (1<sup>st</sup> Cir. 2000)  
7 (primary jurisdiction doctrine is intended to serve as a means of coordinating administrative and judicial  
8 machinery, to promote uniformity, and take advantage of agencies' special expertise). Among the  
9 factors the court considers in determining whether to refer an issue to an agency under the primary  
10 jurisdiction doctrine are whether the agency determination lies at the heart of the task assigned to the  
11 agency by Congress and whether referral to the agency will promote uniformity in the regulated field.  
12 *Id.*; see also *Atlantis Exp. Inc. v. Standard Transp. Services, Inc.*, 955 F.2d 529, 532 (8<sup>th</sup> Cir.1992)  
13 (primary jurisdiction should be invoked when referral will promote uniformity in statutory and  
14 regulatory construction and involves policy considerations).

15 As reflected in the language of the Act, the determination of the reasonableness of a tariff  
16 provision lies within the exclusive jurisdiction of the STB. 49 U.S.C. § 13701; see also *Hargrave v.*  
17 *Freight Distrib. Serv. Inc.*, 53 F.3d 1019, 1021 (9<sup>th</sup> Cir. 1995) (the determination of tariff's  
18 reasonableness is matter within the jurisdiction of the ICC); *RTC Transp. Inc. v. Conagra Poultry Co.*,  
19 971 F.2d 368, 372 (9<sup>th</sup> Cir. 1992) (the ICC has exclusive primary jurisdiction to determine the  
20 reasonableness of a filed rate)<sup>1</sup>; *U.S. v. Western Pac. R.R Co.*, 352 U.S. 59, 63 (1956) (reasonableness  
21 of tariff and question of tariff construction within exclusive primary jurisdiction of the ICC); *Baltimore*  
22 *& O.R Co. v. Brady*, 288 U.S. 448, 456 (1933) (questions as to reasonableness of rules and regulations  
23 governing tariff are for the ICC); *Union Pacific R.R. Co. v. FMC Corp.*, 2000 WL 134010 (E.D. Pa.  
24  
25  
26  
27

28 \_\_\_\_\_  
The STB is the successor to the Interstate Commerce Commission.

1 2000) (issue of reasonability of transportation provider's tariff falls squarely within the primary  
2 jurisdiction of the STB). Thus, under the primary jurisdiction doctrine, the issue of reasonableness of  
3 the rates and the terms of a tariff require determination by the STB. *Hargrave*, 53 F.3d 1021; see also  
4 *Sea-Land Service, Inc. v. Atlanta Pacific Internat'l, Inc.*, 61 F. Supp. 2d 1102, 1112-13 (D. Ha. 1999);  
5 *Advance United Expressways, Inc. v. Eastman Kodak, Co.*, 965 F.2d 1347, 1352-53 (5<sup>th</sup> Cir. 1992)  
6 (district court if confronted with issue within primary jurisdiction of ICC *must* stay its proceedings and  
7 refer the issue to the ICC). The reasonableness of the terms of a tariff is an area where uniformity and  
8 agency expertise are essential to a proper result. *Hargrave*, 53 F.3d at 1021. Accordingly, courts must  
9 refrain from deciding issues related to the reasonableness of a filed rate when the STB has primary  
10 jurisdiction to do so. *Sea-Land Service*, 61 F. Supp. 2d at 1113; *see also*, *Hargrave*, 53 F.3d at 1021-22  
11 (district court erred in deciding whether filed tariff was unreasonable); *Pejepscot*, 215 F.3d at 205-06  
12 (court must defer to STB on question of reasonableness of transportation practice); *Advance United*  
13 *Expressways, Inc. v. Eastman Kodak, Co.*, 965 F.2d at 1353 (where reasonableness of tariff at issue,  
14 there must be preliminary resort to the ICC).

15  
16  
17 The issue presented to the Court here is the reasonableness of terms and conditions contained  
18 in Horizon's tariff and specifically whether it is a reasonable practice to impose personal liability upon  
19 corporate officer and directors acting in their corporate capacity. As a defense to Horizon's efforts to  
20 hold Cohen personally liable for West Point's alleged obligations, the defendants challenge the  
21 reasonableness and the legality of Horizon's tariff. The STB has exclusive jurisdiction to make such  
22 a determination. Indeed, this Court lacks authority to provide the defendants with the relief they seek,  
23 *i.e.*, a determination that the tariff provision is unreasonable. *See, e.g., Western Transport. Co. v.*  
24 *Wilson and Co.*, 682 F.2d 1227, 1232 (district court lacks authority to determine whether tariff provision  
25 is unreasonable because only the ICC can make that determination). Thus, unlike an ordinary contract,  
26 this Court has no equitable power to reform the tariff so as to render it reasonable and just. *Id.*  
27  
28

1 As set forth above, ICC has exclusive primary jurisdiction to determine the reasonableness of  
2 the terms and conditions of Horizon's tariff. The question of whether it is a reasonable practice for  
3 Horizon to disregard the existence of the corporate entity with which it contracts in order to assert  
4 personal liability against corporate officers and directors, and to do so unilaterally by publishing an  
5 anomalous rule without providing any meaningful notice to the parties against whom the transportation  
6 provider ultimately may seek relief, has profound implications not only in this case but in cases  
7 throughout the country. One of the lynchpins of corporate law is that the corporate entity, as opposed  
8 to the corporation's officers, directors or shareholders, assumes liability for the corporation's actions.  
9  
10 In construing corporate liability, courts start with the fundamental premise that the corporate entity  
11 should be recognized and upheld unless extraordinary circumstances call for an exception. See, e.g.,  
12 *Official Committee of Unsecured Creditors v. R.F. Lafferty & Co. Inc.*, 267 F.3d 340, 353 (3d Cir.  
13 2001). California courts equally recognize that a corporation is a legal entity, separate and distinct from  
14 its stockholders, officers and directors with separate and distinct liabilities and obligations. *Sonora*  
15 *Diamond Corp. v. Superior Court*, 83 Cal. App. 4th 523, 538-39 (Cal. Ct. App. 2000). While the  
16 "corporate veil" may be pierced, courts may only ignore the corporate entity and deem the corporation's  
17 acts to be those of the individual acting on behalf of the corporation when the corporate form is used  
18 to perpetrate a fraud, circumvent a statute or accomplish some other wrongful purposes. *Id.* at 539; see  
19 also *Taylor v. Newton*, 117 Cal App. 2d, 752 (Cal. Ct. App. 1953) (corporate form ignored only when  
20 necessary to redress fraud or prevent palpable injustice).

23 Courts caution that the concept of palpable injustice sufficient to justify imposing personal  
24 liability on an individual acting on behalf of a corporation should not be stretched too far. Thus, even  
25 if these were the facts here (and Horizon makes no such allegations), it is not enough to show that a  
26 creditor will remain unsatisfied if the corporate veil is not pierced. *Mid-Century Ins. Co. v. Gardner*,  
27 9 Cal. App. 4th 1205, 1213 (Cal. Ct. App. 1992). The purpose of the doctrine is not to protect every  
28

1 unsatisfied creditor, but rather to afford protection where conduct amounting to bad faith makes it  
2 inequitable for the corporation to hide behind its corporate form. *Id.* Therefore, courts must engage  
3 in a stringent inquiry and take care “on all occasions to avoid making the entire theory of the corporate  
4 entity useless.” *R.F. Lafferty & Co. Inc.*, 267 F.3d 340, 353. *Id.*

5  
6 Here, Horizon seeks to discard a fundamental precept of Anglo-American jurisprudence and  
7 impose personal liability upon directors and officers acting on behalf of a corporate entity for the  
8 corporation’s obligations without regard to any showing of fraud or inequitable conduct. It also seeks  
9 to do so without providing any meaningful notice to corporate officers and directors that they are  
10 assuming such personal obligations. The Defendants challenge the reasonableness and the legality of  
11 Horizon’s tariff in this regard. Because a determination as to the reasonableness of Horizon’s tariff is  
12 within the exclusive jurisdiction of the STB pursuant to 49 U.S.C § 13701, the Court must defer in  
13 ruling on whether liability may be imposed on Cohen until after the STB has had an opportunity to  
14 address the issue.  
15

16 Wherefore, the defendants request that the Court refer to the STB the question of the  
17 reasonableness of the terms in Horizon’s tariff.

18 **VI. CONCLUSION**

19  
20 For all of the foregoing reasons, this Honorable Court should refer the issue regarding the  
21 reasonableness of Horizon’s tariff to the STB, and stay the instant case until the STB makes a  
22 determination.  
23

24 Dated: **June 25, 2009**

NETZAH & JANKIELEWICZ, INC.

25 By: /S/ Shalem Shem-Tov  
26 SHALEM SHEM-TOV  
27 Attorney for Defendants,  
28 WEST POINT RELOCATION, INC.  
(erroneously sued as WEST POINT  
RELOCATION) and ELI COHEN



# **APPENDIX 5**

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8 Attorneys for Plaintiff  
9 HORIZON LINES LLC

10 UNITED STATES DISTRICT COURT  
11 CENTRAL DISTRICT OF CALIFORNIA  
12 WESTERN DIVISION

13 HORIZON LINES LLC, ) Case No. CV 08-6362 RSWL (JTLx)

14 Plaintiff, ) IN ADMIRALTY

15 vs. ) STIPULATION RE

16 )  
17 WEST POINT RELOCATION aka ) 1. REFERRAL OF ADMINISTRATIVE  
18 WEST POINT RELOCATION INC. and ) ISSUES TO THE SURFACE  
19 ELI COHEN. ) TRANSPORTATION BOARD

20 Defendants. ) 2. STAY OF THE ACTION AS TO ELI  
21 ) COHEN

22 WEST POINT RELOCATION, INC. )

23 Counter Claimant, ) Related Motion:

24 vs. ) Date: August 4, 2009

25 ) Time: 9:00 a.m.

26 HORIZON LINES, LLC, ) Courtroom: 21

27 Counter Defendant. )  
28 )

1 The parties by and through their counsel of record hereby stipulate as follows:

2 1. Plaintiff, Horizon Lines LLC, ("Horizon") has alleged in its first amended  
3 complaint that defendant West Point Relocation ("WestPoint") failed to pay for certain  
4 transportation services provided on its behalf.

5 2. Horizon seeks recovery also from WestPoint's principal, Eli Cohen,  
6 ("Cohen") based upon a provision of Horizon's tariff which states "The shipper,  
7 consignee, holder of the bill of lading, bill to party, owner of the goods *and principals of*  
8 *said liable parties* shall be jointly and severally liable to Carrier for the payment of all  
9 freight, demurrage, General Average and other charges." (emphasis added).

10 3. Cohen maintains that this tariff provision is unreasonable. Horizon, opposes  
11 that characterization.

12 4. In an effort to determine the reasonableness of this tariff provision Cohen  
13 filed its motion for a referral of the reasonableness of this tariff provision to the Surface  
14 Transportation Board ("STB"). This motion is set to be heard in this Court on August 4,  
15 2009.

16 5. Pursuant to Ninth Circuit precedent, the STB does have exclusive primary  
17 jurisdiction to determine the reasonableness of this tariff provision. See *Hargrave v.*  
18 *Freight Distribution Services Inc.*, 53 F.3d 1019, 1021 (9<sup>th</sup> Cir. 1995).

19 6. To avoid the waste of the parties and judicial resources and in an effort to  
20 resolve the pending motion the parties request that the following order be entered:

21 1. That Cohen's motion for a referral to the STB be taken off calendar.

22 2. That Cohen is ordered, within 30 days of the date this Order is entered  
23 pursuant to this Stipulation to file its petition with the STB seeking its determination of  
24 the reasonableness of Horizon's tariff provisions indicated above.

25 3. Provided defendant Cohen files its petition with the STB within  
26 30 days this action shall be stayed as to defendant Cohen only pending resolution of the  
27 reasonableness issue by the STB.

28



PROOF OF SERVICE

STATE OF CALIFORNIA )  
 )  
 ) ss.  
COUNTY OF LOS ANGELES )

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 401 E. Ocean Blvd., Suite 710, Long Beach, California 90802.

On July 17, 2009, I served the foregoing document described as **STIPULATION RE 1. REFERRAL OF ADMINISTRATIVE ISSUES TO THE SURFACE TRANSPORTATION BOARD 2. STAY OF THE ACTION AS TO ELI COHEN** on the interested parties in this action by placing a copy thereof enclosed in a sealed envelope addressed as follows:

Shalem Shem-Tov, Esq.  
NETZAH & JANKIELEWICZ, INC.  
16601 Ventura Blvd., 4th Floor  
Encino, CA 91436  
Counsel for Defendants

**BY MAIL:** I caused such envelope to be deposited in the mail at Long Beach, California. The envelope was mailed with postage thereon fully prepaid. I am readily familiar with this firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with U.S. postal service on the same day with postage thereon fully prepaid at Long Beach, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

**VIA CM/ECF:** Pursuant to General Order 08-02 the forgoing document was served on opposing counsel via the Court's CM/ECF system.

**Federal:** I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 17, 2009 at Long Beach, California.

\_\_\_\_\_  
s/Stephen M. Uthoff  
Stephen M. Uthoff