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90-26 FREIGHT FORWARDER—TOFC CONTRACTS

GOVERNMENT

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HEARINGS
BEFORE THE
SUBCOMMITTEE ON TRANSPORTATION
AND AERONAUTICS
OF THE
COMMITTEE ON
INTERSTATE AND FOREIGN COMMERCE
HOUSE OF REPRESENTATIVES
NINETIETH CONGRESS

SECOND SESSION

ON

H.R. 10831

A BILL TO AMEND SECTION 409 OF PART IV OF THE INTER-
STATE COMMERCE ACT, AS AMENDED, TO AUTHORIZE CON-
TRACTS BETWEEN FREIGHT FORWARDERS AND RAILROADS

JANUARY 23, 24, AND 25, 1968

Serial No. 90-26

Printed for the use of the Committee on Interstate and Foreign Commerce



U.S. GOVERNMENT PRINTING OFFICE

WASHINGTON : 1968

89-367

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FREIGHT FORWARDER—TOFC CONTRACTS

TUESDAY, JANUARY 23, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The Subcommittee on Transportation and Aeronautics today is commencing hearings on H.R. 10831, a bill which I introduced by request, which would amend section 409 of part IV of the Interstate Commerce Act, so as to authorize contracts between freight forwarders and the railroads.

Part IV regulates freight forwarders as common carriers of freight in their relationship to shippers which utilize their services. Except for section 409, the freight forwarders in their relationships with the other carriers regulated by the Interstate Commerce Act are not treated as carriers but simply as shippers.

Section 409, which has been amended several times, provides that freight forwarders under part IV may enter into contracts with common carriers by motor vehicle subject to part II of the act. In such relationship the compensation paid under the contracts is comparable with divisions of a joint rate rather than with compensation received by carriers from shippers under a published tariff.

The bill, H.R. 10831, simply extends the scope of section 409 so that freight forwarders could make contracts with railroads as well as with motor carriers as the statute now provides. It is the same proposal as that before the committee in 1956 when hearings were held on H.R. 9548 (84th Congress) with the exception that it is proposed now that forwarders may enter into any type of contract, not merely that of "piggybacking."

At this point we shall include in the record a copy of H.R. 10831 as well as the letters which have been received from the agencies commenting upon the legislation.

(The bill, H.R. 10831, and departmental reports thereon, follows:)

[H.R. 10831, 90th Cong., first sess.]

A BILL To amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 409 of the Interstate Commerce Act (49 U.S.C. 1009(a)), as amended, is amended to read as follows:

"SEC. 409. (a) Nothing in this Act shall be construed to prevent freight forwarders subject to this part from entering into or operating under contracts with

common carriers by railroad subject to part I of this Act, or from entering into or continuing to operate under contracts with common carriers by motor vehicle subject to part II of this Act, governing the utilization by such freight forwarders of the services and instrumentalities of such common carriers by railroad or motor vehicle and the compensation to be paid therefor: *Provided*, That in the case of such contracts it shall be the duty of the parties thereto to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants or any other freight forwarder and shall be consistent with the national transportation policy declared in this Act: *And provided further*, That in the case of line-haul transportation by common carriers by motor vehicle between concentration points and break-bulk points in truckload lots where such line-haul transportation is for a total distance of four hundred and fifty highway miles or more, such contracts shall not permit payment to such common carriers by motor vehicle of compensation which is lower than would be received under rates or charges established under part II of this Act."

SEC. 2. The heading of section 409 is changed to read as follows: "UTILIZATION BY FREIGHT FORWARDERS OF SERVICES OF COMMON CARRIERS BY RAILROAD AND BY MOTOR VEHICLES."

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., October 27, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: This is in reply to your request for the views of this Department concerning H.R. 10831, a bill to amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads.

Since this proposal involves considerations present in H.R. 6533, a bill now before the Committee, dealing with joint rates and through movements between surface transportation common carriers subject to the jurisdiction of the Interstate Commerce Commission, our comments will also make reference to the latter bill.

In the comments of the Department of Transportation of August 25, 1967, supporting H.R. 6533, we noted in passing that "this legislation would at long last bring greater equality of regulation among all of the various surface modes of transportation subject to the Interstate Commerce Act except freight forwarders, an omission from the bill the Department regards as unfortunate." The Department of Transportation continues to be of the opinion that freight forwarders should be included within the scope of H.R. 6533. Forwarders perform a much-needed public service, particularly for shippers and consignees of small shipments. In this regard, it should be emphasized that one of the primary purposes of H.R. 6533 is to aid in the movement of such traffic. Moreover, with the rapid development of trailer-on-flat car movements by the railroads, we believe that as a matter of competitive equality freight forwarders should be permitted to participate to a greater degree in the different TOFC plans and other types of joint arrangements with railroads since many of these arrangements are now available to motor carriers. For example, with the decision of the Interstate Commerce Commission in *Ex Parte 230, Substituted Service-Piggyback*, 322 I.C.C. 301, recently affirmed by the Supreme Court, the so-called "open tariff" regulations of the Commission permit motor carriers to share in plan III TOFC operations. Forwarders, however, are excluded from participating in plan I arrangements, a valid coordinated joint intermodal service.

H.R. 10831, however, takes a somewhat different approach. It would amend section 409 (a) of the Interstate Commerce Act so as to permit freight forwarders to enter into contracts with rail common carriers subject to the limitation that the parties to these contracts establish them on just, reasonable, and equitable terms which shall not unduly prefer or prejudice either party to the contract or any other freight forwarder and which shall be consistent with the National Transportation Policy. With this amendment, freight forwarders would be placed in the same position with regard to railroads as they now are under present law with regard to motor carriers, except that as to contracts involving the line-haul transportation of truckload lots of forwarder traffic between concentration points and break-bulk points where the distance is 450 miles or more, contracts

with motor carriers cannot provide for lesser compensation to the motor carrier party than that which the motor carrier would receive under its regularly established rates or charges under part II of the Interstate Commerce Act.

As noted above, we are of the opinion that joint rate arrangements would be an appropriate arrangement for freight forwarders in dealing with railroads and motor carriers. Nevertheless, we recognize that there is also merit to the approach of extending the scope of section 409(a) to include the making of contracts between the railroads and the forwarders. As a matter of fair and impartial regulation, it would seem appropriate to accord the forwarders the same treatment in dealing with both railroads and motor carriers. The 450-mile limitation, however, which now exists under present law and which would be retained insofar as forwarder contracts with motor carriers are concerned under H.R. 10831, should be discarded. It would appear that the limitation is largely arbitrary in nature and that with the advent and growth of trailer-on-flat car movements, the rights conferred on forwarders by section 409(a), without the mileage limitation, need not be feared as according motor carriers the ability to underbid the railroads on profitable forwarder traffic.

On balance, the Department would favor the extension of H.R. 6533 to include freight forwarders. As an alternative, the Department would have no objection to H.R. 10831 amended, however, so as to eliminate the 450-mile limitation of the present law.

The Bureau of the Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this report for the consideration of the Committee.

Sincerely yours,

JOHN L. SWEENEY,
Assistant Secretary for Public Affairs.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., January 23, 1968.

HON. SAMUEL N. FRIEDEL,
*Chairman, Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN FRIEDEL: The Commission has carefully reviewed the provisions of H.R. 10831, a bill to amend section 409(a) of Part IV of the Interstate Commerce Act so as to authorize freight forwarders subject to that part to negotiate special contracts with railroads for the transportation of forwarder traffic by the railroads. On behalf of the Commission, I am authorized to make the following comments.

At the outset we would point out that the Commission, through its Committee on Legislation, has previously commented on this bill in two letters to Chairman Staggers, dated July 5 and September 12, 1967. Since reference will be made to these two letters later in these comments, copies of both letters follow this letter. While our present comments will, to some extent, restate these earlier remarks, it is also our purpose to comment on some additional matters concerning this bill.

As presently worded, section 409(a) permits regulated freight forwarders to enter into contracts with common carriers by motor vehicle subject to Part II of the Interstate Commerce Act. Such contracts govern the utilization by such freight forwarders of the services of motor common carriers and the compensation to be paid for such motor carrier service by the forwarders subject to two basic limitations set forth in the two provisions of section 409(a): (1) that the parties to these contracts establish them on just, reasonable and equitable terms which shall not unduly prefer or prejudice either party to the contract or any other freight forwarder and which shall be consistent with the National Transportation Policy; (2) that, in the case of contracts involving the linehaul transportation of truckload lots of forwarder traffic between concentration points and break-bulk points where the distance is 450 highway miles or more, such contracts cannot provide for a lesser compensation to the motor carrier or carriers involved than that which the motor carrier would receive under its regularly established rates or charges under Part II of the Act.

The provisions of H.R. 10831 would declare that nothing in the Act forbids the making of similar contracts between the railroads and forwarders. While the proviso that contracts be just, fair, and equitable to the contracting parties, be

non-prejudicial to other forwarders and be consistent with the National Transportation Policy also would be applicable to contracts between railroads and forwarders, the second proviso containing the 450 highway mile limitation would not be applicable.

At the present time, freight forwarders collect small shipments, consolidate them into truckload or carload lots for movement by a motor or rail carrier at bulk rates, break bulk at a central delivery point, and distribute the component shipments to the consignees. The forwarder charges the shipper the forwarder's less-than-truckload or less-than-carload rate, but is charged the lower truckload or carload rate by the motor or rail carrier; his profit is the difference. The forwarder using railroad service, unlike the situation with respect to motor carriers, must pay the railroads the full applicable rail tariff rate.

Section 409(a) has been revised several times since the enactment of Part IV in 1942, the present wording being enacted in 1950. Although no changes in the relationship between forwarders and the railroads were made in the 1950 revision of section 409(a), hearings¹ were held in 1956 before the Congress on bills to amend section 409(a) which would have authorized the making of contracts between the railroads and forwarders for the transportation of forwarder traffic loaded in trailers or containers. This legislation was prompted largely by the rapid development of TOFC ("piggyback") arrangements between carriers and the railroads and a decision by the Commission in *Movement of Highway Trailers by Rail*, 293 I.C.C. 93, 107-08 (1954), that forwarders could not establish through routes or joint rates with the railroads covering forwarder traffic in trailers or containers moving on railroad flatcars. Noting that the Commission had held in 1940² that joint rates and through routes between forwarders and carriers subject to Parts I, II, and III were unlawful and that Congress by successive amendments to section 409 had stayed the effective date of the Commission's order until 1951, shortly after present section 409(a) became effective, the Commission determined that joint arrangements between forwarders and railroads of any kind were unlawful. Thus, except as modified by present section 409(a), forwarders must pay the full regular published tariff rates established by the carriers they utilize, reflecting the general rule that as to common carriers of other modes, a freight forwarder acts in the capacity of a shipper.

The principal effect of the decision, *Movement of Highway Trailers by Rail*, which on this point would have been overturned by these prior bills, if enacted, was to preclude freight forwarders from using certain types of "piggyback" service, particularly so-called Plan I, on the same terms as motor common carriers. As defined by the Commission in Ex Parte 230, *Substituted Service-Piggyback*, 322 I.C.C. 301, 309-10 (1964), Plan I TOFC service involves the movement by railroad of trailers or containers under a motor carrier bill of lading, such service being available only between points where there is actually available service by the motor carrier which substitutes rail for motor service. The traffic moves on rates which are the same as the trucker applies on its all-highway service. The motor carriers solicit the traffic for movement in their own trailers, which, unless the shipper forbids the use of substituted rail service, may be tendered to the railroad for line-haul transportation. Plan I is recognized by the Commission as a valid coordinated joint intermodal service even though it does not possess all of the characteristics of a traditional joint rate-through route arrangement such as Plan V. While other aspects of Ex Parte 230 have recently been affirmed by the Supreme Court, the legality of Plan I is presently under attack in a District Court, the principal argument being that such arrangements are not authorized by the Act.

We have presented this background in order to give the Committee some insight into the basic economic and legal problems which have prompted this legislation. Freight forwarders have a distinctly different status under the Act than other forms of transportation. To the shipping public, particularly the shipper or consignee of small shipments, they are common carriers engaged in a much-needed service while in their dealings with other carriers they are regarded as shippers. Thus, for example, while a forwarder cannot use Plan I

¹ *Transportation Policy*, Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, House of Representatives, 84th Congress, 2nd Sess., on (as here pertinent) H.R. 9548 (1956). *Freight Forwarder Legislation*, Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 84th Congress, 2nd Sess., on S. 3365, S. 3366 and S. 3367 (1956).

² *Acme Fast Freight, Inc., Common Carrier Application*, affirmed *sub nom Acme Fast Freight, Inc. v. United States*, 30 F. Supp. 968, affirmed *per curiam* 309 U.S. 638.

TOFC service or make special contracts with the railroads, forwarders can and do make extensive use of other TOFC plans particularly Plans III and IV. In 1966, for example, 24 forwarders filed reports with the Commission showing direct use of piggyback service in plans other than Plan I. Under these arrangements, forwarders handled 201,327 trailers or other units carrying 2,237,000 net tons of traffic and involving payments of \$61,820,000 for line-haul service to the railroads. Freight forwarder service has been and remains essentially a small forwarders and small shipment l.c.l. rail service or l.t.l. motor carrier service. There has always been some overlap between the services offered by freight forwarders and small-shipment l.c.l. rail service or l.t.l. motor carrier service. Yet, the Commission also has recognized the forwarder service is, both functionally and legally, distinctly different from either of these others because of the manner in which a freight forwarder operates and because of its dual status under the Act, as both a carrier and a shipper.

While we believe that we have correctly interpreted the Act and, further, believe that our decision in Ex Parte 230 will materially assist in the development of a coordinated transportation system, we recognize that the present inability of freight forwarders to participate in Plan I TOFC service or other types of joint arrangements with railroads while such arrangements are, however, available to motor carriers may cause serious economic harm to the forwarding industry. Under these circumstances, some amendment to section 409(a) may be appropriate. It is our view, however, that the questions presented are primarily a matter of policy to be determined by the Congress on the basis of the record developed in the course of these hearings. Should the Subcommittee feel, however, that existing law should be changed, we believe that consideration should be given to a number of amendments to this bill which will preserve the principal purpose of this legislation but, at the same time, will enable the Commission to effectively administer its provisions and prevent the possibility of its being used to the detriment of shippers and other carriers. As I have previously pointed out, the Commission has always recognized that freight forwarders have a unique legal status under the Interstate Commerce Act in that a forwarder has certain characteristics of both a shipper and a carrier. The effect of this bill would be to place forwarders in the role of preferred rail shippers and would allow a freight forwarder to negotiate with a railroad or railroads on the level of charges for the transportation provided for the freight forwarder's use. Although the resulting contracts would be filed with the Commission and open to public inspection, they would not be published or otherwise subject to the same regulatory oversight that rates and charges published by common carriers subject to Parts I, II, and III of the Act normally are. Viewed in this light, we believe that certain safeguards should be thrown around these arrangements, not only as presently provided in present section 409(a), as that section relates to contracts between motor common carriers and forwarders, but also under the amendment of that section which is proposed by this bill. These amendments would include the following:

- (1) A revision of the second proviso of present section 409(a) ;
- (2) Place the burden of proof on the parties to contracts between freight forwarders and common carriers subject to Parts I and II of the Act for the transportation of freight when such contracts are called into question; and
- (3) Provide penalties for the offer, grant, giving, solicitation, acceptance, or receipt of any rebate or discrimination resulting from the transportation of property at compensation less than that specified in such contract.

As indicated in our letter of September 12, 1967, to Chairman Staggers, the Commission has made similar legislative proposals of this nature in the past. For example, the Commission recommended, in its 69th Annual Report, to the 84th Congress that these and other amendments be made to section 409. While this recommendation was subsequently introduced in 1957 in the 85th Congress as H.R. 4393 and S. 1382, no hearings were held on this measure. However, the Commission earlier had alluded to these recommendations in commenting on H.R. 9548 at pages 289-91 of the hearings mentioned previously on page 3 of my testimony in a letter dated April 23, 1956, to Congressman Priest, then Chairman of this Committee. In general, these recommendations reflected our belief that, while a freight forwarder legally is a shipper when dealing with other modes of transportation, its relationships with these other carriers are sufficiently distinct and different as opposed to any other large shipper or exempt shipper association, established under section 402(c) of the Act, so as to warrant special consideration.

With some modifications, our position on H.R. 10831 is similar to that taken on these earlier bills.

Turning now to the amendments that we are proposing, it should be pointed out that, since these amendments will not only amend section 409(a) but also present section 409(b) and, in addition, add several additional paragraphs to that section, line 3 of this bill should be changed by deleting the words "subsection (a) of" in order to reflect the fact that with our amendments all of section 409 would be subject to revision. The first amendment that we are proposing would change the second proviso in present section 409(a) to read as follows:

"And provided further, That in the case where line-haul transportation by common carriers of motor vehicles is for a total distance of 450 highway miles or more, such contracts shall not permit payment to such carriers of compensation which is lower than would be received under rates and charges established and filed by such common carriers under the provisions of Part II of the Act."

In essence, the purpose of this change is to remove the present language of this proviso in section 409(a) which is limited in its application to transportation by motor common carriers of truckload lots between concentration points and break-bulk points. The effect of this amendment would be to apply the second proviso *in all cases* where the line-haul transportation by motor common carriers is for a distance of 450 highway miles or more. This amendment is proposed because (1) it would prevent the circumvention of this prohibition (through the use of contract rates which are not subject to any minimum specified weights) by eliminating the term "truckload lots"; and (2) would eliminate the necessity for the Commission to determine what is meant by "truckload lots" as used in the present law, a term which the Commission has considered almost impossible to define with any sufficient exactness.

Our second amendment would add a new paragraph (c) to the present law by providing as follows:

"(c) At any hearing involving an investigation into the terms, conditions, and compensation of any contract, the burden of proof shall be upon the parties thereto to show that the terms, conditions, and compensation thereof are not inconsistent with the provisions and standards set forth in subsection (a) of this section."

This new paragraph would correct what the Commission has considered to be a major defect in the present law by making it clear that the burden of proof shall be upon both the carrier and the forwarder parties to any contract to show that the terms, conditions, and compensation are not inconsistent with the substantive standards of section 409(a) when such contracts are called into question. Although section 406(e) provides, as do similar provisions in Parts I, II, and III of the Act, that the burden of proof shall be upon the proponent of a changed rate, this provision, like its counterparts, relates to the investigation and suspension of the forwarder's own rates that are published for the use of the public. In this regard, we would point out that the Commission in its 1956 comments on H.R. 9548, at page 291, suggested that it be given the power to suspend and investigate these contracts, similar to the power it has over ordinary commercial rates and charges. At this time, however, we know of no need to recommend such a fundamental change in the present law.

Our third amendment is made up of two additional new paragraphs designated as "(d)" and "(e)", respectively. They are as follows:

"(d) No common carrier by motor vehicle or railroad which has entered into a contract with a freight forwarder for the transportation of property as authorized in this section shall charge, demand, collect, or receive less compensation for such transportation of property between the points named in such contract than that which is specified in the contract filed with the Commission; nor shall any such motor carrier refund or remit in any manner or by any device any portion of the compensation so specified, nor extend to any freight forwarder or person any privileges or facilities in the transportation of property except such as are specified in such contract."

"(e) It shall be unlawful for any person, persons, or corporation to offer, grant, or give, or to solicit, accept, or receive any rebate, concession, or discrimination in respect of the transportation of any property by any common carrier by motor vehicle or railroad under the provisions of this section whereby such property shall by any device whatever be transported at less compensation than that specified in the contract of such carrier and filed with the Commission, or whereby any other advantage is given or discrimination is practiced. Every person or corporation, whether common carrier by motor vehicle or freight forwarder, who

shall, knowingly, offer, grant, or give, or solicit, accept, or receive any such rebate, concession, or discrimination shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be punished by a fine of not less than \$200 nor more than \$2,000 for each offense."

We suggest that these new paragraphs be added to section 409 in order to insure better observance of the terms, conditions, and compensation of such contracts and to provide specific penalties for any rebate, concession, or discrimination resulting from the transportation of property at compensation less than that specified in such contracts. The purpose of these provisions is to prevent the possibility of abuse which could operate to the detriment of both the common carriers utilized by forwarders, other forwarders, and members of the shipping public. Although other sections of Part IV of the Act, specifically section 421, provide for penalties for violating the provisions of Part IV, there appears to be some question as to whether or not the enforcement provisions of this part and/or Parts I and II would be applicable to these contracts. It is for this reason that we are recommending specific language to adequately cover this situation.

In summary, it is our basic position that the decision to permit forwarders to negotiate special contracts for the purchase of underlying transportation from the railroads is essentially one that will necessarily have to be determined on the basis of all of the economic factors presented to this committee in the course of these hearings. We believe, however, if the principles expressed in this bill warrant favorable Congressional action, that the amendments we have proposed should be included. In our opinion, these amendments would not detract from the basic purposes of H.R. 10831 and their inclusion, in our judgment, would render this bill more consistent with the public interest.

Since the Commission will not be appearing before the subcommittee in the hearings scheduled for this week on H.R. 10831, we respectfully request that this letter be included in the record of the hearings on this bill.

Sincerely yours,

PAUL J. TIERNEY,
Chairman.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., July 5, 1967.

HON. HARLEY O. STAGGERS,
House of Representatives,
Washington, D.C.

DEAR CHAIRMAN STAGGERS: This responds to your letter of June 19, 1967, requesting a report on H.R. 10831, a bill to amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads, by Congressman Friedel. This matter has been referred to our Committee on Legislation. On its behalf, I am authorized to submit the following comments.

The bill amends section 409(a) of the Interstate Commerce Act which, as presently worded, permits freight forwarders to enter into contracts with motor common carriers, subject to part II of the Act. These contracts govern the utilization by such freight forwarders of the services of such carriers and the compensation to be paid for such motor carrier service by the forwarders subject to two basic limitations set forth in the two provisos of section 409(a): (1) that the parties to these contracts establish them on just, reasonable and equitable terms which shall not unduly prefer or prejudice either party to the contract or any other freight forwarder and which shall be consistent with the National Transportation Policy; (2) that, in the case of contracts involving the linehaul transportation of truckload lots of forwarder traffic between concentration points and break-bulk points where the distance is 450 highway miles or more, such contracts cannot provide for a lesser compensation to the motor carrier party than that which the motor carrier would receive under its regularly established rates or charges under part II of the Act.

The provisions of the draft would declare that nothing in the Act forbids the making of similar contracts between the railroads and forwarders. While the proviso that contracts be just, fair, and equitable to the contracting parties, be non-prejudicial to other forwarders and be consistent with the National Transportation Policy also would be applicable to contracts between railroads and forwarders, the second proviso containing the 450 highway mile limitation would not be applicable.

At the present time, freight forwarders collect small shipments, consolidate them into truckload or carload lots for movement by a motor or rail carrier at bulk rates, break bulk at a central delivery point, and distribute the component shipments to the consignees. The forwarder charges the shipper the less-than-truckload or less-than-carload rate, but is charged the lower truckload or carload rate by the motor or rail carrier; his profit is the difference. The forwarder using railroad service, unlike the situation with respect to motor carriers, must pay the railroads the full applicable rail tariff rate.

Section 409(a) has been revised several times since the enactment of part IV in 1942, the present wording being enacted in 1950. Although the 450 mile limitation was not included in the initial proposals to amend this section in 1950 (S. 2113, H.R. 5967, 81st Cong., 1st Sess.), this proviso was inserted in the final bill, largely to reduce the fears of certain railroads and shippers that, absent this or other limitations, the rights conferred on the forwarders would give motor carriers the ability to underbid the railroads on their profitable forwarder traffic, and that these reduced motor carrier charges might then burden regular commercial shippers with higher rates. Although no changes in the relationship between forwarders and the railroads were made in the 1950 revision of section 409(a), hearings,¹ were held in 1956 before the Senate Subcommittee on Surface Transportation on S. 3366, a bill to amend section 409(a) to authorize the making of contracts between the railroads and forwarders for the transportation of forwarder traffic loaded in trailers or containers.

This legislation was prompted largely by the rapid development of TOFC ("piggyback") arrangements between carriers and the railroads and a decision by the Commission in *Movement of Highway Trailers by Rail*, 293 I.C.C. 93, 107-08 (1954) that forwarders could not establish through routes or joint rates with the railroads covering forwarder traffic in trailers or containers moving on railroad flat cars. Noting that the Commission had held in 1940² that joint rates and through routes between forwarders and carriers subject to parts I, II, and III were unlawful and that Congress by successive amendments to section 409 had stayed the effective date of the Commission's order until 1951, shortly after present section 409(a) became effective, the Commission determined that joint arrangements between forwarders and railroads of any kind were unlawful. Thus, except as modified by present section 409(a), forwarders must pay the full regular published tariff rates established by the carriers they utilize, reflecting the general rule that as to common carriers of other modes, a freight forwarder acts in the capacity of a shipper.

The principal effect of the decision, *Movement of Highway Trailers by Rail*, which on this point, would have been overturned by S. 3366, if enacted, was to preclude freight forwarders from using "piggyback" service, particularly so-called plan I, on the same terms as motor common carriers. As defined by the Commission in *Ex Parte 230, Substituted Service-Piggyback*, 322 I.C.C. 301, 309-10, (1964), Plan I TOFC service involves the movement by railroad of trailers or containers under a motor carrier bill of lading, such service being available only between points where there is actually available service by the motor carrier which substitutes rail for motor service. The traffic moves on rates which are the same as the trucker applies on its all-highway service. The motor carriers solicit the traffic for movement in their own trailers, which, unless the shipper forbids the use of substituted rail service, is tendered to the railroad for line-haul transportation. The railroad's compensation in such a move is based upon a division of the charges arrived at through negotiations between the two carriers. This division of charges is published as a division sheet. Plan I is recognized by the Commission as a valid coordinated joint intermodal service even though it does not possess all of the characteristics of a true joint rate-through route arrangement such as plan V. While other aspects of *Ex Parte 230* have recently been affirmed by the Supreme Court, the legality of plan I is presently under attack in a District Court, the principal argument being that such arrangements are not authorized by the Act.

We have presented this background in order to give the Committee some insight into the basic economic and legal problems which have prompted this legislation. Freight forwarders have a distinctly different status under the Act

¹ *Freight Forwarder Legislation*, Hearings before a Subcommittee of the Committee on Interstate and Foreign Commerce, United States Senate, 84th Congress, 2nd Sess. on S. 3365, S. 3366 and S. 3367 (1956).

² *Acme Fast Freight, Inc., Common Carrier Application*, affirmed *sub nom Acme Fast Freight, Inc. v. United States*, 30 F. Supp. 968 affirmed *per curiam* 309 U.S. 638.

than other forms of transportation. To the shipping public, particularly the shipper or consignee of small shipments, they are a common carrier engaged in a much-needed service while in their dealings with other carriers they are treated as shippers. Thus, for example, while a forwarder cannot use plan I TOFC service or otherwise make special contracts with the railroads, forwarders can and do make extensive use of other TOFC Plans particularly plans III and IV. In 1965, for example, 22 forwarders filed reports with the Commission showing direct use of piggyback service in plans other than I. Under these arrangements forwarders handled 163,133 trailers or other units carrying 1,777,000 net tons of traffic and involving payments of \$51,575,000 for line-haul service to the railroads. With the recent approval by the Supreme Court of the so-called "open tariff" rules issued by Commission in *Ex Parte 230* which opens plan III to motor carriers this traffic will of course be subject to possible diversion while at the same time plan I is still closed to forwarders. Freight forwarder service has been and remains essentially a small shipment service even though forwarders are not legally confined to such service. There has always been some overlap between the services offered by freight forwarders and small-shipment L.C.L. rail service or L.T.L. motor carrier service. Yet, the Commission also has recognized that forwarder service is both functionally and legally, distinctly different from either of these others because of the manner in which a freight forwarder operates and because of its dual status under the Act, as both a carrier and a shipper.

The effect of this bill would be to place the freight forwarders in the role of preferred rail shippers. At the present time, freight forwarders are required to use published rail tariff rates which are available to all shippers alike. The proposed amendment would allow a freight forwarder to get together with a railroad or railroads and agree on a level of charges. Although the resulting contracts would be filed with the Commission and open to public inspection, they would not be published in the manner rates normally are.

While we believe that we have correctly interpreted the Act and, further, believe that our decision in *Ex Parte 230* will materially assist in the development of a coordinated transportation system, we recognize that the present inability of freight forwarders to participate in all TOFC plans or other types of joint arrangements with railroads while such arrangements are, however, available to motor carriers may cause serious economic harm to the forwarding industry. Under these circumstances, some amendment to section 409(a) may be appropriate. It is our view, however, that the questions presented are primarily a matter of policy to be determined by the Congress. We respectfully request the right to offer additional comments on this matter, if the circumstances warrant, after we have reviewed the testimony of other witnesses whose statements we have not yet seen.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman, Committee on Legislation.

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., September 12, 1967.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN STAGGERS: This responds to your letter of July 11, 1967, suggesting that the Commission might wish to supplement our letter of July 5, 1967, commenting on H. R. 10831, in light of the Commission's comments made in 1956 on similar legislation, H. R. 9548, then pending in the 84th Congress.

As the letter to then Chairman of the Committee indicates, our comments on H. R. 9548 were considered in the context of our legislative recommendation No. 30 contained in our 69th Annual Report. This recommendation and the explanatory comment appearing on page 137 of the report is as follows:

"We recommend that section 409 be amended so as to (1) place the burden of proof on the parties to contracts between freight forwarders and common carriers by motor vehicle subject to part II of the Act for the transportation of freight when such contracts are called into question, (2) prohibit such contracts at compensation lower than the motor carrier's tariff rates in all cases where the line-haul transportation is for a total distance of 450 miles or more, and (3) provide penalties for the offer, grant, giving, solicitation, acceptance,

or receipt of any rebate, concession, or discrimination resulting from the transportation of property at compensation less than that specified in such contract.

No action was ever taken on these three proposals by the Congress. Since we have not renewed this recommendation in recent years, our comments on H. R. 10831 did not take these suggestions of a decade ago into account. In addition, our decision in *Ex Parte 230, Substituted Service—Piggyback*, 322 I.C.C. 301, (1964) may have the effect of altering the competitive relationship between freight forwarders and other modes of transportation; accordingly, we are in no position at this time to determine whether this recommendation should be renewed or whether these amendments should be incorporated in H. R. 10831. If, for example, competitive circumstances have changed to their detriment, the Congress may wish to accord forwarders a status such that compensation paid under the bill properly would be viewed not as a "rate" but, rather, as in the nature of "divisions" similar to those negotiated by rail and motor carriers under section 216(c) of the Act. In such case the bill in its present form, coupled with its legislative history, may be entirely consistent with the present rights and remedies available under the latter section.

Sincerely yours,

WILLIAM H. TUCKER,
Chairman, Committee on Legislation.

FEDERAL MARITIME COMMISSION,
Washington, D.C., January 22, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Reference is made to H.R. 10831 which would enable freight forwarders under Part IV of the Interstate Commerce Act to enter into contracts with railroads to utilize the services of railroads and to pay agreed compensation therefor. The compensation to be paid by the Part IV freight forwarders to the railroads may be lower than such railroads would receive under published rates or charges established under Part I of the Interstate Commerce Act.

The Federal Maritime Commission has responsibility for the regulation of ocean transportation in our foreign commerce under the Shipping Act 1916, as amended, and in our domestic offshore ocean transportation under the Intercoastal Shipping Act of 1933, as amended. The persons whom we regulate are common carriers by water and other persons who carry on the business of forwarding or furnishing wharfage, dock, warehouse or other terminal facilities in connection with a common carrier by water. Among the persons regulated by the Federal Maritime Commission are common carriers by water who do not operate their own vessels but utilize the services of underlying regulated ocean common carriers. These are commonly referred to as "non-vessel operating common carriers". Actually, most non-vessel operating common carriers in our foreign commerce are the counterparts of domestic freight forwarders who are certificated and regulated by the Interstate Commerce Commission under Part IV of the Interstate Commerce Act.

The Interstate Commerce Commission has exclusive jurisdiction over the activities of freight forwarders under Part IV of the Interstate Commerce Act, and is the agency which would be charged with the implementation of this proposed legislation. However, the Federal Maritime Commission is concerned with any improvements in our domestic land transportation because of the import and impact it will have upon the development of through intermodal containerized cargo movement which necessarily requires efficient coordination between domestic carriers and ocean common carriers in our foreign commerce.

As the Federal Maritime Commission has noted in a recent annual report to the Congress, containerization is probably the most significant technological development that has taken place in ocean transportation since the advent of the steamship. The benefits to shippers which flow from containerized transportation are several and have been demonstrated effectively in our domestic offshore transportation. These benefits cannot, however, be fully achieved unless the regulatory climate is favorable and unless shippers can eventually be afforded through single factor rates and single through bills of lading between interior points in the United States and interior points in foreign countries.

The so-called "Container Revolution" is now in its incipient and most explosive stage in the important North Atlantic trade and in the trans-Pacific trade. These trades, in terms of volume and value of shipments, are the most important trades in our foreign commerce. Realistically, we must recognize that Part IV freight forwarders are common carriers. In this respect, freight forwarders hold themselves out to handle the shipments of all shippers offering cargo under their tariffs. They issue through bills of lading and they accept common carrier liability to the shipper. Freight forwarders, as common carriers, handle small or medium size shipments and their vital role in the overall scheme of our national transportation system is fulfilled in the assembling and consolidation of such shipments.

From the point of view of regulatory authority, Part IV freight forwarders are in a position to offer containerized transportation in our foreign oceanborne commerce for small or medium size shipments. To the extent the services of Part IV freight forwarders in our domestic inland transportation can be improved, this will expedite and improve the development of through containerized cargo movement in our foreign trades.

I shall not be so presumptuous as to attempt to analyze this amendment to Section 409 of the Interstate Commerce Act, the administrative precedents thereunder or the prior legislative history. We favor improvement and expansion of all modes of transportation and their increased cooperation in the expansion of through intermodal foreign trade. If in the judgment of this Committee the legislation here under consideration, introduced by Congressman Friedel, is considered desirable for the purpose of enabling those common carriers to provide an improved service to the shipping public and is not inconsistent with our overall transportation policies, then such legislation should be favorably acted upon in the public interest.

The Bureau of the Budget has advised that there would be no objection to the submission of this letter from the standpoint of the Administration's program.

Sincerely yours,

JOHN HARLLEE,

Rear Admiral, U.S. Navy (Retired) Chairman.

Mr. FRIEDEL. Our first witness this morning will be Mr. Giles Morrow, general counsel of the Freight Forwarders Institute, and Mr. Russell Moir, who will accompany him. Mr. Moir is chairman of the board of governors of the Freight Forwarders Institute.

Mr. Morrow, if you want you may have your full statement included in the record and just bring out the highlights or you may read your full statement as you wish.

Mr. MORROW. Mr. Chairman, my statement is not as long as it looks because there is not very much on the page, since I am the first witness and have to describe the bill I think if it is permissible I would just like to read it.

Mr. FRIEDEL. You may do so.

STATEMENT OF GILES MORROW, GENERAL COUNSEL, FREIGHT FORWARDERS INSTITUTE; ACCOMPANIED BY G. RUSSELL MOIR, CHAIRMAN, BOARD OF GOVERNORS, FFI

Mr. MORROW. My name is Giles Morrow. I speak today for the Freight Forwarders Institute as its general counsel. The office is located at 1012 14th Street NW., Washington. I have represented the institute, which is the national trade association of the forwarding industry, for more than 28 years. I was counsel for the institute for 2½ years, 1940 to May 16, 1942, when the original forwarder act was being formulated by Congress.

H.R. 10831 was introduced at our request. It is of major importance to the freight forwarding industry. We think it has considerable significance when viewed in the light of the total transportation system.

It is a simple bill, supported by equity and justified on the basis of economics. But we realize that with transportation as complex and competition as keen as it is, hardly any change in transport law is without controversy. There will be some controversy about this bill. We will present our justification through three witnesses, confident that on its merits this legislation is unassailable. Our witnesses are Mr. J. Russell Moir, who is sitting on my right, chairman of the board of the institute, and Mr. Jerry Chambers, president of the Clipper Carloading Co., will follow Mr. Moir.

What does the bill do? It amends section 409 of part IV of the Interstate Commerce Act so as to authorize contracts between freight forwarders and railroads. Part IV regulates freight forwarders as common carriers of freight and it corresponds in most respects to part I, which regulates rail and express carriers, part II, which regulates motor carriers, and part III, which regulates domestic water carriers.

Section 409, which has been amended several times since it was included in the original act in 1942, now provides that forwarders and motor carriers may operate under contracts with each other.

In principle, section 409 is the counterpart of those sections of parts I, II, and III which authorize rail, express, motor, and water carriers to make joint rates with each other. When Congress provided for contracts under section 409, in 1950, your committee said in its report (No. 2489, 81st Cong.), that it was clear "that the compensation which may be agreed upon under the proposed contracts is comparable to compensation which would be received under a division of a joint rather than to compensation received under a published tariff rate."

But section 409 is more restrictive than its counterparts. For example, section 216(c) of part II, authorizes motor carriers to enter into joint rates with railroads, express companies, water carriers, and other motor carriers. Section 409, on the other hand, authorizes contractual arrangements only between forwarders and motor carriers.

H.R. 10831 simply extends the scope of section 409 so that freight forwarders could make contracts with railroads as well as with motor carriers. That is all that the bill does. Thus no objection can be raised to H.R. 10831 on the ground that it presents a new or novel question of law. Any questions of law were settled by Congress when section 409 was enacted in 1942.

The only issue raised by H.R. 10831 is whether freight forwarders and railroads should be permitted to deal with each other on the same basis on which freight forwarders and motor carriers are now permitted to deal with each other.

That single, simple issue should be kept constantly in mind because nothing can be said in opposition to this bill, from a legal or congressional policy standpoint, that was not answered by Congress when it originally enacted section 409 in 1942.

The history of how and why part IV came to be enacted is contained in report No. 1172 of the 77th Congress, 1st Session, filed by the House Committee on Interstate and Foreign Commerce, on August 13, 1941. That historic report shows that when Congress was considering the Transportation Act of 1940, the House included an amendment, and passed it, to regulate freight forwarders simply by regulating them as common carriers under part II—the motor carrier part.

That, of course, would have given forwarders across the board joint rate authority. The Senate disagreed and separate legislation was taken up.

In the legislation which emerged in 1942, Congress sought simply to preserve freight forwarder service as it then existed.

Report 1172 recites that historically forwarders had functioned by consolidating smaller lots of freight and sending them then by the shortest and most economic route to a destination point for break-bulk and distribution; that they used motor carriers primarily for assembly and distribution, under contract rates; and that they paid the railroads whatever published charge applied to the consolidated shipments.

Motor carrier regulation, which came in 1935, made no provision for continuation of the contracts then in effect between forwarders and motor carriers. The central problem was to provide for continuance of such relationships.

Since motor carriers were used predominantly for the unconsolidated portion of the through movement, forwarders simply could not provide a competitively priced service and pay the full local truck rates.

As everyone knows, a combination of local rates is higher than the through rate, and carriers who are parties to joint through rates always receive less as their share or "division" than they would receive if the shipments moved only locally over their own lines.

Congress met that immediate problem, in 1942, by providing in section 409 for joint rates between forwarders and motor carriers. It put a time limit on those joint rates. It was hoped that motor carriers, in the interim, would establish "assembly and distribution" rates under section 408, and that joint rates would no longer be necessary. But section 408 rates were never established on a satisfactory scale, and finally, in 1950, Congress amended section 409 to read as it now stands.

From the beginning Congress recognized that freight forwarders should not, in all instances, be required to pay the tariff rates of the underlying carriers. There was strong sentiment for full scale joint rates and vigorous opposition by those who wanted forwarders to pay tariff rates to all carriers. Congress adopted a compromise. The 1942 report, No. 1172, stated that:

The decision of the committee not to include permanent authority for joint rates between freight forwarders and carriers subject to parts I, II, and III was not based on the belief that freight forwarders should be required to pay full published rates to such carriers in all cases.

In the light of history it is unfortunate that Congress did not, in 1942, include permanent authority for joint rates between forwarders and all other carriers. Because while the 1942 act preserved the status quo in the forwarding industry at the time, time does not stand still and conditions have changed.

We are now trying simply to improve and update the law we obtained in 1942, even though we know that we would be justified in asking for complete equality and full scale joint rates.

Indeed the Department of Transportation advocates that forwarders now be given the right to make joint rates with all other carriers. (The Department's letter of October 27, 1967, to Chairman Staggers.)

It is gratifying to know that the arm of Government which has top responsibility in the executive branch for transportation believes that we are entitled to more than we are asking for.

We are practicing realists. We would like to have full equality with all other carriers to make joint rates, but we can get along with that measure of equality provided by H.R. 10831 and we ask no more. Those who oppose our efforts to obtain even that partial measure of equality will bring out their ammunition but we suggest you look carefully at their target.

We think you will discover that their aim is to hamper their cooperation.

Now let me direct attention to the terms of H.R. 10831. Submitted herewith is a copy of section 409 of the act with the changes made by the bill superimposed thereon and italicized.

(The document referred to follows:)

APPENDIX A

(Note: Italicized portions represent additions)

UTILIZATION BY FREIGHT FORWARDERS OF SERVICES OF COMMON CARRIERS BY RAILROAD AND BY MOTOR VEHICLE

SEC. 409(a). Nothing in this Act shall be construed to prevent freight forwarders subject to this part from *entering into or operating under contracts with common carriers by railroad subject to Part I of this Act, or from entering into or continuing to operate under contracts with common carriers by motor vehicle subject to Part II of this Act*, governing the utilization by such freight forwarders of the services and instrumentalities of such common carriers by *railroad or motor vehicle* and the compensation to be paid therefor: Provided, That in the case of such contracts it shall be the duty of the parties thereto to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants or any other freight forwarder and shall be consistent with the national transportation policy declared in this Act: And provided further. That in the case of line-haul transportation *by common carriers by motor vehicle* between concentration points and break-bulk points in truckload lots where such line-haul transportation is for a total distance of four hundred and fifty highway-miles or more, such contracts shall not permit payment to *such* common carriers by motor vehicle of compensation which is lower than would be received under rates or charges established under Part II of this Act.

(b) Contracts entered into or continued pursuant to subsection (a) of this section shall be filed with the Commission in accordance with such reasonable rules and regulations as the Commission shall prescribe. Whenever, after hearing, upon complaint or upon its own initiative, the Commission is of opinion that any such contract, or its terms, conditions, or compensation is or will be inconsistent with the provisions and standards set forth in subsection (a) of this section, the Commission shall by order prescribe the terms, conditions, and compensation of such contract which are consistent therewith.

Mr. MORROW. The bill makes no change in paragraph (b) of section 409, which gives the Commission complete control over the contracts, so I have copied that paragraph simply to indicate the safeguards which would apply to rail contracts as they now apply to contracts with motor carriers.

If the committee members would look briefly at appendix A you will see that in large part the bill just copies existing law. Those italicized words are the only new words brought into the act by this bill.

The rest of the bill is simply copied from present law. Now to go back to page 7 of my statement, the second proviso to section 409(a)

which begins on line 5, of page 2 of the printed bill, should be explained. It provides that if a forwarder makes a contract with a motor carrier for the line haul transportation of the forwarder's shipments, in truckload lots, between the forwarder's consolidation and distribution stations for a distance of 450 miles or more, then the equivalent of tariff rates must be paid to the motor carrier.

The bill does not change the 450-mile limitation, but leaves it as it is. Some people have asked why the limitation was not imposed on contracts between forwarders and railroads and others have asked why it was not eliminated altogether.

Obviously such a limitation, if imposed as to contracts with railroads, would destroy the purpose of the bill. The predominant use by forwarders of rail service is for distances of more than 450 miles.

We did not provide in the bill as we drafted it for the elimination of the 450-mile restriction as to motor carriers because we did not want to broaden the simple issue raised by the bill, which is whether forwarders should be permitted to make contracts with railroads.

The 450-mile provision was incorporated in section 409 in 1950. The purpose of the limitation is explained in the report of the House Committee on Interstate and Foreign Commerce, numbered 2489, 81st Congress, as follows:

The proviso imposing the 450-mile limitation with respect to terminal to terminal movements meets certain objections made to the introduced bill, based upon a fear that the forwarders might substantially increase the scope of their terminal to terminal truck movements, but at the same time permits continuance of freight forwarder service of substantially the same character and scope as that engaged in at the present time.

Again the effort was to preserve the status quo and mollify opposition. The Department of Transportation now recommends that the limitation be removed. That would be perfectly agreeable to us, but we leave that to the best judgment of your committee.

Your subcommittee will naturally want to understand why it is that since forwarders have dealt with railroads on the basis of tariff rates in the past they now need the more flexible basis of contracts. The reasons are that the competitive picture has changed and the economic situation has changed. Witnesses who will follow me will tell you about the economic pattern that exists today. I will show how recent developments and statutory interpretations have completely changed the competitive posture of all carriers and placed forwarders at an intolerable disadvantage in competing with the only other carriers who operate in the less-carload, less-truckload field, the motor carriers.

As you know, revolutionary developments of the greatest significance have taken place in the last decade in the area of containerization, common forms of which are "piggyback" and "fishyback" service. Freight forwarders have been pioneers in that field. I will refer briefly to the legal history of this development.

As soon as the railroads began to transport freight in highway trailers or containers certain legal questions arose. In a proceeding decided in 1954, the Commission undertook to answer some of the legal questions that had arisen. In relevant part, the Commission held that motor carriers could make joint rates with railroads in the provision of piggyback service, but that they could not ship at rail published rates.

Conversely, the Commission ruled that forwarders could obtain piggyback service and pay the rail rates, if any were published, but that they could not make any kind of a joint arrangement with the railroads. Our problem then was that there were no published rail rates for piggyback service and the forwarders were completely excluded from the picture.

After that 1954 decision the railroads published some plan II piggyback rates, which were designed to meet truck competition by substituting all rail piggyback service for boxcar service at rates matching the truck rates. But piggybacking really did not amount to much until 1958, when railroads began to publish rates, called plan III and plan IV rates, for the movement of freight in trailers on flatcars at a stated charge of so much per car loaded with a trailer or trailers. Forwarders immediately began to make substantial use of such service. Perhaps because forwarders were successful in their employment of the piggyback technique, a notion gained currency that they had some advantage over motor carriers.

In 1962 the administration sent to Congress bills to "equalize the opportunity" of all carriers to participate in piggyback service, H.R. 4701, S. 3242, 88th Congress.

That legislation did not really make for equality. It proposed to give motor carriers the right to ship their freight in trailers on flatcars at published rail rates, but it did not propose to take away the right of motor carriers to make contracts under what is called plan I or to make joint rates with railroads under what is described as plan V.

Nor did it propose to give forwarders the right which motor carriers have to use plans I or V. This compounded inequality instead of bringing about equality.

Hearings were held on the "equal opportunity" legislation and it met strong opposition. The ICC said it needed time to study the matter. The legislation died in committee. Later the Commission instituted a proceeding known as *Ex parte 230, Substituted Service—Piggyback*. In 1964 the Commission published its decision in that proceeding (322 I.C.C. 301), and much to everyone's surprise the Commission prescribed, by rule, exactly what Congress had refused to authorize by a change in the law.

The Commission found that motor carriers may ship their freight in trailers by rail and pay the open tariff charges of the rail carriers. That part of the decision has now been upheld by the Supreme Court. (*American Trucking Associations v. A.T. & S.F. Ry. Co.*, 387 U.S. 397.)

The Commission also held, in *Ex parte 230*, that plan I, under which motor carriers ship their trailers by rail and pay an undisclosed contract charge to the railroads, is lawful as a joint rate. That portion of the decision was appealed to Federal court in Texas by certain forwarders and railroads, and the case is still pending. But plan I is in effect.

Thus, the situation that now exists is that motor carriers have the right to and do participate in piggyback service on three bases. Under plan I they ship by rail and pay the railroads on the basis of negotiated contract changes.

Under plan V they make joint rates and divisions with railroads for piggyback service. And under the open tariff plans which are the

only plans open to forwarders, the trucks ship their freight in trailers by rail and pay the published rail rates.

The Interstate Commerce Commission recognizes that the present situation, under which railroads are required to accept truck trailers and on at least as favorable a basis as they handle the trailers of freight forwarders and are permitted to transport truck traffic in TOFC service under still other and more favorable conditions, may cause serious economic harm and to the forwarding industry. (Letter of July 5, 1967, from the Commission to Chairman Staggers.)

We do not see how it can fail to cause not only serious but irreparable harm to the forwarding industry. It would have been a fortunate thing if the Commission had foreseen such a result when it rendered its decision in *ex parte* 230. If the Commission had felt bound by an inequitable law it would have been commendable if the Commission had recommended a change in the law. The need for change is now obvious and compelling.

In the present state of the law our national transportation policy simply does not mean what it says where freight forwarders are concerned. Transportation law and regulation do not apply fairly and impartially to forwarders in relation to the other carriers. Motor carriers are authorized by law and their certificates to transport freight over the highways, but they now operate also in the same manner as freight forwarders sending their shipments by rail without necessarily ever touching the highways.

Motor carriers not only operate exactly as freight forwarders do but they obtain precisely the same service from railroads as freight forwarders obtain and at drastically reduced charges. In the course of time, unless there is change, motor carriers may exploit this unfair advantage to the point of eliminating the freight forwarder entirely.

We do not rest our justification of H.R. 10831 solely on the basis of equality of regulation and integrity of transportation law and policy. The bill can be justified on the basis of economics and the public interest. But equality and the integrity of law and policy are basic considerations. If now one segment of the common carrier transportation system is treated unfairly the system will be eroded and the goals of our policy will become obscure and be lost.

Now let me say that no one can attack this bill strictly on its merits. There can be no valid objection to fair and equal treatment. But opponents of the legislation will mount an oblique attack. I know the objections by heart. They have been raised on every occasion when forwarder legislation has been before Congress and the fact that Congress has flatly and emphatically rejected the arguments does not deter the forwarder's competitors, and those who seek to obtain the advantages of forwarder regulation without assuming the obligations which it entails, from raising them again.

You will be told that the status of the forwarder is such that he may not be given the right to make contracts with railroads. That argument was forcefully advanced and specifically repudiated when Congress provided for contracts between forwarders and motor carriers in 1950.

In reporting the 1950 amendments the House Committee on Interstate and Foreign Commerce rejected the same arguments about the

status of a forwarder which will be advanced during these hearings. In Report No. 2489, 81st Congress, the House committee said:

The opponents argue . . . that freight forwarders occupy a dual role and that when they deal with other carriers they are shippers only and should be treated as such.

The term "common carrier" was used at common law and has been adopted by statute, to describe the activities of a person who assumes certain obligations and responsibilities to the public.

The nature of these obligations and responsibilities rather than methods of dealing between common carriers, is the test normally applied in determining status as a common carrier.

The fact that freight forwarders now tender freight to railroads under the published tariff rates of the rail carriers does not have any bearing on their right to deal with railroads on some other basis if Congress gives them that right.

As I have said, motor carriers now have the right to ship their freight in trailers by rail and to compensate the railroads on the basis of the published rail tariff rates.

No one contends that because motor carriers assume the role of shippers when they operate in that manner they lose their right to make joint rates with railroads.

But if the principle were sound as to freight forwarders it would be valid as to motor carriers, and the joint rate provisions of part II of the act should be repealed.

Certain shippers and shipper groups, called shippers' associations, oppose H.R. 10831. They would not oppose the bill if it were amended so as to authorize shippers' associations as well as freight forwarders to make contracts with railroads.

Of course, the associations cannot carry water on both shoulders. They are unable to argue that the status of the regulated common carrier forwarders is a bar to granting such forwarders the right to make contracts with railroads and at the same time urge that they, as private shippers, be given the right to make such contracts.

Shippers' associations may not logically maintain their right to be exempt from forwarder regulation on the grounds that they are not common carriers, and at the same time assert the right to be included in that part of the act which grants contractual rights to freight forwarders precisely because the forwarders are common carriers.

Shippers' associations do not transport freight "for the general public as common carriers" as the definition of a freight forwarder requires. They do not publish tariffs and hold out to handle the shipments of all persons without discrimination or undue prejudice. They do not issue bills of lading assuming common carrier responsibility. To grant these private shipper groups the right to deal with railroads as though they were one common carrier dealing with another would be contrary to the entire plan of transportation law.

Both the Interstate Commerce Act and the Elkins Act are carefully designed to prohibit private shippers from obtaining transportation service from common carriers at anything less than the published tariff rates of such carriers.

I will not attempt to further anticipate objections to the bill. If questions are presented during the course of the hearings to which your subcommittee would like to have the answers—and I assure you there are good answers to any questions that may be raised—we will

be available either to present further oral testimony or to file a statement.

That concludes my statement but I have here a statement submitted for inclusion in the record by Mr. Harry Baker, of Coast Carloading Co., a small freight forwarder who operates on the west coast.

Mr. Baker planned to come and testify but he could not get here. If I may I would like to submit his statement for inclusion in the record.

Mr. FRIEDEL. His statement will be included in the record.

(The statement referred to follows:)

STATEMENT OF HARRY M. BAKER, PRESIDENT, COAST CARLOADING CO.

My name is Harry M. Baker. I am the president of Coast Carloading Co., a regulated freight forwarder operating between California on the one hand and Oregon, Washington, parts of Idaho, Western Canada, and Alaska on the other. We are active members of the Freight Forwarders Institute, which provides a common voice for our industry.

Our company began operations in 1939 prior to regulation as a consolidator of less than carload shipments to improve service to the many shippers in the Southern California area. Since regulation we have continued in the same manner, until today we handle in excess of 110 million pounds of l.c.l. freight per year, representing approximately 75,000 shipments. Revenues have grown to approximately 5 million dollars and we employ 250 people. We are an independently owned corporation with all the stockholders active in the business.

As a forwarder, we purchase all of our transportation services from carriers subject to parts I, II, or III of the Interstate Commerce Act. Because railroads have curtailed substantially all of their l.c.l. service, were it not for a healthy forwarder service, the shipping public would be at the mercy of a single service without competition. Also, the motor carrier has stated many times that they lose money on handling small shipments. Therefore there is ample need and justification for strengthening the forwarder service.

H.R. 10831 is a very simple piece of legislation, sorely needed as an enabling act to allow a vital segment of the transportation industry to contract with its major transportation supplier in the same manner that they contract with others. It provides ample safeguards against destructive practices, if in fact they were possible. It purely and simply provides for competitive equality between the various modes and removes a former discriminatory practice.

The only kind of opposition to this bill is that of an outside competitor who is not willing to meet on even terms. A review of the comparative sizes and growth trends of the motor carrier industry and the freight forwarding industry alone attests to the past inequities.

Our industry provides cost saving advantages to the railroads in many ways, terminal locations, consolidations, tendering full carloads of rail yards and receiving at yards, multiple car blocks, billing aids, claims processing, and numerous others. We are asking for the right to sit down with our supplier and negotiate a contract in relation to their costs on a carrier to carrier basis.

Our industry is the only common carrier service to provide healthy competition to the motor carriers for the small shipment. We are the small shipment arm of the railroad industry and it is vital that we be allowed to provide the public this service at a rate which reflects all the economies possible.

In our particular area we provide a revenue movement for the railroads of boxcars into a boxcar shortage area, the Pacific Northwest. Were it not for this, they would have to move empty cars at substantially the same cost as loaded cars. In 1967 we loaded approximately 7,000 cars at a much higher per car revenue to the railroads than their average. The railroads are presently prohibited from using anything except open tariffs in dealing with forwarders. However, if a motor carrier tendered that amount of freight (either in trailers or boxcars), the two carriers are permitted to contract for the movement at negotiated rates. This is an unfair competitive advantage that this bill will eliminate.

Also, important in this bill is that it is not mandatory, only permissive. It allows the parties to meet and discuss the relative economies of a particular situation and then willingly enter into an agreement.

We, as a relatively small company eagerly awaiting the opportunity to meet the population explosion which is taking place on the Pacific coast. We must provide for the need and services these people demand. Transportation is one of their very important needs. We must have this inequitable millstone removed from our business neck in order to prosper and grow so that we will be in a position to provide competition to the motor carrier. The increase in our transportation capacity must be dramatic to meet this challenge. However, the trend within the motor carrier industry is for acquisitions and mergers which tends to eliminate competition and reduce capacity.

Thus H.R. 10831 will enable our industry to better meet the challenge of tomorrow. I strongly urge your favorable support.

Mr. MORROW. That concludes my statement, Mr. Chairman.

Mr. FRIEDEL. Do you wish to proceed, Mr. Moir and then we will ask questions.

STATEMENT OF G. RUSSELL MOIR, CHAIRMAN, BOARD OF GOVERNORS, FREIGHT FORWARDERS INSTITUTE

Mr. MOIR. Mr. Chairman, if I may I would like to read my statement because in essence it supplements what Mr. Morrow has already stated and also is not quite as long.

Mr. FRIEDEL. You may proceed.

Mr. MOIR. My name is G. Russell Moir. As chairman of the board of governors of the Freight Forwarders Institute, I am here to urge the passage of H.R. 10831, a bill to permit freight forwarders to enter into contracts with railroads.

The institute, as you know, is the trade association of the common carrier freight forwarding industry. I know how forwarders operate and how they fit into the transportation picture and why this bill is necessary.

I have been in the freight forwarding business all of my life. I started to work for one of the subsidiaries of United States Freight Co. in 1929 and I became chairman of the board and chief executive officer of the parent company in October 1966.

There has been a good deal in the press about United States Freight Co. in recent times and perhaps I should say something in the beginning about our company. We own a number of domestic freight forwarders. We have two short haul certificated motor carriers which we owned when the Freight Forwarder Act, which is part IV of the Interstate Commerce Act, was passed in 1942.

We are also engaged in operations as foreign freight forwarders and as non-vessel-owning common carrier by water. United States Freight subsidiaries are engaged in local trucking operations, warehousing and offshore steamship service. For about a year now we have been providing a through, containerized, single responsibility service, between the United States and Western Europe.

Long ago at United States Freight Co. we recognized the need of shippers for complete transportation service. To fill that need we have diversified. But domestic freight forwarding is the keystone of our transportation plant. Two of our companies, Universal Carloading & Distributing Co., and International Forwarding Co., operate in all 50 States of the Union. Others, including such companies as Western Carloading Co., and Merchant Shippers, are more specialized as to territory or commodities.

The domestic freight forwarder industry is the smallest of the freight carrying transport groups. In 1966 the 61 large freight forwarders—those having more than \$100,000 revenue per annum—had gross transportation revenue of \$527 million. These carriers provided complete transportation service with respect to about 18 million shipments, having an average weight of just over 500 pounds.

These are ICC figures. Industry studies show that 70 percent of all forwarder shipments weigh less than 300 pounds.

The industry, of course, cannot be judged by size alone. Forwarders are coordinators of transportation and coordination, always important, is the most critical need in the spectrum of transportation today. With the greatest physical transportation plant in the world we are still fumbling around with various notions of how to coordinate. With new containerships being put into service at an increasing rate nobody, except the forwarder, has any very clear idea how the boxes are to be moved from inland points to inland points.

Forwarders also are essentially carriers of small shipments, and that too is a troubled area of transportation. Indeed, there is a crisis in small shipment transportation. The Interstate Commerce Commission said, in its 80th annual report to Congress for fiscal 1966:

Because of the reduction or total abandonment of less than carload traffic by some railroads and the trend to discontinue handling of short haul and off line shipments by freight forwarders, some shippers of small, fragile, light weight, and low rated commodities are unable to obtain adequate and necessary transportation service. While some short haul or feeder line service carriers do attempt to service the excepted traffic, they may encounter difficulty in obtaining a connecting line carrier to accept such shipments.

The Commission was traditionally conservative in that statement. The railroads have almost completely abandoned less than carload traffic. The only way in which a shipper of small lots of freight can obtain rail service today is through the freight forwarder. In that sense, the freight forwarder is today the less-than-carload lot arm of the railroads.

But as the Commission said there is a trend for forwarders to abandon short haul and off-line shipments. And long haul motor carriers, in many cases, refuse to take less-than-carload lot shipments from their feeder lines. The Commission has proposed a remedy but it is an inadequate remedy because, for one important reason, it overlooks the forwarder.

The Commission has proposed that it be given the power to order the establishment of joint through rates between all regulated carriers—except freight forwarders. H.R. 6533 was introduced for that purpose. The freight forwarder already is providing coordinated transportation and he is essentially in the less than carload field. It makes sense to us that whatever may need to be done to bring about coordinated transportation of small shipments in other fields of transport, something should be done to encourage the growth and expansion—and above all to avert further restriction of forwarder service. That is why we are here with our own proposal as to what should be done.

It is true, as the Commission said, that forwarders have discontinued handling some short-haul and off-line shipments. There is a very simple reason. They can't make money on that business. The

major elements of a forwarder's cost of doing business are what he pays to the underlying motor and rail carriers.

The law realistically provides that forwarders may deal with motor carriers on a contractual basis. To the short-haul motor carrier a forwarder is a connecting line, enabling the feeder and distribution motor carrier to participate in transportation of shipments beyond his own lines. The cost of handling characteristics of such traffic are not the same as those applicable to purely local traffic and mutually beneficial contract charges are established.

For the rail portion of the haul the forwarder is required to pay the published rail rate, the same as commercial shippers. But the characteristics of forwarder traffic are, again, not the same as those of private shippers' traffic.

For one thing, forwarders are, as I have said, the l.c.l. arms of the railroad. They solicit traffic which it would be uneconomic for the railroads to handle if it came to them as individual shipments, and forwarders turn such traffic over to the railroads to be moved in economic carload service. Further, the forwarder has the basic legal responsibility for loss and damage to the shipments moving in his service and for the prompt carriage of the goods.

The forwarder deals with the actual shippers and consignees. He performs the actual work of billing, accounting, classifying, receiving, sorting, consolidating, and of deconsolidating, distribution and collection of charges. The forwarder traces the shipments, reconsigns them when necessary, and he has the responsibility of keeping a vast number of shippers as contented customers.

The forwarders and railroads are, in a realistic sense, partners, but they must deal with each other as carrier and customer. Forwarder facilities are located on rail property frequently within the operating yards of the railroad.

The volume and flow of forwarder traffic is predictable, enabling the railroads to allocate their equipment and plan their operations. There is economy in volume, and there is even more economy in predictable volume, day-in and day-out volume.

Many of the most successful fast-freight-train schedules operating today were developed jointly by the railroads and the freight forwarding industry. The daily repetitive blocks of freight forwarder cars are frequently the main support of these fast freight schedules. The forwarders also help the railroads to keep their equipment in balance by using refrigerated trailers and cars which would otherwise return to their loading point empty.

As already pointed out, the forwarders assume directly the very considerable overhead cost that the railroads would otherwise be confronted with if they were handling the less than carload traffic directly. The forwarders assist the railroads in maintaining the economical, efficient line haul service. Because forwarder traffic basically moves in large blocks to and from terminals within railroad operating yards, the average cost of handling forwarder cars within terminal areas is substantially lower than experienced in the switching, placement, and handling of cars for individual shippers at scattered locations.

Therefore, since the cost characteristics incidental to the handling of forwarder traffic basically differ from the cost of handling miscellaneous shipper traffic, it follows that the railroads should be per-

mitted to reflect these economies and efficiencies in their operating arrangements and bases for charging the forwarders for the railroad portion of the overall services performed jointly by the railroads and the forwarders.

The purpose of this bill, therefore, is to accomplish these objectives. This in turn will permit the railroads and the freight forwarders to combine their resources more effectively in competition with the other modes and to permit the most efficient rail forwarder service to the general shipping public at the lowest possible cost.

That is not possible today under the regular ratemaking machinery. When a railroad desires to publish a rate that would be adaptable to forwarder shipments it must consider the effect on all other traffic. If there are differing cost characteristics involved, they must be averaged out. The railroad must deal with its partner, the forwarder, as though that partner were a customer competing with all of the railroad's other customers. That simply is not the case. The law should not so require.

In the present state of the law railroads are required to treat their most formidable competitors, the long-haul trucks, at least as well as they treat their partners and coworkers, the forwarders. And they are permitted to treat those competitors a great deal better than they do forwarders. Many railroads do just that—possibly not because they want to but because they are forced to treat the forwarders as commercial shippers.

The Supreme Court has agreed with the ICC and ordered railroads to transport truck traffic at rail tariff rates, the same as forwarders pay. The rule so far is limited to trailer or flatcar traffic, but in legal principle it applies to the use of boxcars as well. This means that a motor carrier may bring his overflow traffic down to the railroad whenever he has a shortage of equipment on a particular run and obtain rail service at the same price paid by the forwarder who gives the railroad all of his traffic.

In other words, the railroads are forced to assist their competitors by treating them as well as they treat freight forwarders, when the motor carrier obviously will turn over to the railroad only that traffic which can more economically or more conveniently be transported by rail.

Moreover, railroads are permitted to make joint rates with motor carriers, and under so-called plan I piggyback arrangements, railroads transport the trailers of motor carriers at contract charges. Everybody knows that these contract charges are lower than the rail published rates for the same service, and they have built-in features which further widen the gap, such as lower or no charges for empties, discounts for a given number of trailers per month or even per year, and things of that nature.

The contract charges are not published. They are not even filed with the Commission as the pending bill would require in the case of contracts with forwarders. There is no control and there can be no policing.

There has not been much experience as yet under the present situation in which railroads are forced to treat motor carriers the same as they treat forwarders, while also having the right to give the motor carriers more service at lower charges than they assess against forwarders.

But it is a serious and dangerous state of affairs. The lines of distinction between forwarders and motor carriers, established by what we thought were fundamental concepts of law and policy, have been erased. Motor carriers are in the freight forwarding business. They need never put a tractor on the highways. They can purchase their transportation from railroads at prices which are closed to forwarders and which unfairly and devastatingly discriminate against forwarders. If we look down the road far enough we can see what the end must be.

What will happen to competition if the forwarder—the only remaining competitor of the motor carriers, unless express is considered competition—is driven out of the picture? What choice will the shipper have then? How will the reasonableness of truck rates and charges be measured when competition is no longer a factor? If the plight of the small shipper is bad now it will then become impossible.

H.R. 10831 provides the absolute minimum of what must be done to keep the forwarder actively and vigorously in the picture and to stop the erosion of forwarder service and permit its expansion.

The forwarder is needed now as never before. He is needed as a coordinator of transportation and as a handler of small shipments. Containerization has made rapid advance in domestic transportation but there is still a long way to go. We are just now on the threshold of worldwide containerization. The forwarder can and should be a key element in the development of the concept of total transportation.

We have a fine tool, ready for use, but we restrict the forwarder by outmoded regulation while people are desperately casting about for some new tool—some “transmodalist” or entrepreneur. When it comes to doing something to help the only carrier in the picture today who has the capacity to do what needs to be done some people get mental indigestion.

We are confident that this subcommittee will evaluate the pending legislation on its merits. Our competitors, the long-haul trucks, are powerful in resources but they cannot say anything against the merits and the justice of this bill, because when they do they condemn themselves. They are doing—with a great deal more latitude than we propose for ourselves—exactly what we ask the right to do.

Nor can the imitators of the common carrier forwarder—the associations who claim exemption from forwarder regulation but who refuse to assume the liabilities and obligations to the general public which we assume—say anything to detract from the merits of the bill. If this bill helps us it will help all the shippers as well. If private forwarders obtained the same rights it would help them to further increase their advantages over their competing shippers who are not in a position to consolidate their own freight.

H.R. 10831 is a fair and a just bill. It should have been enacted long ago, but it is not too late to act now. Action should be taken promptly. We urge your favorable consideration.

Mr. FRIEDEL. I have a few questions here. How will the freight forwarder be able to provide a better service to the shipping public if this proposed legislation should be enacted?

Mr. MORROW. I think Mr. Moir will be able to deal with that question, Mr. Chairman.

Mr. MOIR. Basically, in this manner: As costs have increased over the years, costs of pickup and delivery and terminal handling, and the charges that the forwarders pay to the railroads for the line haul service, it has become economically impossible for the forwarders to handle the short haul shipments, shipments that would move in service say, 300, 400, 500, 600 miles.

At one time the forwarder handled a great many such shipments, had regular service operating between these shorter distant points.

They cannot do that today. We can pick up and deliver freight as economically as the motor carriers; we can handle it through the terminals, through the terminal areas, as economically and as efficiently, but because of the restricted manner in which we must pay the railroads for the line haul services, the cost of transportation line haul, point to point, as a contributing factor is so great, the sum total of these costs on the short haul movements make it prohibitive indeed, impossible, to protect the through motor carrier rate from door to door and on the short hauls.

If the railroads and the freight forwarders were able to have the benefit of arrangements such as proposed under this bill, the railroad could make pricing and operating arrangements with the freight forwarder which would be on a different basis than the forwarder has to pay under the tariff today and this would enable the freight forwarder to reestablish a great many of these short-haul services that have been discontinued over the years.

Mr. FRIEDEL. I think Mr. Morrow said that the freight forwarders operate in all 50 States. How would this affect them? Don't they have short hauls like from Washington to New York or Philadelphia?

Mr. MORROW. Yes.

Mr. MOIR. It means they operate in and out of terminals in all 50 States but it does not mean that they operate, say, between New York City and on the one hand and Buffalo on the other, a haul of approximately 400 miles.

They cannot perform that local service today. The economics just do not permit it. At one time the forwarders handled a great deal of traffic between the New York City area and Buffalo. That service has been removed and the shipping public no longer can use forwarder service between Buffalo and New York City.

Mr. FRIEDEL. You mentioned in your statement that the shipping associations will be opposed to this. What is the difference between the freight forwarder and a shipping association?

Mr. MOIR. Basically the shipper association is a pooling of shipments between certain very large corporations who have a great deal of volume freight at their disposal.

They select those shipments moving between certain origins and destinations which lend themselves to the most economical handling and they consolidate these shipments into their own car loads or trailer loads as the case may be, and then these same people generally take their off-line shipments, their light and bulky shipments, small shipments, this sort of traffic, which is more costly to handle and turn them over to the common carriers, meaning the motor carriers or freight forwarders.

They are able to reduce their cost on those shipments that they select and put in their own consolidated cars only because they deal

on a selective basis. They do not have to hold themselves open to serve the shipping public as a common carrier freight forwarder must do.

Mr. FRIEDEL. Under the law they cannot.

Mr. MOIR. That is right.

Mr. FRIEDEL. They can only deal with the people they represent?

Mr. MOIR. That is right, and only on certain traffic. They do not attempt to handle the whole spectrum of traffic that is moving.

Mr. FRIEDEL. We have a lot of manufacturers in Baltimore, and they ship to Chicago and California. These shipper associations do it on a nonprofit basis. They work together. They feel they should be under the same amendment that you are asking for so that they can go in and contract with the railroads.

Mr. MORROW. Mr. Moir pointed out, as you pointed out, Mr. Chairman, the shippers' associations not only do not assume any common carrier responsibility, they may not assume any common carrier responsibility. If they did they would be freight forwarders subject to regulation under part IV.

If they were freight forwarders and had permits then of course they would be entitled to anything that the law affords with regard to the common carriers. But they ask here for this committee to maintain their exemption on the basis that they are not common carriers and at the same time to give them the only benefit that I know of, which is a real benefit, provided under the law for freight forwarders simply because the forwarders are common carriers.

You could not, consistent with the law and policy of this country, grant any private shipper a right to make a deal with a railroad or any other common carrier unless you granted that same right to all shippers.

There are countries in the world where common carriers are permitted to make contracts with shippers. A railroad in some countries can make a contract with a shipper to take all his freight and because he has a large volume over a period of time to give him a better break than the other shippers.

We have not come to that in this country. Our law is based on the theory that common carriers must deal with all shippers alike and must publish tariffs to serve them. These shippers' associations simply want to have their cake and eat it too, to put it simply.

They want to maintain their exempt status as private shippers in competition with other private shippers who are not so fortunately situated as they are to consolidate their freight and at the same time obtain the advantages of the common carrier.

They want to select the part of the common carrier regulation which they think should be applicable to themselves and reject the part that should not apply. I think their position is wholly untenable.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman. I am trying to establish in my mind historically why the difference was allowed in the transportation under the section 409, part of the transportation law, why the Congress allowed freight forwarders and motor carriers to negotiate rates on routes less than 450 miles and would not allow the freight forwarders to negotiate with the rails.

Why was that distinction made?

Mr. MORROW. I think you have two parts to your question. One part deals with why the law gives the forwarders the right to contracts and the other deals with why the 450-mile limitation is in there.

Mr. PICKLE. Yes.

Mr. MORROW. Taking the first part of your question, Mr. Congressman, as I tried to explain in my statement there was a historic pattern of freight forwarder operations. Freight forwarders going back to the last century had consolidated shipments and sent them by rail but they could not go very far outside the railhead, they were simply consolidators on the railroads.

But when the motor carriers became important carriers, beginning in the late 1920's, the forwarders and the motor carriers saw a way to coordinate their services and provide a better service for the shipping public. Now these short-haul motor carriers, of which there were and still are a great many, don't have an outlet to send freight from Washington, D.C., to California.

They must use railroads or motor carriers. They had to make some kind of deal with railroads or long-distance motor carriers. They can make joint rates with such carriers now. In those days the freight forwarders and short-haul carriers got together and they made contracts with each other.

The forwarder was a very important outlet. I think he was very helpful to the development of the short-haul motor carrier industry because he was the long-haul outlet for these motor carriers.

At the time motor carrier regulation was passed in 1935 the forwarders had contracts with several thousand motor carriers throughout the country. All the forwarders and most of the short-haul motor carriers had contracts, very similar to the kind of contract I think this law now authorizes.

When motor carrier regulation was passed either the freight forwarder was overlooked or the definition of a motor carrier did not mean what Congress through it meant.

Mr. PICKLE. You say it was overlooked. Do I understand you were discriminated against when the law was put on the books?

Mr. MORROW. When the motor carrier regulation was put on the books I am confident that Congress did not intend the result that legally ensued. The result was that within the law there was no provision for continuation of the historic pattern.

Mr. PICKLE. Now I am wondering under this type of legislation if the Congress said on short hauls that they intended the shipment primarily to go by truck, thinking that would be probably cheaper and more reasonable in price.

Now I assume that it is becoming economical for you to participate in the long haul, that is for the motor carriers, and you want the same thing now that the Congress did not give 15 years ago, or whatever time it was, you want that right now?

Mr. MORROW. I think now you are probably getting into this 450-mile limitation. The 450-mile limitation on consolidated lots was put in at the insistence of the railroads. The freight forwarders used motor carriers primarily for assembly and distribution and for distances less than 450 miles.

When forwarders consolidated freight they always had given the freight to the railroad for the consolidated long-haul movement and the railroads wanted it kept that way.

Mr. PICKLE. What are you asking—what you are asking for is equality. You want to be able to negotiate with the railroads the same as the carrier can negotiate with them today?

Mr. MORROW. Yes, sir.

Mr. PICKLE. When this bill was discussed some last year in the letter to our chairman the ICC stated that if the legislation you were asking for were granted to the freight forwarders this would not only provide you equality, it would give you preferred treatment.

I think they recognized that there was a problem that you have inasmuch as you could not negotiate with the railroads. You are both a shipper and a carrier. Now if you were given this law would that not give you some preference?

Mr. MORROW. No, sir. I have the Commission's current letter before me and I glanced quickly through it while Mr. Moir was giving his testimony and they do refer to the fact that this would give us a preferred shipper status.

They recognize that we are in a bad position today due to their ruling that trucks can become shippers, too. I don't know why the Commission or anyone else ever has had the notion that the forwarder has this dual status of shipper and carrier, only because Congress did not see fit to permit us to deal with railroads on some other basis than that which we assumed.

The motor carriers now, under the Commission ruling and Supreme Court decision, can also ship by rail.

Mr. PICKLE. You are a shipper, are you not?

Mr. MORROW. We are the same kind of shipper that the motor carrier is when he takes his trailer down and gives it to the railroads to move piggyback.

Mr. PICKLE. But you are a shipper?

Mr. MORROW. When we tender shipments under a tariff rate, yes.

Mr. PICKLE. You are also a carrier because you actually transport the goods?

Mr. MORROW. Right.

Mr. PICKLE. There must be a distinction on that basis because you say that a shipper association is only a shipper and cannot therefore claim the rights of just shipper and assume none of the responsibilities of the carrier. Now if you object to their status you must admit then that you are both a carrier and a shipper.

Mr. MORROW. Every piece of freight that moves in our service is on our bill of lading at our rate. You see, that is not true with respect to shipper associations.

Mr. PICKLE. You say that the ruling that the ICC has issued with respect to their ex parte 230, as I recall, saying in effect by that ruling, and it was upheld by the Supreme Court, that actually the motor carriers were forced under this interpretation to ship their freight by rail and pay the open tariff.

That would mean cheaper rates. Is that not an attempt for equalization? Is that not sufficient so far as your organization is concerned?

Mr. MORROW. It would be sufficient if we had the authority not only to take the tariff rate where we can get it but to make a deal with the

railroad for a better rate. Now the motor carriers had no rights taken away and they still have contracts for the larger portion of truck trailers shipped by rail in this country today.

They are shipped on a contract rate between the motor carrier and railroad which is not published, not disclosed. Nobody knows what it is.

Now we don't have that right.

Mr. PICKLE. One last question. I noticed that you dismiss in somewhat short manner the claim of a shipping association they can't have their cake and eat it both. You say that the legislation would help all shippers. Now how would this help their associations if you got the relief you asked?

How will this help the shipper? The shippers have opposed this bill. How would this help their associations?

Mr. MORROW. Unless they are included in the—well, it will help their association even if they are not included in it if the bill is passed just as it is. Their associations don't handle all shipments for all points. They will handle the right kind of commodities between certain key points but the members of those same shippers' associations have other traffic and we have to take it all.

We have to take the good with the bad. So if this does help us to help shippers it will help even the members of the shippers association.

Mr. PICKLE. They just have not got the word then.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Mr. Morrow, the issue involved here is whether freight forwarders should be able to make contracts with railroads as well as motor carriers.

Mr. MORROW. That is right.

Mr. DEVINE. In response to a question by Mr. Pickle you said that this was not provided originally because it was probably overlooked. The first thing you said in your statement was that you have been counsel and connected with the institute for 28 years when this law was on the books. Was it overlooked in 1942?

Mr. MORROW. I am afraid I gave the wrong impression. When I said it was overlooked I was talking about the passage of the Motor Carrier Act in 1935 which did not provide for continuance of contracts that were then in existence between forwarders and motor carriers.

I said that Congress did not intend any such result. There is a long legal history there. I did not intend to give the impression that when Congress enacted part IV in 1942 they overlooked the relationships between forwarders and railroads.

There was a pretty hot battle over that question. We had always shipped by rail at that time. That was the historic pattern. We and a number of other people thought we should have joint rates across the board, rails and everybody else. But others thought we should not have any such rights. Congress came to a compromise.

They said we will permit you to continue these arrangements in effect between forwarders and motor carriers but you continue to ship your freight by rail as you have done in the past.

As I said that was all right for the past but we have come to the future and we think we need the right now, which we would like to

have had then. It was not overlooked. It was simply that it got involved in controversy and Congress did not give it to us.

Mr. DEVINE. Mr. Moir's statement is that there has been a sufficient change in circumstances during the intervening 25 or 30 years to allow you to make contracts with railroads?

Mr. MORROW. Precisely. We have had a complete revolution in transportation in the last decade. We are standing on the edge of further revolution in containerization. We are in a bad competitive situation with motor carriers in that field alone but there are others as Mr. Moir mentioned.

Mr. DEVINE. It will be interesting to hear the other side of the controversy develop.

Mr. MORROW. Yes, sir.

Mr. FRIEDEL. Mr. Ronan.

Mr. RONAN. No questions.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. I am sure I am not alone on this committee that needs some education here. May I ask several questions for my own enlightenment?

For purposes of clarification—and I am talking about very elementary clarification—one of the problems we have in this committee is that some of our problems are so complex that most of us don't want to admit that we are so ignorant that we don't understand them.

I want to plead ignorance and start from the beginning. For purposes of clarification could a freight forwarder be called a broker?

Mr. MORROW. No, sir. Not by any means of the term at all. It is as improper to call freight forwarders a broker as it would the Railway Express Agency or any other type of indirect carrier. A forwarder is a common carrier, not a broker.

A broker is regulated now under part II, who merely arranges for transportation, assumes no responsibility, has no responsibility to the shipper at all.

Mr. KUYKENDALL. Do they own fleet vehicles?

Mr. MORROW. A very great many. We are permitted to operate our own trucks within the terminal areas of cities and we have in the forwarding industry probably one of the greatest truck fleets in the world.

Mr. MOIR. I think in our own company that between the piggyback fleet and our equipment operating within terminal areas performing pickup, delivery, and transfer we probably have some 5,000 pieces of equipment tied into this common carrier service that we render.

Mr. KUYKENDALL. For the sake of clarification let us talk now about the situation as it now exists between the freight forwarders and trucklines.

I am talking about a theoretical case now, not what happens under the law.

You as freight forwarder of course are given the right to go and negotiate with a truckline a rate less than the ICC quoted rate between two points; is that right?

Mr. MOIR. Yes.

Mr. KUYKENDALL. That is so you can make money. You are really negotiating your margin of profit; is that it?

Mr. MOIR. That is right. I am sure you understand this is for the portion of the service basically involving pickup and delivery in and out of the terminals.

Mr. KUYKENDALL. If some truckline were hungry enough and competitive enough, his competitor running the same route was running the same route from Memphis to Nashville, Tenn., if he were hungry enough to give such a rate that you can make what you considered a satisfactory profit and still cut under the ICC quoted rate between Memphis and Nashville could you legally do so?

Mr. MOIR. Yes.

Mr. KUYKENDALL. Is this not a privilege then that no one else has? Actually quoting to me as your customer a rate less than ICC rates?

Mr. MOIR. No. Our rates are the ICC rates. We file our tariffs with the Interstate Commerce Commission.

Mr. KUYKENDALL. Let me restate my question. A truck company governed by ICC regulations between Memphis and Nashville. If I, a manufacturer in Memphis, wish to use one of those trucklines I am going to have to pay that rate; is that right?

Mr. MOIR. Right.

Mr. KUYKENDALL. Would it be possible within the law—I am not talking about the practicality of your economic structure but within the law, would it not be possible for you to quote cheaper rates than the trucklines?

Mr. MOIR. Yes, this is possible between every two points served by a freight forwarder throughout all 50 States.

Mr. KUYKENDALL. Does this not give the forwarders a preferential position within the law?

Mr. MOIR. No, I don't feel that way.

Mr. KUYKENDALL. You can cut ICC and he can't?

Mr. MOIR. No, he can't. He can do exactly the same thing.

If it is possible to move a truck between Memphis and Nashville at a certain cost per mile—

Mr. KUYKENDALL. Let us say from West Memphis?

Mr. MOIR. Any two points. If it is possible to run trucks at a certain cost per truck-mile, the other motor carriers are just as smart and just as competent they can do it also. Whatever the cost of producing the services will reflect itself in the marketplace in the price to the shipper whether it be done through an arrangement with the freight forwarder or whether the motor carrier does it in his rate field with the Commission.

Mr. KUYKENDALL. Is there not today, this day, an established Memphis-Nashville ICC truck rate? Now they may negotiate a change next month or next year but is there now one that they can't go below?

Mr. MOIR. I don't know because they are both within the same State.

Mr. KUYKENDALL. Let us cross the river then. I want to establish this—

Mr. MOIR. I think we can do that very simply in that all shipments moving into interstate commerce, whether moving in truck service or freight forwarder service move at rates filed and approved by the Interstate Commerce Commission.

Mr. KUYKENDALL. But may a truck hauling my merchandise from West Memphis to Nashville actually haul cheaper through a freight forwarder than he could haul for himself?

Mr. MORROW. May I point out something in response to your question, Mr. Congressman? A freight forwarder by law and by definition must assemble, must consolidate, must break bulk, and must distribute. So that you cannot assume that on a given shipment picked up at Memphis and delivered at Nashville a forwarder will be—will go to a motor carrier get a contract that would be so low that on that shipment the forwarder could undercut the motor carrier's rate.

Mr. KUYKENDALL. That is not my premise. I did not say how foolish it might be to do it.

Mr. MORROW. I am saying legally it could not be done. The forwarder would have to have a lot of other shipments in the movement and he would have to pay the motor carrier for the lot you see, the forwarder would not operate that way in the first place.

Mr. KUYKENDALL. Do you turn down a straight truckload just because you are a forwarder.

Mr. MORROW. We can't handle a straight truckload not unless we put it with another truckload and put it on a piggyback train as a carload.

Mr. KUYKENDALL. You cannot handle a straight carload?

Mr. MORROW. Not by itself; that is right.

Mr. KUYKENDALL. That is part of the education I am trying to get; we get it from all sides, you understand. So I wanted to question you on this. For further clarification you are stating that this privilege that you have of negotiating a margin of profit, and this is what we are all in business for, when you are a trucking line it is not allowed between you and the railroad at any distance; is that right?

Mr. MORROW. That is correct.

Mr. KUYKENDALL. You can't do the same thing from West Memphis to Nashville with a railroad that you can do for a truckline?

Mr. MORROW. That is right.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Mr. Morrow, I have only one more question. I understand this proposal was made back in 1956.

Mr. MORROW. Yes, sir.

Mr. FRIEDEL. Then I would like to know what has happened recently that warrants the bill now.

Mr. MORROW. The legislation that was proposed in 1956 was not the same as this. It was an amendment proposed to section 409 which simply gave the forwarder a right to ship traffic in trailers on flatcars at negotiated contract prices.

The reason for that legislation at that time was that the ICC had ruled that forwarders could not make any kind of arrangements with railroads for the shipment of their trailers and the railroads had not at that time published any rates.

They did not publish any rates for use by forwarders and the general public until 1958 when they began to publish piggyback rates. That relieved the urgency of the situation that had existed in 1956 and no further efforts were made to provide for contracts between forwarders and railroads but we have recited the legal and economic history here that has changed the picture now.

In the piggyback field we are at recognized and complete disadvantage because, while the trucks can ship by rail and pay tariff rates the same as we do, they also can make a better deal with them.

The other economic reasons, and I won't go through them all, were cited by Mr. Moir.

Mr. PICKLE (presiding). I did not quite get the distinction that the legislation had some 10 years ago. At that time you asked that the freight forwarder be given the right to ship by rail and negotiate a rate?

Mr. MORROW. Trailers only.

Mr. PICKLE. Trailer piggyback shipment?

Mr. MORROW. Yes.

Mr. PICKLE. That was the legislation proposed. What is the legislation now that is different?

Mr. MORROW. It is not limited to trailers on flatcars. It could be for boxcar traffic; any kind of traffic.

Mr. PICKLE. At that time they had no rates. Now they are published. I have no more questions. Are there any other questions?

I want to thank you, Mr. Morrow and Mr. Moir.

Mr. MORROW. Thank you very much, Mr. Chairman and members of the committee.

Mr. PICKLE. Do you have any copies of the amendment proposed by the shippers' association?

Mr. MORROW. No, sir.

Mr. PICKLE. Would you forward us your comments on their amendment?

Mr. MORROW. Yes, sir; I will be glad to file my comments.

(The information requested follows:)

FREIGHT FORWARDERS INSTITUTE,
Washington, D.C., February 5, 1968.

HON. SAMUEL N. FRIEDEL,
*Chairman, Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.*

DEAR CHAIRMAN FRIEDEL: During the hearings on H.R. 10831, held January 23-25, 1968, you asked me to submit the views of the freight forwarding industry with respect to amendments to the bill proposed by the Interstate Commerce Commission and by certain shippers' associations. Members of the Freight Forwarders Institute have considered those amendments and our views and comments are set forth below.

AMENDMENTS PROPOSED BY THE I.C.C.

The Interstate Commerce Commission proposed three amendments. Two of the amendments would be acceptable to our industry. One of them we must oppose. In the order presented the amendments are:

1. Amend the bill so that a freight forwarder could no longer make any contract with a motor carrier for a distance of more than 450 miles.

2. Add to the bill a provision that when any contract between a freight forwarder and a rail or motor carrier is drawn in question, by complaint or on the Commission's own motion, the burden of proof would be on the parties to the contract.

3. Provide penalties in the bill for violations of the terms of the contracts. The technical terms of the amendments, and the Commission's reasons for offering them, are set out at pages 9 to 12 of the Commission's letter of January 23, 1968 to Chairman Staggers. We would not oppose amendments 1 and 3, but we are unalterably opposed to amendment number 2. Our comments are:

1. *Limitation of Contracts with Motor Carriers to 450 Miles.*—Under present law forwarders may make contracts with motor carriers for any distance but if the contract covers transportation in truckloads between the forwarders' terminals for a distance of 450 miles or more the compensation provided by the contract may not be less than that provided in the published tariffs of the motor carrier.

Under the Commission's amendment freight forwarders and motor carriers

would have no right to make contracts involving a motor carrier haul of 450 miles or more. The Commission proposes the amendment because of potential difficulties in administering the present law, and not for economic or policy reasons. The possible administrative difficulties could be prevented as well by eliminating the limitation altogether as by making it an absolute limitation. Nevertheless, the limitation is of little practical significance and we do not oppose the amendment.

2. *Placing Burden of Proof on Parties to Contracts.*—We are opposed to this amendment. It appears to be based on a mistaken concept of the legal nature of contracts. In its justification of the amendment the Commission refers to sections of law that are applicable to published tariff rates. Contracts, as this Committee has said in the past, provide for compensation that is the same as a division of a rate. The amendment could, and we think would, result in stultifying litigation.

Under Section 409 any person with a complainable interest may file a formal complaint with the Commission, and based upon such a complaint, or on its own motion, the Commission may enter upon a hearing. After the hearing, the Commission may order a change in the terms, conditions, or compensation of the contract if it finds anything unlawful. But any person who complains must sustain his complaint by showing injury. If the parties to the contracts are required, in effect, to show that a complainant has not been injured, we anticipate that many complaints would be filed simply as a harassing tactic.

Section 409 provides the same legal standards for contracts as all other parts of the Act provide with respect to "divisions" of revenue in the case of joint rates. (Secs. 1(4), 216(c), and 305(b)). Section 409 also provides the same legal procedure for correcting contracts which are drawn in question as are provided by all other parts with respect to divisions. (Secs. 15(6), 216(f), and 307(e)). *Not one* of those other sections places the burden of proof on the parties to joint arrangements.

The law applicable to rates which the shippers pay is different, in Part IV and in all other parts. When the Commission, on complaint or its own motion, suspends a published tariff rate of a forwarder or any other carrier the law imposes the burden of proof on the forwarder or other carrier to justify the rate. That is because the shipper has been paying one rate and he is asked to pay another rate and the carrier must show the economic factors which made it necessary for him to change the rate. No rates which a shipper pays are involved in Section 409. Section 409 only deals with the amount which the forwarder pays other carriers.

At page 11 of its letter the Commission points out that the *Rate Section* of Part IV (Section 406(e)) provides, as do all other rate sections of the Act, that the burden of proof shall be upon the proponent of a "changed rate." The Commission wants that same provision made applicable to Section 409 contracts. This Committee took pains to point out, when Section 409 was amended to provide for contracts in 1950, that compensation under those contracts is comparable to "divisions" and is not to be considered as a rate. Thus this Committee said, in its Report:

"The proviso in section 409, as proposed by the bill, which requires the parties to contracts to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of the participants to such contracts or any other freight forwarder *closely parallels the provisions of the Interstate Commerce Act which govern divisions of revenue among common carriers subject to parts I, II, and III participating in joint rates* (secs. 1(4) and 15(6) of pt. I: secs. 216 (c) and (f) of pt. II; and secs 305(b) and 307(e) of Pt. III). It is thus clear that . . . the compensation which may be agreed upon under the proposed contracts is *comparable to compensation which would be received under a division of a joint rate rather than to compensation received under a published tariff rate.*" (Emphasis added. Rpt. 2489, 81st Cong. 2d Sess.).

Even though, as this Committee said, the compensation agreed upon under contracts is to be compared with divisions, and not with rates, if the burden of proof amendment is enacted it is inevitable that numerous complainants will challenge the contract charges on the ground that they differ from the rates which they pay. The result will be endless litigation, and the purpose of Section 409 will be frustrated.

3. *Penalties for Rebates and Concessions Under Contracts.*—As the Commission points out in its letter to the Chairman, Part IV of the Act contains various

sections prohibiting violations and imposing penalties. The Commission has some doubt about the application of those sections to contracts. To remove that doubt the Commission proposes specific penalty provisions to be written into Section 409. We have no objection.

AMENDMENT PROPOSED BY SHIPPERS' ASSOCIATIONS

Certain shippers' associations support an amendment which was submitted by Mr. Ronald N. Cobert, General Counsel of the American Institute for Shippers' Associations, Inc. The amendment would bring within the scope of the bill "shippers' associations excluded from regulation under 402(c)" of the Act.

The argument advanced by a great many of the associations that H.R. 10831 would make bad law unless it is applied to them is transparently disingenuous. The bill either represents bad law or good law and the scope of its coverage is beside the point.

The consistent claim of the associations is, as Mr. John C. Lincoln of the Los Angeles Wholesale Institute put it, that the bill "would spell the death knell to the very existence of these associations." Now how could that be? The bill would spell the death knell of private shipping organizations only if it enabled forwarders to provide service and rates which the associations could not match, so that their members would find it to their advantage to use regulated forwarders rather than unregulated forwarders. Surely that would not be so dire a consequence as the associations contend.

Members of shippers' associations do make extensive use of freight forwarder service today. They use regulated forwarders to and from points where the associations do not operate, and for the transportation of commodities which the associations will not handle. If this bill should make it possible for freight forwarders to handle all of the business of the members of the associations, instead of only portions of their business, the members should be happy to see that come about.

Bona fide shippers' associations are not, or should not be in the transportation business. They should not compete with forwarders, nor with railroads or motor carriers. The business of association members is to manufacture, to process, to buy and sell goods and merchandise. Because common carriers of all kinds have been forced, by rising costs, to constantly raise their rates, or curtail their service, many shippers have found it cheaper to provide the means of transporting their own goods. Numerous shippers today own their own fleets of trucks to transport their product and supplies. Others have formed shippers' associations. But I have heard many of these shippers say, in public statements, that they do not want to be in the transportation business and if common carrier agencies could do as well for them as they can do for themselves they would immediately return to the use of common carriers. We are trying to find a means whereby we will be able to supply service at charges which will be attractive to the general public, even the members of shippers' associations.

Members of shippers' associations—manufacturers and buyers and sellers—do compete with other manufacturers of goods. Those who are situated so that they can combine their goods with other shippers and save money on transportation have a natural advantage over their competing manufacturers and merchandisers. If they are given the further advantage of being able to negotiate lower charges with railroads they will further increase their advantage over their competitors. What these manufacturers who are members of associations pay the railroads should be compared with what their competing manufacturers pay, not with what the common carrier forwarders pay.

Shippers' associations are excluded from forwarder regulation by Section 402(c) provided they consolidate freight "for themselves," on a "nonprofit basis," for the purpose of "securing the benefits of carload, truckload, or other volume rates." Section 402(c) says that "the provisions of this part" shall not apply to shippers' associations. But they want one provision—Section 409—to apply to them. None of the provisions of Part IV may be made applicable to shippers' associations unless all provisions are made to apply to them. They will automatically become subject to all provisions of Part IV if they obtain a permit as a freight forwarder and hold themselves out, as the definition of a forwarder requires, to transport freight "for the general public as a common carrier."

Shippers' associations say they function just like a forwarder, therefore, they should have any privileges that accrue to forwarders. They perform the physical acts of assembly, consolidation, and distribution which a forwarder performs.

But they do not serve the public. They do not publish tariffs that are open to all shippers on a uniform basis. They do not issue bills of lading. They do not, as do the forwarders, serve as the L.C.L. arms of the railroads, gathering up and bringing in from considerable distances beyond the rail head the small, miscellaneous shipments and combining them into volume lots for profitable rail hauls.

The shippers' associations' amendment should be rejected.

ADDITIONAL COMMENTS

The forwarder witnesses, concluding first, had no opportunity to respond to the contentions of opposing witnesses nor to correct certain erroneous impressions which may have been left with the Subcommittee. The following comments are respectfully offered for the record and for study by members of the subcommittee.

The "Dual Status" Argument

Basic to all of the arguments of those who oppose the bill is the thoroughly discredited contention that freight forwarders have, and *ought to be held to*, a dual status. Admitting that forwarders are full common carriers insofar as the shipping public is concerned, the opponents say forwarders are and must remain shippers in their relations with the carriers with whom they deal.

It is incredible that anyone, at this point in time, would seriously make that argument. Witness that under common law for years prior to the enactment of forwarder regulation in 1942 forwarders dealt with motor carriers not as shippers but as connecting common carriers. Witness that under Part IV, by statutory authority, forwarders have always dealt with motor carriers not as shipper to carrier but as connecting carriers. Witness that under very recent decisions of the Commission and the Supreme Court *any common carrier* subject to any part of the Act may ship the freight of its customers by railroad and pay the rail published rate, *the same as a forwarder*. Witness that this bill does not give forwarders a *new right to contract*—it only extends the right they already have so as to include railroads as well as motor carriers.

And yet the dual status contention is still made and our best answer is to ask this Subcommittee to refresh its recollection by referring to what it has consistently said in the past in response to the self-same argument. I quoted in my testimony and I repeat here for emphasis the following paragraph from the report of this Committee which brought forth present Section 409 in 1950:

"Even those who oppose the bill, for the most part, concede that freight forwarders are common carriers in their relations with the public. The opponents argue, however, that freight forwarders *occupy a dual role* and that when they deal with other carriers they are shippers only and should be treated as such. The term 'common carrier' was used at common law, and has been adopted by statute, to describe the activities of a person who assumes certain obligations and responsibilities to the public. The nature of those obligations and responsibilities, rather than methods of dealing between common carriers, is the test normally applied in determining status as a common carrier." (Emphasis added. Rpt. 2489, 81st Cong. 2d. Sess.).

This Committee went on to say in that report that many provisions of other parts of the Act were incorporated in Part IV and that—

"The Elkins Act, designed particularly to govern common carriers, is made applicable to freight forwarders. In incorporating such provisions no exception is included to indicate that forwarders are not to be considered as *full common carriers*."

And the Committee continued:

"The contention sometimes made that freight forwarders may not be treated as full common carriers because they do not own or operate the facilities of transportation which they use is answered both by the analogy to the express agency and by numerous decisions of the courts." (Citations omitted).

Finally your Committee said:

"Therefore, to describe freight forwarders as common carriers, as the amendment . . . proposes to do, does not change the status which they have always had, but simply recognizes that status by statutory law. This will remove any anomaly and confusion regarding the status of freight forwarders and *make clear that they have the status of common carriers*."

The Senate Commerce Committee, reporting the same legislation in 1950, said:

"To the committee it seems anomalous to say that a person who is a carrier and is subject to regulation as such, and who is subject to all of the responsibilities, limitations, and restrictions which are imposed by law upon common carriers, is not to be treated as a common carrier for all purposes which are otherwise lawful under the act."

I will not comment on the old court decisions and the quotations from statements of individual members of Congress which make up a large part of the testimony of the witness for American Trucking Associations further than to say that the courts interpret the law as Congress enacts the law and we are asking for a change in the law. It is not a change in substance but a change in scope. There is no question of policy here—only a question of economics and public interest. We have sustained the bill on those grounds.

The Argument that Section 408 is Adequate

American Trucking Associations advocates doing away with Section 409 saying that Section 408 would then come into play and "place all shippers on an even keel." There is no rule against perpetuity in argument but this one was resolved by Congress 21 years ago, in 1946.

When Part IV was enacted, in 1942, Congress did express the hope that assembly and distribution rates would be established under Section 408, and that joint or contract rates between forwarders and other carriers would then be unnecessary. But after four years, during which the authority for joint forwarder-motor rates was extended several times, Congress became convinced that Section 408 would not work. Accordingly, in 1946, a bill was passed authorizing "agreements" between forwarders and motor carriers. In reporting that bill, H.R. 2764, this Committee said:

"Section 408, providing for assembling and distribution rates, has not worked out in the manner that had been hoped."

And further:

"There is no reason to believe that the situation will ever be satisfactorily met by the establishment of assembling and distribution rates under section 408." (Rpt. 1516, 79th Cong. 2d. Sess.).

Forwarders had nothing to do with the failure of Section 408 to serve its purpose. The decision to publish or not to publish 408 rates was up to the motor carriers and they could not or would not establish the rates. Mr. Earl Girard who then represented 62 short-haul motor carriers in the Chicago area told the Congress why in his testimony on H.R. 2764, referred to above. He said that he did file an assembly and distribution tariff designed to handle forwarder traffic, and added:

"The reaction to that tariff was exactly what we expected, based upon our investigation. The Chicago Association of Commerce filed a protest with the Interstate Commerce Commission. And one of the allegations in support of their protest was that the rates were too low. That caused me to make further investigation as to why that contention would be made. And we found that that was merely to force the issue of requiring the opening of that tariff so that the general public could utilize it."

The Girard group and other motor carriers know that when a rate is published in a tariff, even though it is designed as a substitute for a division of a charge with another common carrier, it will ultimately set the level of the entire rate structure. And the motor carriers were not willing to give shippers generally the charges which they could well afford to make on forwarder traffic. That would be true today as it was then.

The Plan I Question and Equality of Regulation

I am afraid the record was left in a state of utter confusion as regards the facts about Plan I piggyback operations under which motor carriers contract with railroads to haul truck trailers on rail flatcars. The members of the Subcommittee expressed interest in two questions:

1. What is the difference, if any, between Plan I operations and what would be brought about under H.R. 10831?

2. What is the difference, if any, between what truckers pay railroads under Plan I and the Plan III rates which forwarders now pay?

The short answers to the questions are (1) there is absolutely no difference between Plan I operations and the kind of operations that this bill would authorize, and (2) motor carriers pay substantially less to have their trailers hauled under Plan I than forwarders pay for identical service under Plan III.

Whether deliberately or through lack of knowledge, the witnesses who dealt with the subject simply did not give straightforward or correct answers to the questions. I shall set forth the facts without fear of contradiction.

The Commission described Plan I, in its report in Ex Parte 230 (322 I.C.C. 301), as follows:

"Plan I. Railroad movement of trailers or containers of motor common carriers, with the shipment moving on one bill of lading and billing being done by the trucker. Traffic moves under rates in regular motor carrier tariffs."

In its Rule 4, authorizing Plan I, the Commission provided that—

"... tariffs embracing rates or charges covering such service may provide for the performance of TOFC service for the *entire line-haul movement*."

Under a Plan I operation a motor carrier gathers up freight at a City such as New York and makes up trailer loads. The trailers are shipped all the way by rail to another City, such as Chicago, where the trailers are taken back by the motor carrier and the individual shipments are delivered to the consignees. The rate charged the shippers is the rate published by the trucker in his tariffs and it is the same whether the trucker ships by rail or hauls the trailers over the highway in his own service. The trucker may bring some of the shipments in from offline points, but he is not required under the Commission's rule to do so. As the above-quoted rule says, the trucker may perform only the pick-up in New York and the delivery in Chicago, leaving the entire line-haul to the railroad. This is identical in every way to the operations of a forwarder.

It was pointed out at the hearing that the trucker must have rights all the way from origin to destination. So must the forwarder. But truckers have joint rates with each other and the I.C.C. rule does not say the same trucker must have highway rights all the way to destination. He may join with other truckers.

When pressed for the difference between Plan I and forwarder operations the witnesses said the trucker is a carrier but the forwarder is a shipper. The forwarder, as I have shown, is a common carrier, not a shipper. He pays the railroads' published rates only because Congress, thus far, has provided no other basis of relationship. This argument also overlooks the fact that while the motor carrier has rights to transport freight on the highways he does not use those rights when he ships by Plan I. While the motor carrier might, as stated, bring in some shipments from off-line points the fact is, as transportation people know, that most of the Plan I shipments are originated and terminated by the motor carriers within the exempt terminal areas of the origin and destination cities and no highway service is performed at all.

The illustration given by one witness of a Plan I movement where the motor carrier would haul the trailers by highway from New York to Buffalo and then ship by rail from Buffalo to Chicago is not realistic. If the motor carrier used the railroad he would use the railroad all the way from New York to Chicago. If the motor carrier could save money by shipping by rail from Buffalo to Chicago he could save more money by shipping from New York to Chicago. And that is what he would do.

Under both Plan I and freight forwarder service the shipper deals only with the trucker or the forwarder; he pays the trucker or the forwarder rate; he holds a trucker or a forwarder bill of lading; he looks to the trucker or forwarder for the safe carriage of the goods and for the payment of loss and damage claims. The shipper does not know any carrier other than the trucker or the forwarder, as the case may be, and he does not know or care how the shipments are transported to destination. The operations are identical.

None of the witnesses could tell your Subcommittee just how much lower the Plan I charges are than the comparable Plan III charges. The Plan I charges are not filed with the Commission. The so-called "division sheet" which one witness said is filed with the Commission does not reveal the charges. But enough has been learned about Plan I charges from I.C.C. proceedings so that everyone in the transportation industry should know that Plan I charges are materially lower than Plan III charges. In addition to charging a lower dollar amount per trailer under Plan I the railroads participating in that plan normally make other concessions to the truckers, such as hauling a certain percentage of empty trailers free; hauling all empty trailers at discounts under the loaded charge; permitting the loading of more freight in Plan I trailers than forwarders may load in Plan III trailers without penalty; and providing a graduated scale of charges which provide discounts based on the number of trailers tendered in a given period.

American Trucking Associations submitted an exhibit in Ex Parte 230, the proceeding in which the I.C.C. approved Plan I as a joint rate arrangement, which consisted of a comparison of Plan I and Plan III charges submitted in an earlier proceeding by a witness for the Pennsylvania Railroad. That exhibit is attached hereto as Appendix A.

Looking at Appendix A you will see that it compares Plan I charges with Plan III charges between seven pairs of points in the East. The Plan I charges are divided into five groups, depending on the number of trailers shipped in a month by an individual motor carrier. If a motor carrier ships more than 900 trailers per month, qualifying for group V, he obtains a much lower charge than the motor carrier in group I who ships less than 150 trailers per month.

Please observe line 7 on Appendix A, which involves movements between East St. Louis and Kearney (New York). The Plan III charge per car with two trailers having 50,000 pounds of lading is \$578.90, or 115.8 cents per hundredweight. For the same line-haul movement of the same lading in Plan I service a motor carrier would pay \$399.60 per car or 79.9 cents per hundredweight if less than 150 trailers are tendered to the railroad in a month. If the motor carrier tenders more than 900 trailers per month his charges are reduced to \$355.60 per car or 71.1 cents per hundredweight. Thus it is possible for a motor carrier to purchase rail piggyback service between New York and St. Louis for \$223.30 per car less than the freight forwarder pays.

The Commission's Bureau of Inquiry and Compliance submitted evidence in Ex Parte 230 showing that one Eastern Railroad had a Plan I contract with one motor carrier under which the railroad agreed to transport 300 trainloads of the trucker's trailers over a 12-month period for the sum of \$2,172,000. (Exhibit No. 6, Ex Parte 230).

We have no later official data at our disposal. The figures quoted above probably have changed in the five or six years since they were submitted in evidence. I doubt if the differential between Plan I and Plan III charges has been reduced. Mr. Charles L. Smith, who testified for the Eastern Railroads was requested by the Chairman to submit comparative figures showing Plan I and Plan III charges. Perhaps he will be able to update the figures I have quoted.

I submit that there is no reason whatsoever why motor carriers should have their trailers transported by rail at charges so much lower than those available to common carrier forwarders. In the *National Automobile Transporters case*, 91 M.C.C. 398, the Commission said that "... the physical rail transportation service provided by the railroads under Plans I, III, and V, is identical."

Both the forwarders and the motor carriers are common carriers and they turn over their trailers to the railroads under exactly the same circumstances and conditions. There can be no reason for the legally compelled discrimination against forwarders which exists today.

Questions arose at the hearings as to why, since the physical service performed by the railroads is the same whether the trailers are those of the motor carriers, the forwarders, or commercial shippers, the charges should not be the same for everyone. The answer is that physical service is not the only consideration involved when two common carriers are dealing with each other. Connecting common carriers in a thorough movement always receive less as their share or "division" of the through rate than they receive from shippers for local transportation on their own lines.

When a forwarder tenders freight shipments to a railroad the forwarder has already performed a great many carrier services in connection with the shipments, and he has a continuing responsibility to the shipper until the shipments are delivered. This is what distinguishes forwarder traffic from the freight of commercial shippers. But there is no distinction at all between the freight of the forwarders and the freight of motor carriers when it comes to the railroads. There should, therefore, be no discrimination in the pricing of the rail service.

Position of the Eastern Railroads

The position of the Eastern Railroads, arrived at a week before the hearings, is both surprising and difficult to understand. The reason for the opposition of those roads was stated to be that under a system of "give-and-take bargaining" there would be a reduction in railroad revenues. Recognizing the incompatibility of this reasoning with the existence of large-scale Pan I operations in the East, the Eastern roads sought to distinguish Plan I by saying that "the motor carrier and the water carrier provide all the facilities required and all of the

service required for intercity transportation" whereas the forwarder does not.

I have already shown the invalidity of the attempted distinction where Plan I is concerned. The motor carrier has the facilities for intercity transportation but those facilities are not used when Plan I service is performed. Even so, what has that to do with the question of depletion of rail revenues? Does the railroads' fear about depletion of their revenue depend upon whether it is depleted by motor carriers or by freight forwarders? The argument simply does not hold water.

In the I.C.C. release "Monthly Comment" for October, 1967, piggyback statistics for the years 1964-1966 are set forth. They show that the Class I railroads terminated 329 thousand trailers in Plan I service in 1966. They also show that freight forwarders reported only 103 thousand trailers moved in Plan III service in that same year.

It is a known fact that a predominance of Plan I operations is in the East. It would appear that the Eastern railroads transport at least three times as many trailers for motor carriers under Plan I as they transport for forwarders under Plan III. The figures set forth in Appendix A hereto show that the railroads transport trailers under Plan I at very large discounts under their Plan III charges.

If the railroads really fear the bargaining power of the relatively small freight forwarding industry they should be terrified about the bargaining power of the giant trucking industry. But the Eastern roads in particular seem to like Plan I very much.

I point out, in conclusion, that the contracts proposed to be authorized by H.R. 10831 are purely voluntary. No railroad would be forced to make a contract with a forwarder. Many railroads do not like Plan I, and they have not made Plan I arrangements. But we are faced with a condition, not a theory. Plan I is in effect and it is largely used. It discriminates unfairly against freight forwarders. National transportation policy calls for fair and equal treatment. H.R. 10831 simply conforms the law to transportation policy.

Yours very truly,

GILES MORROW, *General Counsel.*

APPENDIX A

COMPARISON OF RAIL LINE-HAUL CHARGES FOR PLAN I AND PLAN III SERVICES, PRR LOCAL MOVEMENTS (10-FOOT TRAILERS)

[Plan I charges: Group I—When individual motor carrier tenders 150 loaded trailers or less per month, Group II—When individual motor carrier tenders more than 150 but less than 300 loaded trailers per month, Group III—When individual motor carrier tenders more than 300 but less than 600 loaded trailers per month, Group IV—When individual motor carrier tenders more than 600 but less than 900 loaded trailers per month, Group V—When individual motor carrier tenders more than 900 trailers per month.]

Line No.	Between—	And—	Plan I charges 1													
			Plan III charges 1					Plan I charges								
			PRR miles	PRR car	Per 100-lb. lading (cents)	Group I	Group II	Group III	Group IV	Group V	Group I	Group II	Group III	Group IV	Group V	
(A)	(B)	(C)	(D)	(E)	(F)	(G)	(H)	(I)	(J)	(K)	(L)	(M)	(N)	(O)		
50,000 LB. LADING PER CAR (2 TRAILERS)																
1	East St. Louis, Ill.	Fort Wayne, Ind.	356	\$257.00	51.4	\$173.60	\$167.60	\$163.60	\$159.60	\$155.60	34.9	33.5	32.7	31.9	31.1	
2	Harrisburg, Pa.	Toledo, Ohio	508	312.00	62.4	209.60	203.60	199.60	193.60	187.60	41.9	40.7	39.9	38.7	37.5	
3	Fort Wayne, Ind.	Harrisburg, Pa.	569	334.00	66.8	231.60	225.60	219.60	213.60	207.60	46.3	45.1	43.9	42.7	41.5	
4	Philadelphia, Pa.	Louisville, Ky.	819	428.00	85.6	309.60	299.60	291.60	283.60	275.60	61.9	59.9	58.3	56.7	55.1	
5	Chicago, Ill.	Kearny, N.J.	899	500.65	100.1	347.60	337.60	327.60	319.60	309.60	69.5	67.5	65.5	63.9	61.9	
6	East St. Louis, Ill.	Philadelphia, Pa.	925	536.00	107.2	373.60	361.60	351.60	343.60	331.60	74.7	72.3	70.3	68.7	66.3	
7	do.	Kearny, N.J.	1,047	578.90	115.8	399.60	387.60	375.60	365.60	355.60	79.9	77.5	75.1	73.1	71.1	
60,000 LB. LADING PER CAR (2 TRAILERS)																
8	do.	Fort Wayne, Ind.	356	\$257.00	42.8	\$195.60	\$189.60	\$185.60	\$179.60	\$175.60	32.6	31.5	30.9	29.9	29.3	
9	Harrisburg, Pa.	Toledo, Ohio	508	312.00	52.0	237.60	231.60	225.60	219.60	211.60	39.6	38.6	37.6	36.6	35.3	
10	Fort Wayne, Ind.	Harrisburg, Pa.	569	334.00	55.7	263.60	257.60	249.60	243.60	235.60	43.9	42.9	41.6	40.6	39.3	
11	Philadelphia, Pa.	Louisville, Ky.	819	428.00	71.3	331.60	323.60	313.60	303.60	293.60	58.9	57.3	55.3	53.9	52.5	
12	Chicago, Ill.	Kearny, N.J.	899	500.65	83.4	397.60	385.60	373.60	363.60	351.60	66.3	64.3	62.3	60.6	58.6	
13	East St. Louis, Ill.	Philadelphia, Pa.	925	536.00	89.3	427.60	413.60	401.60	389.60	377.60	71.3	68.9	66.9	64.9	62.9	
14	do.	Kearny, N.J.	1,047	578.90	96.5	457.60	443.60	429.60	417.60	403.60	76.3	73.9	71.6	69.6	67.3	
70,000 LB. LADING PER CAR (2 TRAILERS)																
15	do.	Fort Wayne, Ind.	356	\$257.00	36.7	\$224.60	\$217.60	\$212.60	\$205.60	\$200.60	32.1	31.1	30.4	29.4	28.7	
16	Harrisburg, Pa.	Toledo, Ohio	508	312.00	44.6	273.60	266.60	259.60	252.60	243.60	39.1	38.1	37.1	36.1	34.8	
17	Fort Wayne, Ind.	Harrisburg, Pa.	569	334.00	47.7	304.60	297.60	287.60	280.60	271.60	43.5	42.5	41.1	40.1	38.8	
18	Philadelphia, Pa.	Louisville, Ky.	819	428.00	61.1	409.60	397.60	383.60	374.60	362.60	58.5	56.8	54.8	53.5	51.8	
19	Chicago, Ill.	Kearny, N.J.	899	500.65	71.5	461.60	447.60	433.60	421.60	407.60	65.9	63.9	61.9	60.2	58.2	
20	East St. Louis, Ill.	Philadelphia, Pa.	925	536.00	76.6	496.60	480.60	465.60	451.60	437.60	70.9	68.7	66.5	64.5	62.5	
21	do.	Kearny, N.J.	1,047	578.90	82.7	531.60	515.60	498.60	484.60	468.60	75.9	73.7	71.2	69.2	66.9	

1 Sec. IV. PRR tariff 2170, ICC 3777.

(The following reply to Freight Forwarders Institute's comments was submitted by the ICC at the request of Chairman Friedel:)

INTERSTATE COMMERCE COMMISSION,
Washington, D.C., March 8, 1968.

HON. SAMUEL N. FRIEDEL,

Chairman, Subcommittee on Transportation and Aeronautics, House of Representatives, Washington, D.C.

DEAR CHAIRMAN FRIEDEL: This responds to your letter of February 6, 1968, enclosing a letter to you from Mr. Giles Morrow, General Counsel of the Freight Forwarders Institute, dated February 5, 1968, which comments on the views expressed by various parties in the course of the hearings on H.R. 10831. In your letter you specifically request the views of the Commission on the objections which the Institute has made to the second of the three amendments proposed by the Commission in its letter to you of January 23, 1968, and to the suggestions offered by the shippers' associations that they be included in H.R. 10831. For convenience, each of these points is discussed separately below.

As set forth on page 10 of the Commission's letter of January 23, our second proposed amendment would place the burden of proof on the parties participating in a contract of the type authorized by section 409(a) to show that the terms, conditions and compensation specified in such contracts were not inconsistent with the substantive provisions of section 409(a) whenever the terms of such contracts were called into question. In essence, the Institute contends that the legislative history of section 409(a), specifically the quoted portion of the Committee's 1950 report which appears on page 3 of the Institute's letter, indicates that these contracts are to be considered as comparable to traditional joint rate arrangements between common carriers and that the compensation received under them is similar to a division of a joint rate. From this premise, the Institute points out that, unlike the situation with regard to changes in rates, the burden of proof in proceedings involving disputes over divisions of joint rates rests with the complainant. The Institute further states that if the burden of proof is specifically imposed on the parties to these contracts, whether the compensation received is considered to be a "division" or a "rate", the result will be harassment from "endless litigation".

We do not agree with these contentions and believe that, if favorable consideration is given to H.R. 10831, our proposed burden-of-proof amendment should be included. At the outset, we should point out that the Commission has always attempted to avoid the application of an inflexible rule as to the burden of proof, believing that all parties to a Commission proceeding have the obligation to come forward with pertinent information in their possession irrespective of where the burden of proof in a strict technical sense may lie. Although the usual rule, reflected in section 7 (c) of the Administrative Procedure Act, places the burden of proof on the proponent, the Congress has in the past seen fit to change this general rule in appropriate circumstances. See for example, the provisions of section 15(7), and comparable sections in Parts II, III and IV of the Act which place the burden of proof on the carriers to justify changes in rates when such rates are protested and placed under suspension by the Commission. Irrespective of whether the compensation received by a party to a contract authorized by section 409(a) is substantively considered as a "division" or a "rate", the basic justification for this amendment is found in the distinct and unusual nature of these contracts themselves when considered in the context of other sections of the Act and the unique legal status of freight forwarders which we discussed in detail in our prior letter.

Since a freight forwarder legally shares many of the characteristics of both a shipper and common carrier, its relationships with other carriers are, as we pointed out on page 9 of our prior letter, "[S]ufficiently distinct and different . . . [S]o as to warrant special consideration". In this regard, it should be noted that, separate and apart from the use of the contracts authorized by section 409(a) or the provisions of H.R. 10831, a forwarder, as a matter of right, is entitled to take advantage of carload, truckload or other volume-related rates which are offered to the shipping public generally. Complaints against divisions are usually disposed of by the participating carriers and are usually submitted to the Commission in those cases where parties themselves are unable to reach agreement. In such cases, imposing the burden of proof on the complaining parties creates no hardship since they could be expected to have sufficient information available to make

out their case. By contrast, a complaint against the terms, conditions, or compensation set forth in contracts authorized by section 409(a) would be filed by a stranger to these agreements. In view of the unique regulatory nature of these agreements, it seems reasonable in this situation to impose the burden of proof on the parties in possession of the requisite information whenever they are called into question. We do not share the Institute's fear that this provision will result in "endless" litigation. The Commission possesses adequate power to deal with frivolous complaints and we do not believe that a complaining party will lightly undertake the time and expense involved in pursuing a totally groundless complaint.

The second matter raised in your letter concerns an amendment to H.R. 10831 proposed by the shippers' associations which, if adopted, would bring such associations within the scope of this bill. We agree with the institute that this proposal should be rejected. At the present time, shipper associations operate under an exemption from Part IV of the Interstate Commerce Act and the Commission's regulation by virtue of section 402(c) of the Act; at best, this exemption has been difficult for the Commission to enforce. Although they would still be exempt from all other provisions of the Act, the shippers' association would, under their proposal, be entitled the benefits of one section, section 409(a). In our opinion, it does not seem either appropriate or desirable to permit an exempt shipper association to share in these benefits without any of the regulatory constraints which are imposed on forwarders subject to Part IV of the Act.

In sum, we believe that our second proposed amendment to H.R. 10831 should be adopted and that the proposed amendment of the shippers' association should be rejected.

Sincerely yours,

PAUL J. TIERNEY, *Chairman.*

Mr. PICKLE. The next witness will be Mr. Jerry Chambers, president of the Clipper Carloading Co.

I understand that your statement is brief and you may read it if you wish.

STATEMENT OF JERRY CHAMBERS, PRESIDENT, CLIPPER CARLOADING CO.

Mr. CHAMBERS. Yes, it is.

My statement is comparatively brief and I would like to read it, sir, if I may.

Mr. PICKLE. You may do so.

Mr. CHAMBERS. Mr. Chairman and gentlemen of the committee, my name is Jerry Chambers and I am the president of Clipper Carloading Co., a common carrier freight forwarder operating under permit No. FF-128 issued by the Interstate Commerce Commission. Our general offices are located at 3401 West Pershing Road, Chicago, Ill. 60632.

Clipper Carloading Co. was established by me in 1938, and I have been its president since that time. With the exception of 3 years in the Army during World War II, I have personally directed its activities for over a quarter of a century.

The bill before you, if passed, and enacted into law, will have beneficial and lasting effects upon not only the freight forwarding industry but the shipping public as well.

If it is not passed, gentlemen, I seriously question the ability of the freight forwarding industry to survive and continue to serve the public.

This bill provides that the freight forwarder may make the same agreed rates with the railroads that motor carriers now make. It does not give us any advantage not presently enjoyed by motor carriers. Let us examine the record.

In exhibit A (p. 46), I have shown a comparison of the tonnage handled by rail l.c.l., freight forwarders, and motor carriers, using 1943 as a base year. If you will examine exhibit A, you will note that the motor carrier movement of tonnage has increased tremendously. The freight forwarder decreased and the rail l.c.l. has become almost nonexistent.

The railroads have lost 93 percent of the less-carload tonnage that they handled. The freight forwarders have lost 15 percent. The motor carriers have gained 258 percent.

The motor carriers have increased their less-carload tonnage at the expense of the railroads and freight forwarders.

The disadvantages under which freight forwarders operate are too great for us to continue. Compared to the motor carriers, these disadvantages are:

(a) The motor carriers may and do make agreed rates with the railroads which are as much as 40 percent under the rates that freight forwarders must pay. Recently the railroads have expanded the use of agreed rates with motor carriers considerably.

(b) In addition, when agreed rates are not available, they may ship trailers by rail at exactly the same rate the freight forwarders must pay. A recent Supreme Court decision made this available to the motor carriers.

(c) They have the alternative choice of shipping a trailer over the highway or by rail piggyback, depending upon which is cheapest.

(d) They may distribute over a much wider territory than freight forwarders because their operating rights permit them to do so.

They may also, and do, purchase short-haul carriers for the purpose of assembly and distribution. Freight forwarders may distribute with their own equipment only in a terminal area. To move beyond that area, we must employ short-haul carriers and we may not purchase these carriers, which are used for assembly and distribution purposes.

Less-carload business is extremely difficult to handle. Proof of this is the fact that the railroads are almost entirely out of the l.c.l. business, because their losses in handling it were so great. Motor carriers are becoming more and more selective in handling less-carload traffic, and shippers and the commission are very concerned about this.

Here I refer to exhibit B. (See p. 46.) This simply quotes the small number of articles that have appeared concerning the small-shipment problem on the difficulties of securing adequate, reasonable cost transportation on small shipments.

Freight forwarders are handling this most difficult type of freight. Our average shipment is 500 pounds, very considerably less than the average shipment handled by trucking companies.

The shipping public generally recognizes the benefits of freight forwarder service and are anxious to retain freight forwarders as a competitive factor in l.c.l. transportation. Shipper witnesses will testify to this.

If the freight forwarder is eliminated from the transportation picture, shippers will be forced to negotiate with motor carriers on rate matters on l.c.l. freight.

The motor carriers opposition to this bill is basically limited to long-haul carriers who would benefit by having the freight forwarders out of business.

Short-haul motor carriers tend to support the freight forwarder requesting the passage of this bill because they will be at a considerable disadvantage if the freight forwarders do not survive. Motor carrier witnesses will testify to this.

Some shipper associations have opposed the bill. I feel that this question should be asked of the organizations who testify in opposition to this: If the statement of the forwarders is correct that they must have this bill to survive, would you prefer to see them go out of business rather than have this bill passed?

Our industry has a great deal to offer to the national transportation system, to intermodal transportation and to the shipping public but we will not be able to contribute unless the gross inequity which confronts us in the instant case is removed. We seek only equality under the law with motor carriers. We do not seek any preferential treatment or competitive advantage.

Gentlemen, please look favorably upon this bill and assist it in becoming law. Thank you for allowing me to express my views to you.

Now I have an addendum, which is on the last page of my submitted statement, and it is very short. I feel that it is important that this be included. It reads as follows.

Freight forwarders serve a very substantial portion of the shipping public.

In the New York-New Jersey metropolitan area alone, there are 50,000 manufacturers. In the Chicago metropolitan area there are 14,500 manufacturers.

It is very important that all of these companies have available to them excellent and competitive transportation facilities.

The motor carrier will quickly have a monopoly on l.c.l. transportation if this bill is not passed.

Thank you, gentlemen.

(The exhibits referred to follow:)

EXHIBIT A

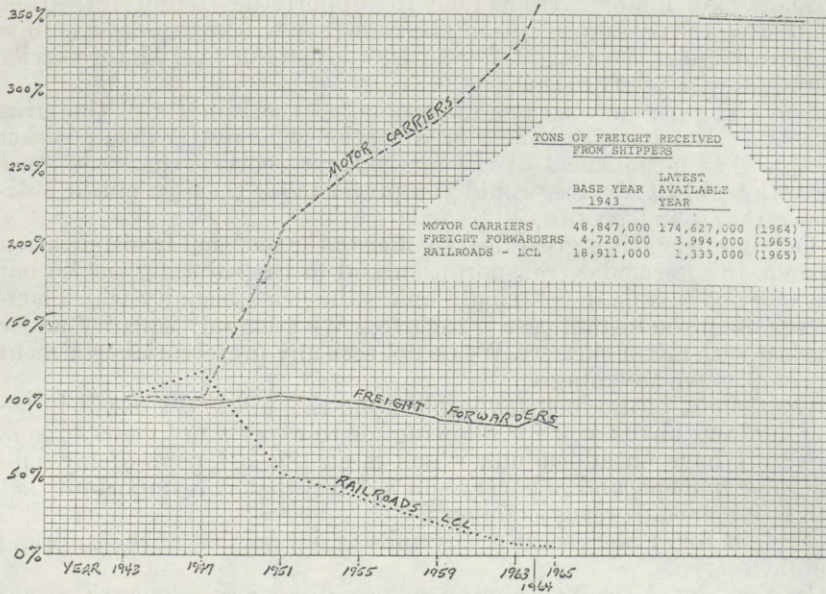


EXHIBIT B

[From Transport Topics, Jan. 1, 1968]

ICC FOCUSING ON CHARGES OF TRAFFIC PICKING

ANNUAL REPORT ASSERTS SOME CARRIERS REFUSE TO HAUL CERTAIN CARGO DESPITE TARIFFS

The Interstate Commerce Commission, in its annual report, has advised Congress that the ICC "has been directing increased attention to the actions of those motor carriers which are alleged to be picking and choosing traffic at the expense of the public, thereby disregarding their obligations to serve the public under operating authority issued by the Commission."

[From Journal of Commerce, Jan. 11, 1968]

SMALL LOTS STILL MAJOR ICC PROBLEM

WASHINGTON, January 10.—Small shipments, described by the outgoing chairman of the Interstate Commerce Commission last year as one of ICC's biggest problems, still remain a trouble spot, in the opinion of new Chairman Paul J. Tierney.

Again like his predecessor, Mr. Tierney would like Congress to give ICC the right to order joint rates and through routes to solve the problem. It would also help intermodal coordination, he felt.

[From Traffic World magazine, July 29, 1967]

DIFFICULTIES IN SMALL-SHIPMENT TRANSPORT

For thousands of shippers and for other thousands of carriers and carrier executives, the question of what can be done to make possible the provision of small-shipment transportation service at such rates and of such character as will make the service mutually beneficial to carrier and customer remains, as it has for months and years, at the top of any list of current national transportation problems.

[From Traffic World, Apr. 29, 1967]

NEW ICC POLICY DESIGNED TO PUT PRESSURE ON MOTOR CARRIERS TO GIVE SERVICE

Motor common carriers who "pick and choose" their traffic, failing to give uniform service to the public under their operating authorities, may find difficulty in seeking additional rights, in view of a new Interstate Commerce Commission policy.

Mr. FRIEDEL. Thank you, Mr. Chambers, for your very short, informative statement. Mr. Ronan, do you have any questions?

Mr. RONAN. No questions, Mr. Chairman.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. No questions.

Mr. FRIEDEL. I want to thank you, Mr. Chambers.

Mr. CHAMBERS. Thank you.

Mr. FRIEDEL. We have a long list of witnesses. We are going to recess at 12 or 12:15. I would like to know if any of the following witnesses would like to file their statements for the record because we have many, many witnesses for tomorrow and Thursday.

Mr. Vincent Bordelon, Washington representative of the Los Angeles Chamber of Commerce.

Mr. BORDELON. Yes; I would like to file my statement. However, I would like to highlight two or three points in that statement if I may.

Mr. FRIEDEL. You may proceed.

STATEMENT OF VINCENT BORDELON, WASHINGTON REPRESENTATIVE, LOS ANGELES AREA CHAMBER OF COMMERCE

Mr. BORDELON. I am the manager of the Washington office of the Los Angeles Area Chamber of Commerce. This matter is quite important to us. As you probably recognize as a chamber of commerce we do subscribe to the free enterprise system.

Basically your free enterprise system is based on competition. We also believe then in strong competition but we think where you have two competitors that one competitor should not have an advantage over the other.

We feel that this legislation will equalize the freight forwarders with the motor carriers and give them an opportunity to compete fairly.

Now I heard a question asked of an earlier witness about the making of rates or making a contract with either a motor carrier or rail carrier. I would like to point out this is not just something that the freight forwarder would have carte blanche authority to do. That any agreement made between the freight forwarder and the rail carrier, the same as with motor carriers, must be filed with the ICC and they will review it.

So they can't just say my cost is a dollar and we will only charge 25 cents, the ICC will not permit it.

We are concerned because of the ever-increasing costs of the freight forwarders and all carriers for that matter. We would like to see anything done and we think this legislation would assist, to lower the cost of transportation wherever possible in order that the rates may be at the lowest rates commensurate with the needs of the carriers.

There are several other items in my dissertation here but I will not take the time because as you say we have many other witnesses.

(Mr. Bordelon's prepared statement follows:)

STATEMENT OF THE LOS ANGELES AREA CHAMBER OF COMMERCE, SUBMITTED BY
VINCENT A. BORDELON, MANAGER, WASHINGTON, (D.C.) OFFICE

Mr. Chairman and distinguished committee members, my name is Vincent A. Bordelon and I hold the position of manager, Washington office of the Los Angeles Area Chamber of Commerce. In order to establish my qualifications with your committee, may I state for the record that I have approximately 30 years of experience in the transportation field and that prior to my present position I was, for approximately eight years, manager of the Chamber's Transportation Department. Further, I am a registered practitioner before the Interstate Commerce Commission and the Federal Maritime Commission and have often participated in matters before those Commissions as well as the Civil Aeronautics Board and various state and other regulatory agencies.

For more than eighty years the Los Angeles Area Chamber of Commerce has used its most strenuous efforts to foster an industrial climate conducive to the proper development of Southern California. In accomplishing our purpose I may say parenthetically that our Transportation Department has been one of the most active Departments of the Los Angeles Area Chamber of Commerce.

During these hearings there will be witnesses appearing in behalf of the freight forwarders, railroads, motor carriers, shipper associations and shippers. Inasmuch as the Los Angeles Area Chamber of Commerce is concerned with the economic well-being of each it was deemed of significant importance for the Chamber to offer our views on H.R. 10831.

At its regularly scheduled meeting, held on January 18, 1968, the Board of Directors of the Los Angeles Area Chamber of Commerce, voted unanimously to support legislation, such as H.R. 10831, presently before this Committee, which would do no more than permit freight forwarders and the rail carriers to deal with each other the same as the freight forwarders are presently able to do with the motor carriers.

Mr. Chairman, in the eyes of the Los Angeles Area Chamber of Commerce, perhaps one of the most important parts of the free enterprise system is competition. Whether this competition be for jobs; business; a whole market or for a given territory. Competition has done much to make the entire world a better place in which to live. Looking at it from a shipper's point of view, competition, basically speaking, has afforded better and faster service at rates commensurate with the needs of the carriers but at the same time at their lowest basis.

We believe that competition is a healthy condition. But we also feel that one carrier should not be allowed to wheel and deal while his competitor has one hand tied behind his back. It is our opinion that the legislation presently before this Committee will go a long way towards the establishment of an equality of opportunity as between two modes of transportation.

Perhaps my choice of words of "two modes of transportation" is not proper because in actual operation in today's market the motor carriers are presently operating almost identically with the freight forwarders. On the other hand,

while the motor carrier can presently operate similarly to freight forwarders, it is our position that motor carriers have an advantage in certain areas that the freight forwarder does not have. The legislation presently before you would eliminate this motor carrier advantage and place the freight forwarder in a more competitive position.

One of the most talked about problems on Capitol Hill today is the dollar drain and the upset in balance of payments. Mr. Chairman, may I respectfully submit that the Los Angeles Area Chamber of Commerce is also concerned about the "dollar drain" and "balance of payments" . . . not on the international level but as it pertains to the amount of goods presently moving into Southern California versus goods being shipped out.

There has been a historical disproportionment of the volume of tonnage moving into Southern California versus the amount of tonnage moving out of the area. To this extent, therefore, I respectfully submit that any action taken by this Committee and the Congress to assist us in this vital problem will certainly be of significance to the economics of Southern California. We feel that the vehicle to assist us is contained in the subject of this hearing. Passage of H.R. 10831, we feel, can provide our area with additional competition which we hope will result in improved service and possibly lower rates and charges.

While both freight forwarders and motor carriers carry many volume shipments, one of our concerns is for the small shipper and/or the shipper of small shipments. Because of ever increasing handling costs, carriers have been forced to materially increase their rates and charges on small shipments. Such increases, we feel, have created serious distribution problems for many of our industries. Therefore, to the extent that this legislation will afford the underlying carrier, the railroad, to reduce the costs of the freight forwarders on small shipments, it is our position that the economics of Southern California will be enhanced.

Congressional approval of this legislation, it is respectfully pointed out, will not give the freight forwarders and rail carriers carte blanc authority to contract for rates which are not properly commensurate with the needs of the rail carriers. All such contractual agreements made under the new section of the Act will be subject to the review of the Interstate Commerce Commission. To this extent, therefore, the rail carriers, as well as the motor carriers are properly protected.

Perhaps it may be argued by some that Congressional approval of this legislation would have the effect of reducing the revenue of the rail carriers. This matter received considerable attention by our Board of Directors and it was pointed out that contractual agreements made under the proposed section of the Act should create a greater generation of traffic for the rail carriers, thus better utilizing the huge rail plant facility and at the same time reduce the rail per unit cost, which could, therefore, increase their revenue.

The last point I would like to make is that during discussion of this legislation by our Freight Traffic Committee and our Board of Directors the question of small shipper associations was raised. In answer it was determined that a shipper association should provide the service for which it was organized, namely, to provide a cost savings. Discussion disclosed that such savings should be derived if economically sound, and not under protectionism.

We appreciate the opportunity given to us to express our views and respectfully urge that this Committee approve the legislation and seek ultimate passage by the full Congress.

Mr. FRIEDEL. I want to thank you. Are there any questions of the gentleman?

Mr. KUYKENDALL. I would like to ask a question to clarify another point here. If this is out of your field maybe one of the other gentlemen could answer. This is just a matter of public responsibility in the picking up of small loads from obscure shipping points such as small towns and obscure neighborhoods and so forth. This has become less and less desirable business for all the major carriers, is this not true?

Mr. BORDELON. That is correct.

Mr. KUYKENDALL. One of the things that people in the trucking business complain about is that they have become almost the sole people now saddled with this undesirable responsibility of public responsibility.

ity, you might say. Now, is the freight forwarder as bound by the public duty of picking up these undesirable cargoes as the truckline is?

Mr. BORDELON. Sir, as you are aware, a motor carrier, freight forwarder or railroad, in order to operate between any given points, must secure the authority from the Interstate Commerce Commission.

Mr. KUYKENDALL. I realize this. But is that going to bind them?

Mr. BORDELON. Yes, sir; as long as they have the authority to offer the service they must offer the service.

Mr. KUYKENDALL. On the same basis?

Mr. BORDELON. On the same basis as the motor carrier. That makes a big difference between a freight forwarder and trucker and shipper association. A shipper association would not have to do that, whereas a freight forwarder is a public carrier just as a motor carrier or rail carrier.

Mr. KUYKENDALL. But the rail carrier is not bound by the strict regulation to haul cargoes.

Mr. BORDELON. Yes, sir; he is. As long as he has the authority he is to provide the service. I grant you the service would not be as good.

Mr. KUYKENDALL. Thank you.

Mr. PICKLE. Mr. Chairman, I have a question.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. You made a statement a minute ago that although a freight forwarder could make a rate or agreement less than the published rate still it would have to be filed with the ICC.

Mr. BORDELON. The agreement would have to be, yes, sir.

Mr. PICKLE. In that sense it would be a published rate. But it could be less than the published rate. You start at one level and it could go down correspondingly one, two, or three levels. Though you filed it, it could be less than what was in the original published rate.

Mr. BORDELON. I hope we are not confusing rates with agreements. Rates are published in tariffs that are available to the public. We are speaking here of contractual arrangements between two carriers, a freight forwarder and motor carrier. These are not published. They are an agreement that is filed with the Interstate Commerce Commission but not in a published tariff. There is a big difference between the two.

Mr. PICKLE. Between the rates and the agreement?

Mr. BORDELON. Right.

Mr. FRIEDEL. Thank you, Mr. Bordelon.

Mr. BORDELON. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Samuel S. Bretzfield, California Fashion Creators.

STATEMENT OF SAMUEL S. BRETZFIELD, REPRESENTING CALIFORNIA FASHION CREATORS, AND MEN'S APPAREL GUILD OF CALIFORNIA

Mr. BRETZFIELD. Sir, I would like to file my statement and also say a few brief words.

Mr. FRIEDEL. Are you in favor of the bill?

Mr. BRETZFIELD. Yes, sir; I am.

As a representative for the garment industry in the State of California, four shipments from small points from the eastern portion of

the United States have been carried by the members of the less-than-carload carriers for years and years.

We are solely dependent on these freight forwarders for our shipments. They have been the only people who have been willing to service the offpeak areas where most textile mills are producing these textiles which in turn are shipped to the communities in Los Angeles, Calif., and service our particular industry. We feel that if allowed, if bill H.R. 10831 is passed that this would favor our industry and help our industry which must remain competitive with the eastern garment manufacturers.

Today we have the additional problem of hauling raw freight to California to produce a garment to ship it back east.

Mr. FRIEDEL. Would this benefit you in any way?

Would you have reduced rates?

Mr. BRETZFIELD. I would say in the face of rising costs that at least rates we are paying today would be preserved. Additional freight costs would hurt our industry greatly in terms of competition with the east.

Mr. FRIEDEL. Thank you.

Are there any questions?

Thank you.

Mr. BRETZFIELD. Thank you, sir.

(Mr. Bretzfield's prepared statement follows:)

STATEMENT OF SAMUEL S. BRETZFIELD, REPRESENTING CALIFORNIA FASHION CREATORS, AND MEN'S APPAREL GUILD OF CALIFORNIA

My grateful thanks to your committee for making the time available for me to testify in favor of House of Representatives bill H.R. 10831.

I would like to introduce myself. My name is Samuel S. Bretzfield. I am currently representing the apparel industry on the board of directors of the Los Angeles Chamber of Commerce and I am chairman of the market development committee for this organization. In addition, I have been appointed to serve on two committees for Mayor Sam Yorty again representing our industry. I am immediate past president of the California Fashion Creators and I am also president of my own business, a sportswear firm, known as International Set. I am here today on behalf of the 209 members of California Fashion Creators and the Men's Apparel Guild in California. These people represent approximately 70% of all garments produced on the west coast. The manufacturers of the California Fashion Creators and the Men's Apparel Guild have elevated California to the number 1 source area of sportswear in the United States. The largest swimwear manufacturers in the world are part of the membership of these two organizations. Our members produce apparel of all kinds in the women's wear, men's wear and children's wear field.

The fashion industry's gross business in 1967 is estimated about 700 million dollars in the State of California. The fashion industry's total business on a national and international scale is estimated to be in excess of one billion dollars. Approximately 1,000 plants employing some 90,000 people make up the industry. The California apparel industries are only second to the aircraft and space-age industry in terms of total employment in the State of California and are the largest employer of unskilled and semi-skilled workers in the Los Angeles area.

The board of directors of California Fashion Creators and the Men's Apparel Guild instructed me to represent our industry in favor of H.R. 10831, a bill amending the Interstate Commerce Act authorizing freight forwarders to make contracts with railroads. Our industry uses all forms of transportation, but as I will explain, is greatly dependent on the freight forwarder for the majority of their freight which falls in the category of raw materials. Apparel products, as you know, must start with the basic fabrics and findings. Even though California produces much raw cotton, the actual weaving and looming of textiles is executed by textile mills and converters throughout the eastern and south-

eastern part of the United States. For this reason, raw products must be transported transcontinentally to our manufacturing plants.

It is estimated that some 1,500 mill, converter and finding sources comprise the suppliers of our basic products and their shipping points exist in every little town and hamlet from New England down throughout the eastern seaboard and across the great Southeast to Mississippi. Purchases from these sources of basic textile fabrics alone are estimated at 350 million dollars. It is difficult to estimate the dollar volume purchases of findings, such as zippers, buttons, thread, snaps and hooks and sewing machine needles. However, much more significant than these dollar statistics is the fact that in terms of freight these sources ship to the California apparel industry transcontinentally via freight forwarder in excess of 200 million pounds of freight a year. Even more significant is the fact that this freight is made up primarily of minimum shipments and small shipments. For the clarification of the committee, a minimum shipment is approximately 150 pounds, a small shipment would be from 150 pounds to 350 pounds.

Shipments of this size are identified in the parlance of the carrier as less-carload shipments. It is rare and far between that an apparel manufacturer will transport a carload or truckload of raw material. I think you can visualize the impossibility of a carload of buttons. Textile mill and fabric suppliers historically ship their products daily as they come off of the production run and only under special arrangements are any sizable weight of textiles accumulated for shipment. In other words, the California manufacturer receives freight from approximately 1,500 sources shipping from eastern States multiple number of less-carload shipments daily. I wish to emphasize again that most of these points of shipment are located in the little towns and hamlets away from the major industrial areas of our great Nation. For this reason, the freight forwarder has become a most important factor in the transporting of our raw materials since he specializes in the handling of less-carload freight.

Under the Interstate Commerce Act, part IV, acting as common carrier, the freight forwarder facilitates the movement of our raw products from the very door of the offline rural mill across the Nation to our receiving door at our plant in California. Because of the nature of our fashion business, which is one of frantic overnight fashion changes and seasonable promotional markets, we are dependent on an expedited service. Here again, the freight forwarder by virtue of his ability to use the best modes of transportation to coordinate his handling has provided an important service. In other words, gentlemen, even though as stated before our industry used all modes of transportation, including rail express, air freight, and motor carrier, we are greatly dependent on the freight forwarder in the conduct of our daily business. The California Fashion Creators and the Men's Apparel Guild take the position that the Interstate Commerce Act in its present form discriminates between one mode of transportation and another. Freight forwarders under the present Interstate Commerce Act, do not have the right to make contracts with railroads whereas the trucking industry has this right. The freight forwarders are subject to rail tariffs, whereas the truckers are not. We ask that the freight forwarder be given the opportunity to be equal amongst the modes of transportation available to us.

As stated, the California fashion industry, in order to maintain its growth and compete in the fashion markets throughout the world, must not be limited in moving freight competitively, transcontinentally from the raw material source. It should be noted that the California manufacturer must remain competitive with the eastern manufacturer. We, as manufacturers, by virtue of our geographical location with respect to our suppliers of raw materials, already have large additional expenses of handling that our eastern competitors do not.

Our industry is aware of a potential source of transportation difficulties coming from some carrier circles. Let me call your attention to an article appearing in "Transportation Topics", September 1967, reporting on the Southern Shipper and Motor Carriers Council meeting held in Atlanta, Georgia, September 14 and 15: "Shippers in Podunk cannot expect the same transportation services and prices offered those located in New York, Chicago, and San Francisco and other terminal city areas. James K. Seymour, president, Associated Transport in New York told Southern Carrier and Motor Carrier Council here last week." Mr. Seymour added later in his speech "What kind of traffic is it that the motor carrier tends to run away from? The list is long and familiar; small shipments, interline, light and bulky articles, claim-prone articles, short-haul freight, furniture and peddle freight destined for the boondocks." Gentlemen of this committee, our sources are in Podunk and many of our contract plants are at the boon-

docks. Mr. Seymour's remarks are just the kind that concern us. We claim that discrimination between the motor carrier and the freight forwarder cannot exist and that the freight forwarder be given the right to make contracts with the railroads. It is our belief that H.R. 10831 must pass and that under the amended regulation the freight forwarder will not only be able to protect the existing services, but be capable of expanding his service into other areas, which at present they are unable to serve.

Section 409(a) of the Interstate Commerce Act as amended in H.R. 10831 provides that all contractual charges between the railroads and the forwarders be approved by the Interstate Commerce Commission.

We are sure that the public interest will best be served by making these two modes of transportation equal and urge the passage of H.R. 10831.

Again gentlemen, let me thank you for allowing me to appear before you and please be assured my only interest in this matter is the continued success and growth of the California market.

Mr. FRIEDEL. Mr. R. C. Fels, director of the Traffic Department of the Furniture Manufacturers Association of California.

STATEMENT OF R. C. FELS, DIRECTOR, TRAFFIC DEPARTMENT, FURNITURE MANUFACTURERS ASSOCIATION OF CALIFORNIA

Mr. FELS. I have a statement, Mr. Chairman. I wonder if I could read it into the record. I will try to be as fast as possible.

Mr. FRIEDEL. You don't want to submit it? You want to read it?

Mr. FELS. There are certain pertinent points of the statement.

My name is R. C. Fels, I am the director of the Traffic Department of the Furniture Manufacturers Association of California with offices at 1933 South Broadway, Los Angeles, Calif., and we are appearing in favor of H.R. 10831 which seeks to change the wording of section 409(a), part IV of the Interstate Commerce Act so as to allow freight forwarders subject to this part of the Interstate Commerce Act to enter into and operate under contracts with common carriers by railroad subject to part I of the act.

The Furniture Manufacturers Association of California, hereinafter referred to as FMAC, is a voluntary nonprofit association of furniture manufacturers organized to expand the production and promote the distribution throughout the world of home furnishings designed and manufactured in California, and whose 155 members constitute the major shippers of furniture from California and who have contributed greatly in making California the second largest furniture producing and shipping State in the Nation.

FMAC member manufacturers are afforded the services of its working traffic department on a day-by-day basis.

Sales of furniture at manufacturers invoice value, in various product classifications for the year 1965 in California totaled \$274,615,000 which was 10.8 percent of the national sales. The sales for the 13 Western States totaled \$427,100,000 or 16.9 percent of the national sales for the same period.

One final statistic, Los Angeles, Calif., ranks first in a line up of 10 cities located in eight States manufacturing furniture. California produced furniture valued at \$235,102,000 which was 7.7 percent of the national total in 1963; number of employees, 23,562. (U.S. Department of Commerce 1963 Census of Manufacturers.)

The furniture manufacturers in California find themselves in a unique position, to wit: Major basic materials such as wood and textiles

are shipped into California involving considerable distances of transportation. Two other basic materials—namely, cotton and steel—are produced in California. In the movement of inbound materials and outbound finished products all modes of transportation are used—rail, water, motor carrier, freight forwarder, express, air cargo, and parcel post.

In the day by day use of the various modes of transportation, we are large users of the services of freight forwarders operating under part IV of the Interstate Commerce Act.

In a survey made November 16 to December 31, 1965, by the FMAC Traffic Department in connection with the movement of cloth fabrics (textiles) used in the manufacturing of upholstered furniture, we developed that in 32 working days during this period (which is a low shipping period for us) consigned to 44 plants, we moved entirely via freight forwarders 208.52 tons (417,043 pounds) of fabrics and an average of 7.56 tons (15,123 pounds) per day. The freight bill was \$30,353.54.

This material was purchased and shipped from 183 mills located in 13 States and originated in 74 towns and cities. A further breakdown indicated these movements were made from seven States and 34 points of origin on the eastern seaboard and from six States in the South from 40 points of origin.

This tonnage constituted 1,368 shipments of which 427 or 31.21 percent were minimum shipments (153 pounds or less) and 941 shipments of 68.79 percent were over the minimum weight required to get away from paying minimum charges.

The intent of the survey was to ascertain the feasibility of consolidating our tonnage to avoid the minimum shipment factor.

Frankly, we were astounded at the number of mills originating this traffic and the diversified number of points of origin. It was therefore concluded to continue our movements via freight forwarders and take advantage of their improved transit time plus other services such as notification of arrivals prior to arrival of shipments. These features are of considerable value to our industry because in the manufacture of upholstered furniture, with constant change of consumer appeal, we could not alleviate the minimum shipment factor.

On our outbound movements of our finished products, all methods of transportation are used with freight forwarder service playing an important part. Some years ago when it became painfully clear to our members that the buying habits of the consuming public were undergoing a change, to the customer order type of purchase, with the resultant effect on the retailer who had to reduce his inventory and in many instances eliminating inventory altogether thus creating a hand-to-mouth buying pattern. To meet this situation, faster and more frequent methods of shipping were necessary. This was achieved by FMAC phasing out its consolidation of less-than-carload shipments for transcontinental movement of some 1,000 cars per year and this tonnage was diverted to the freight forwarders and who published a special furniture tariff for furniture and offered a daily service. This phasing out was completed in 1960 when the last area of consolidation into the Pacific Northwest was discontinued and this tonnage was diverted to freight forwarders operating into this area from Los Angeles. So after some 30 years of consolidating furniture pool

cars we closed our terminal facilities. Less-than-carload shipments of furniture moving from Los Angeles into Pacific Northwest via freight forwarders in 1967 totaled 13,766,123 pounds with freight charges of \$953,630.

We feel any instrumentality that can be created to reduce costs or at least hold the line in the raising cost picture should receive favorable consideration. We feel H.R. 10831 is such an instrument.

We favor passage of H.R. 10831, which would allow the contract conception dealing with underlying rail carriers and our basis of this is the specific movements referred to in the foregoing paragraphs indicating movements from a total of 74 points of origin. These shipments must be handled by the freight forwarders on through bills of lading via underlying motor carriers, with whom they have contracts, from origin point to loading point or consolidating point. Again, at destination, this same shipment is handled by the freight forwarder through the medium of the contract carriers if destination point is beyond the terminal area where the cars are unloaded. In this transportation bridge of three segments, we have two movements under contract arrangement and the longest part of the haul not under contract.

Congress defined a freight forwarder as a carrier under section 402 of the act. It says:

The term "freight forwarder" means any person which otherwise than as a carrier subject to part I, II, or III of this Act holds itself out to the general public as a common carrier.

In the eyes of the shipping public, a forwarder is a carrier handling a shipment on a through bill of lading and they look to the forwarder to assume his responsibility as a carrier when a through bill of lading is signed.

The forwarder, under part IV as previously pointed out, does contract for a portion of the transportation services. We therefore favor H.R. 10831 to make the contractual arrangements applicable to the entire transportation performed by underlying carriers.

Contractual arrangements would afford both the rail lines and the forwarders the opportunity to explore cost-saving methods such as trainloads, switching, in most cases forwarder terminals are located adjacent to railyards. Rail carriers would have the opportunity under the contractual arrangement to evaluate forwarder traffic. In the final analysis any cost reduction or holding the line on costs would reflect in the rate paid by the shipping public. Safeguards are written into part IV, section 409(b), to wit, filing of contracts with the Interstate Commerce Commission, who have the authority to review and suspend and order investigation if found necessary.

Mr. FRIEDEL. Mr. Fels, in other words, you are saying that if it were not for the freight forwarders you would not be able to ship your material, your furniture, because the railroads don't take it or the trucking association does not take it?

Mr. FELS. That is right. In other words, we feel under the contractual arrangement all contracts of any kind are a meeting of minds on cost factors that could be brought out. Costs could be reduced, in some cases held without rise, which would be to our benefit.

Mr. FRIEDEL. Thank you.

Are there any questions?

Mr. Pickle?

Mr. PICKLE. You phased out your l.c.l. shipments to avoid the minimum charges and went by way of the route of freight forwarder because that is considerably cheaper. You gave us costs and figures showing this was costing a great deal more. Now I assume you want to use the freight forwarder and extend your negotiation further so that this would give the further right to all underlying carriers, rails as well as motor carriers.

Now, if you did that I assume you would get a reduction of the cost, you would save a lot of money if you could do this. Now, you give cost and figures, how much it would cost. How much cheaper could you ship if this bill is passed?

Mr. FELS. It is an unknown quantity. We don't know whether there will be a cost reduction. But it is an instrument that could explore this.

Mr. PICKLE. Surely you have some indication of what you think you would save? You mean you are uncertain whether it will mean a saving at all?

Mr. FELS. That depends on the factors.

Mr. PICKLE. You mean you come here from California to testify and you don't know whether there will be a reduction in rates for you?

Mr. FELS. It may not be a reduction in rates but it could hold the line on the rates. It is an instrument that has not been tried yet. This is the only method by which it can be tried. We feel it will hold the line on costs. I go by that in my own personal experience operating a motor carrier. When we made a contractual arrangement it was stipulated on areas of both parties.

Mr. PICKLE. I understand you would not have any concrete figures, you would have to estimate what it would be, but surely there would be some considerable savings; otherwise you would not have any interest other than just one spectator.

Mr. FELS. Another factor, it would keep the people in the business. That is one thing we are fearful of, that if the freight forwarder phases out we are out on the limb.

Mr. PICKLE. Thank you.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. You know, in the free enterprise system as opposed to government, we learn you cannot create something out of nothing. I tend to look at this whole program in one package. I am wondering, with all the savings, who is going to get hooked, because somebody will have to pay for these savings. Somebody will lose and be hurt by it. This is the thing that bothers me about the whole hearings. Some money will be saved, but who will pay for it?

Mr. FELS. You are talking about if the contracts become law?

Mr. KUYKENDALL. Any price cutting, lower rates, whose pocket is that money coming out of, who is now getting it?

Mr. FELS. In the first place, with the contract being filed with the Interstate Commerce Commission—

Mr. KUYKENDALL. The Interstate Commerce Commission does not collect it or put it in the bank. You are talking about money being saved. Whose treasury will that go in?

Mr. FELS. Who is the money going to?

Mr. KUYKENDALL. Yes.

Mr. FELS. In our own case it would go to the buying public.

Mr. KUYKENDALL. You think the public is paying that much more for goods and you would be able to cut the cost?

Mr. FELS. That is right.

Mr. FRIEDEL. I want to thank you for your statement.

Mr. FELS. Thank you, Mr. Chairman.

Mr. FRIEDEL. I would like to know how many witnesses would like to file their statements for the record.

Mr. Barrie Vreeland, director, Department of Transportation, Commerce & Industry Association of New York.

Mr. VREELAND. Sir, I will file mine for the record if you would allow me to make a few brief comments.

Mr. FRIEDEL. I want to find out who would like to file statements only, for the record.

Mr. John C. Allen.

Mr. ALLEN. No, Mr. Chairman.

Mr. FRIEDEL. Mr. D. R. Macdonald, general traffic manager of the City Products Corp.

Mr. MACDONALD. I prefer to read mine, Mr. Chairman.

Mr. FRIEDEL. Mr. John V. Hoey, Jr., president of the National Textile Traffic Bureau, Inc.

Is he here?

Mr. Harvey A. Burke, manager, physical distribution, Buxton, Inc., Springfield, Mass.

Mr. BURKE. I would like to make a few brief statements, Mr. Chairman.

Mr. FRIEDEL. Mr. Bernard J. Handelsman, president of Textile Association.

Mr. HANDELSMAN. I would like to make a brief statement.

Mr. FRIEDEL. Mr. Anthony George, Georges Carriers, Inc., New York.

Mr. J. R. Evans, traffic manager, National Lock Co. Is he here?

Mr. Charles B. Ratliff, Morven Freight Lines, Inc., North Carolina.

Mr. Harold H. Stevens, general traffic manager, Carstensen Freight Lines, Inc.

All right, we will proceed until the first bells at 12:15 and then come back this afternoon because we have a lot of witnesses tomorrow and Thursday.

Mr. Morrow, in the statement of the Interstate Commerce Commission they propose three amendments. They are on pages 9, 10, and 11. I would like to have you supply your answers for the record.

Mr. MORROW. I will be glad to file it for the record, Mr. Chairman.

(The information requested appears in letter dated February 5, 1968, p. 33.)

Mr. FRIEDEL. Mr. Barrie Vreeland.

STATEMENT OF BARRIE VREELAND, DIRECTOR OF TRANSPORTATION, COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK

Mr. VREELAND. Mr. Friedel, I will file my statement; however, I would like to briefly comment on it in my own words.

This is a statement of the Commerce and Industry Association of New York, with whom I am the director of transportation. Commerce

and Industry is the largest regional chamber of commerce in the country, representing approximately 3,500 members, many of which are small business firms in all branches of industry and commercial activity, and many of which are engaged in multistate operations. The position of the association is to support legislation such as H.R. 10831 and it is opposed to shipper associations being granted a similar privilege.

Now, the reasoning behind this should be of some interest to the committee because this is a very broad based business group not overtly influenced by any special interest. It is the feeling of the association that the freight forwarder fills many shipping needs not as well provided by any other type of transportation.

Thousands of industrial shippers use these forwarders for expedited movements of their goods. They are practically the only effective competition that the truckers have at this time.

In providing statutory freedom for negotiation this would provide equality with motor carriers who are able to negotiate contract rates under piggyback plan 1. It would sharpen the service competition between carriers and the forwarders. We don't know if lowered shipping costs will result. It is, of course, hoped that this may improve shipping costs and relieve the small shipment problem. It will, the shippers believe, permit freight forwarders to provide better service and more service into the outlying areas and it may help recover some of the traffic that has been diverted and which the freight forwarders apparently have been losing. It will hopefully bring about a better competitive balance.

Now, the reason that shipper associations should be excluded is that they don't serve the general public whereas the freight forwarder would, and, of course, the reason this bill is supported is because it would be in the general public interest. The rest of the points, I believe, are made adequately in the statement. They cover some of the questions that have been asked by the committee this morning but because of the shortness of time I would simply like to conclude by urging that the bill be passed as we support it.

Thank you.

(Mr. Vreeland's prepared statement follows:)

STATEMENT OF BARRIE VREELAND, DIRECTOR OF TRANSPORTATION, COMMERCE AND INDUSTRY ASSOCIATION OF NEW YORK

The Commerce and Industry Association of New York, with principal offices at 99 Church Street, New York, New York, is the largest service Chamber of Commerce in the country. It represents approximately 3,500 large and small business firms in all branches of industrial and commercial activity, many of which are engaged in multi-state operations.

As we understand it, H.R. 10831 (Friedel) would permit freight forwarders to contract with railroads for carload rates below those available to individual shippers. Policy responsive to this bill, adopted by this Association on January 8, 1968 reads:

Supported is legislation such as H.R. 10831, that would permit domestic freight forwarders to enter into contracts with railroads. However, shipper associations should not be given this right which should be preserved for intermodal carrier arrangements.

We would like briefly to explain the reasoning behind the Association's support of this legislation because it is a broad-based business group, not overtly influenced by any special interests. In adopting the above policy position, the invaluable service to the shipping public provided by regulated domestic freight forwarders was given great weight. They fill many shipping needs of the thousands of industrial shippers for expedited movement of manufactured goods.

With the railroads almost completely out of the small shipment business, the forwarder is the truckers' only effective competition on most less-than-volume traffic.

In providing by statute freedom to negotiate contract rates, freight forwarders would be given only equality with motor carriers who are today moving similar traffic more economically via rail Piggyback Plan I, under negotiated rates. Statutory permission for forwarders to negotiate contract rates with railroads would sharpen service and competition by making it economically feasible for forwarders to serve more shipping points. Although lowered direct shipping costs are to be hoped for, it would be beneficial to the public interest if, by lowered cost brought about by negotiated rates, further shipper rate increases alone were forestalled. There exists, too, a strong conviction that much forwarder traffic now being diverted could be recovered because the freight forwarders would have more flexibility to meet truck, express, and shipper association competition. Only lower underlying costs for freight forwarders can bring about a better competitive balance.

In the process of developing this policy the interests of key opposing views was given consideration. However, it is a fundamental rule of every opposing business that they become concerned with a business showdown. The freight forwarding industry has been lagging in this fashion and is only seeking a fair remedy substantially in the public interest.

On balance, the Association supports and urges passage of legislation such as H.R. 10831. Key opposing arguments were found to be unconvincing. For example, it is said by opponents to this bill that freight forwarders are really shippers and, therefore, should not be allowed to contract with the railroads. But, under Piggyback Plan I, motor carriers are shippers by railroad and there is no evidence that the public has suffered. Again, from the day they became regulated, freight forwarders have been able to contract with regulated common carriers for cargo movements up to 450 miles. While competition between motor carriers is much greater than among railroads, there have been no adverse results attributable to such negotiated rates. The railroads today seek from this Congress, deregulation for a number of commodities. It must be assumed the railroads see some virtue in freedom to offer contract rates so far as net returns are concerned.

Some opponents of this bill would have this Congress believe that if it was passed certain carload shippers would have to subsidize freight forwarder traffic in the form of higher freight rates. The reverse is closer to the truth. Net rail revenue from high-rated forwarder traffic often exceeds that of straight carload commodities. High-rated manufactured products which are almost exclusively handled by freight forwarders, in fact, subsidize all lower-rated industrial bulk commodities. The traditional nature of the railroad commodity classification system dictates that high-value freight forwarder type traffic bears a higher burden of rail costs than raw, bulk, and unfinished commodities. It is from a small number of influential raw, bulk, and unfinished commodity shippers that substantial opposition comes. The fact is, however, freight forwarders contribute substantially to both gross and net rail earnings. Net rail revenue from high-rated forwarder traffic often exceeds net revenue from other specific types of carload traffic.

While shipper associations have been of considerable importance to many shippers big and small, they do not serve the general public and would be in no position to pass on negotiated rate benefits to the general public. Thus, inclusion of nonprofit shipper associations is opposed.

Mr. FRIEDEL. Thank you, Mr. Vreeland.

Are there any questions?

Mr. John C. Allen, Sr., general manager of the ITOFCA, Inc., Clarendon Hills, Ill.

Mr. SINGER. Mr. Chairman, my name is Charles Singer. I am an attorney with Mr. Allen.

Mr. FRIEDEL. You have a lengthy statement. Do you wish to place your statement in the record and briefly outline it?

**STATEMENT OF JOHN C. ALLEN, SR., GENERAL MANAGER,
ITOFCA, INC.; ACCOMPANIED BY CHARLES SINGER, COUNSEL**

Mr. ALLEN. I would like to read it but I will try to make it very brief in deference to your time.

Mr. FRIEDEL. Very good.

Mr. ALLEN. My name is John C. Allen, Sr., and my business address is 2 Walker Avenue, Clarendon Hills, Ill. I am general manager of ITOFCA, Inc., a nonprofit shippers' association, operating pursuant to the exemption of section 402(c) of the Interstate Commerce Act.

I have served as general manager of ITOFCA since its inception in 1959, and I am fully familiar with its operations. Prior to that time I was engaged in transportation work in various capacities for 31 years, including employment as general traffic manager of Sears, Roebuck & Company. I was also privileged to serve as Assistant Postmaster General of the United States in charge of the Bureau of Transportation.

During my years of employment in transportation work I have had constant dealings with motor and rail carriers, freight forwarders and shippers' associations. I had the privilege of being involved in most all of the past legislation dealing with freight forwarders, either as a representative of Sears, Roebuck & Co., and affiliated companies, or as a member of the National Industrial Traffic League, an authoritative representative of the shipping fraternity. My transportation work has included the negotiation of motor carrier contracts, railroad rates, the purchasing of freight forwarder transportation, the operation of a private motor carrier fleet, and the operation of a freight handling company. With due respect, I consider that I am intimately familiar with the problem before Congress in H.R. 10831.

As indicated, ITOFCA, Inc., is a nonprofit shippers' association. Unlike many other shippers' associations, however, ITOFCA, Inc., does not consolidate small less-than-truckload shipments into carload or truckload shipments, but instead primarily consolidates trailer load shipments into carload movements in trailer-on-flatcar or piggyback movements. Our primary function is to "marry" or consolidate two trailerloads into a single shipment to take advantage of the lower volume rates afforded such movements. These shipments are known as plan II½, plan III, and plan IV TOFC movements. ITOFCA or its members in this service employ the use of motor carriers for pickup and delivery and relatively short haul movements, and, of course, rail service for the line haul movements between the main terminal points.

ITOFCA, Inc., is comprised of 120 members consisting of some of the largest corporations in the country. A list of these members is submitted herewith as appendix A. During 1967, ITOFCA shipped approximately 50,000 trailers, and its total transportation costs were approximately \$18,000,000.

It can be seen that ITOFCA is a substantial shipper and would be substantially affected by the proposed legislation.

My appearance here has been approved by the board of directors of ITOFCA, Inc. A list of the members of the board of directors is submitted herewith as appendix B. Specific reference is made to the stature of the individuals and companies represented on the board of directors of ITOFCA, Inc.

ITOFCA, Inc., opposes H.R. 10831 for three reasons:

1. The preferential position in which the regulated freight forwarder will be placed in relation to the exempt shippers' association by having contract rates in lieu of published tariff rates.

Why should a freight forwarder be entitled to a lower charge from a railroad than another shipper or shippers' association if the transportation service supplied by the railroad is for the same quantity of the same commodity between the same points for the same distance under the same conditions?

The freight forwarders' answer is that they are carriers and not shippers. This has been their contention since the first legislative proposals in conjunction with the enactment of part IV in 1942. The courts have ruled that they are shippers in their relations with the underlying carriers (*Acme Fast Freight* case, 1949).

Shippers' associations or individual shippers should be entitled to the same rates or charges by railroads as freight forwarders if they can comply with the provisions of published rail tariffs.

In my opinion charges for railroad services with all shippers should be only in tariff form subject to the publicity given tariff procedures.

2. ITOFCA opposes H.R. 10831 because we believe it will result, if enacted, in dissipation of railroad revenue which will inevitably result from contract rates.

If contracts are to be entered into by the railroads and freight forwarders in lieu of published tariff rates, lower charges by the railroads to the forwarders will result. This is why the forwarders desire this legislation. The ability to play one railroad against another with substantial traffic at stake can have only one end result—reduced railroad revenues.

To the extent that railroads are pressurized into recognizing the importance of large volume such as the freight forwarders have—and I don't believe that all of the railroads can successfully resist this pressure—reduced revenues will result.

The Bureau of Economics of the Interstate Commerce Commission Statement 66-1 entitled, "Piggyback Characteristics," page 22, table 12, shows that class A freight forwarders originated approximately 160,000 trailers in piggyback in 1965. Table 15, page 25 of this same publication indicates that of the total payments made for rail transportation by class A forwarders, only 34 percent were made for line haul piggyback service.

My point is that the forwarders are asking for this privilege of contract not only in piggyback but in conjunction with all their arrangement in forwarder transportation with the railroads; namely, boxcars as well as piggyback.

Table B-5, page 62, of this same publication tabulates average rail revenues on plan II½ traffic for the year 1963—the latest year reported therein—as \$388 per trailer, and on plan III traffic, \$229 per trailer. Plan II½ and plan III are those utilized by shippers, including the freight forwarders, today.

Plan I which involves contracts negotiated between motor carriers and railroads lists average rail revenues per unit of only \$150. It is reasonable to assume that if freight forwarders are given the right to negotiate charges with the railroads they will succeed in obtaining at

least as good a deal as negotiated by the motor carriers, and probably with their heavier concentrated traffic volume, even a better deal.

Reductions in rail revenue per trailer of between \$79 and \$238 appear probable. This does not take into account the reductions which might occur on freight forwarder traffic moving in rail boxcar service which represented 66 percent of the total payments during the reported period.

As similar reports are released by the Bureau of Economics of the Interstate Commerce Commission for later years, I believe the contrast in revenues between plan I and plan II $\frac{1}{2}$ or plan III will be even greater.

3. ITOFCA, Inc., opposes H.R. 10831 because we believe it will result in eventual increased costs to the shipping public with no improvements in service.

The freight forwarders have suggested to many industrial traffic men that amending section 409 of part IV as provided in this bill before you will mean reduced shipping costs and improved service for the public.

This suggestion should be carefully analyzed.

Before the enactment of part IV in 1942, complete chaos reigned in conjunction with the charges assessed by freight forwarders to the shipping public. Cutthroat price cutting prevailed to the extent that in order to gain certain volume tonnage freight forwarders handled traffic at close to cost or maybe less than cost. Rate changes by the freight forwarders occurred so fast that shippers did not know from day to day prevailing charges to be assessed.

Quotations to certain shippers were made based on prevailing railroad tariff rates, plus an arbitrary figure for handling costs.

Industrial traffic men found it worthwhile to look into the rates the freight forwarders paid to the railroads for transportation service supplied. Some shippers immediately began to evaluate freight forwarder charges with costs which would accrue should the shipper accomplish himself the consolidation function in conjunction with his own shipments. Others found economies in pooling more of their shipments with other shippers—a practice existent for many years but not essentially in the small shipment area.

This trend in my opinion caused the freight forwarding industry to seek, in the original legislation, the same privileges they are asking for in this bill before you. Congress wisely, in my opinion, did not elect to give them this privilege.

The above trend, in my opinion, also emphasized to the freight forwarders the need of a commodity clause which was enacted in the original legislation in 1942, section 411(b).

As freight forwarder regulation became a reality, and as railroad and motor carrier rates increased substantially during the war years and immediately thereafter, industrial traffic managers became more and more conscious of the economies through pooling shipments with one another rather than employing freight forwarder published rates.

Shipping associations began to spring up in substantial numbers. Industrial traffic managers and their superiors saw in these associations a real answer to the increased transportation costs to which they were being subjected.

Conscious of this trend, and desirous of recovering volume lost through this trend, S. 3366 was introduced in 1956 and this bill was designed to allow forwarders to make special contract rates with railroads lower than those applicable to similar movements by other shippers. S. 3366 was substantially if not exactly, similar to H.R. 10831 which is before you.

I have before me a statement which I was privileged to make before a House committee on companion bill in the Senate, S. 3366, that being H.R. 9548.

My statement at that time read as follows:

This bill seems to be an expansion of the theory that a freight forwarder is a common carrier in his relationships with underlying carriers. We do not subscribe to this theory. While we agree his relationships to the general public are similar in making available selective transportation service any legislation which attempts to further grant the freight forwarders privileges of an actual carrier in relation with the underlying carriers in our opinion is not conducive to a sound healthy transportation system.

If the freight forwarding industry as a consolidator and distributor is permitted the right of contractual relationships with the railroads on piggyback service it would be a stepping stone and invite us to establish a similar arrangement on railroad traffic handled in freight cars. In our opinion this would have a detrimental effect on the general public's railroad transportation bill.

This bill before you, if enacted, in my opinion will not result in reduced costs to the public—it will mean reduced costs to the forwarders, reduced revenues to the railroads, and increased profits to the forwarder, but there is nothing inherent in this bill which will mean that the shipping public will have a lower transportation bill.

On the contrary, to the extent that railroads are pressurized into entering into contracts for large volume movements with the forwarders, the reduction in railroad revenue can easily compel the railroads to seek additional revenues from other sources to offset these reductions. The shipping public in my opinion will eventually be asked to pay this bill.

The shipping public has a much greater chance to evaluate the equitability of railroad general increases such as *Ex parte 256* if rates are in tariff form, as contrasted to contract charges not publicized as are tariff rates.

In this connection it would be interesting to know if the contract rates the motor carriers have with the railroads under so-called plan I piggyback were increased in the same amounts as were the plan III, plan II, and plan II½ rates under *Ex parte 256*. It is my opinion that many of them were not.

It seems to me that if this bill is enacted the benefits the freight forwarders derive from it will be used to reduce rates where shipper association competition is existent. When this competition has been diminished or eliminated the same thing will happen as did immediately after part IV was enacted in 1942—higher charges to the shipping public and greater profits for the freight forwarding industry.

Finally, as to the suggestion that enactment of this bill will mean better transportation service, I can't believe the railroads will run their trains faster or put in new transportation services on movements where their revenues are to be reduced.

In summary, our opposition to H.R. 10831 is based on the following reasons:

1. Preferential position in which the regulated freight forwarder will be placed in relation to the exempt shippers' associations by having contract rates in lieu of published rates.

2. Dissipation of railroad revenue which inevitably will result from contract rates.

3. Eventual increased costs to the shipping public with no improvement in service.

Thank you for the privilege of submitting this statement to you.
(Appendixes A and B, referred to above, follow:)

APPENDIX A

ITOFCA, INC. MEMBERS

Ace Hardware Corporaton, Chicago, Illinois
 Advance Transformer Company, Chicago, Illinois
 Allied Products Corporation, Chicago Illinois
 Allis-Chalmers Mfg. Company, Milwaukee, Wisconsin
 Alside, Inc., Akron, Ohio
 Alton Box Board Company, Chicago, Illinois
 American Biltrite Rubber Company, Inc., Boston, Massachusetts
 American Radiator & Standard Sanitary Corp., New Brunswick, New Jersey
 American Synthetic Rubber Corporation, Louisville, Kentucky
 Anaconda Company, New York, New York
 Automatic Distributing Corporation, Houston, Texas
 Barr Stalfort Company, Niles, Illinois
 Bird & Son, Inc., East Walpole, Massachusetts
 Borden Company, New York, New York
 Bowman Products Division, Associated Spring Corporation, Cleveland, Ohio
 Brown & Bigelow, St. Paul, Minnesota
 Brown & Williamson Tobacco Corporation, Louisville, Kentucky
 Brunswick Corporation, Chicago Illinois
 Burry Biscuit Division, Quaker Oats Company, Elizabeth, New Jersey
 Cain & Bultman, Inc., Jacksonville, Florida
 Ceco Corporation, Chicago, Illinois
 Celanese Corporation, New York, New York
 Chemetron Corporation, Louisville, Kentucky
 Continental Can Company, New York, New York
 Cooper Tire & Rubber Company, Findlay, Ohio
 Cowles Communications, Inc., Chicago, Illinois
 Culligan, Inc., Northbrook, Illinois
 Cuneo Press, Inc., Chicago, Illinois
 Delta Company, Wheeling, Illinois
 Diversey Corporation, Chicago, Illinois
 Dow Chemical Company, Midland, Michigan
 E. I. du Pont de Nemours & Company, Inc., Wilmington, Delaware
 Ekco Products, Inc., Wheeling, Illinois
 Electric Machinery Mfg. Company, Minneapolis, Minnesota
 Electrical Equipment Company, Phoenix, Arizona
 F. D. Farnam Company, Necedah, Wisconsin
 Fawcett Publications, Inc., Louisville, Kentucky
 Food Fair Stores, Inc., Philadelphia, Pa.
 Frito-Lay, Inc., Dallas, Texas
 General Electric Company, New York, New York
 General Foods Corporation, White Plains, New York
 General Motors Corporation, Detroit, Michigan
 Georgia-Pacific Corporation, Stamford, Connecticut
 Gerber Products Company, Fremont, Michigan
 Globe Rubber Products Corporation, Philadelphia, Pennsylvania
 Grabler Manufacturing Company, Cleveland, Ohio
 W. W. Grainger, Inc., Chicago, Illinois
 Graybar Electric Company, Inc., New York, New York

Harris Hub Company, Inc., Harvey, Illinois
 Hart-Greer, Inc., Birmingham, Alabama
 Hearst Corporation, New York, New York
 Hillside Metal Products, Inc., Newark, New Jersey
 Honeywell, Inc., Minneapolis, Minnesota
 Hooker Chemical Corporation, New York, New York
 Hoover Company, North Canton, Ohio
 HMH Publishing Company, Inc., Chicago, Illinois
 Ingersoll-Humphries Division, Borg-Warner Corporation, Shelby, Ohio
 Ingersoll-Rand Company, Los Angeles, California
 Inland Steel Company, Chicago, Illinois
 Interlake Steel Corporation, Chicago, Illinois
 International Telephone & Telegraph Corporation, New York, New York
 Interstate Dept. Stores, Inc., New York, New York
 Jewel Companies, Inc., Melrose Park, Illinois
 Joanna Western Mills Company, Chicago, Illinois
 Johns-Manville Corporation, New York, New York
 Joslyn Mfg. & Supply Company, Chicago, Illinois
 Kaiser Aluminum & Chemical Corporation, Oakland, California
 Kalcor Coatings Company, Inc., Willoughby, Ohio
 Kinkead Industries, Inc., Chicago, Illinois
 Kohler Company, Kohler, Wisconsin
 Geo. H. Lehleitner & Company, Inc., New Orleans, Louisiana
 Lincoln Electric Company, Cleveland, Ohio
 P. Lorillard Company, New York, New York
 Lovable Company, Atlanta, Georgia
 Luminous Ceilings, Inc., Chicago, Illinois
 Maple Island, Inc., Minneapolis, Minnesota
 Marquette Corporation, Minneapolis, Minnesota
 Leo Maxwell Company, Inc., Oklahoma City, Oklahoma
 McNeil Corporation, Akron, Ohio
 Mead Corporation, Dayton, Ohio
 Mes-Tex Steel Buildings, Inc., Houston, Texas
 Midas-International Corporation, Chicago, Illinois
 Minnesota Mining & Mfg. Company, St. Paul, Minnesota
 Mobile Oil Corporation, New York, New York
 Mogen David Wine Corporation, Chicago, Illinois
 Montgomery Ward & Company, Inc., Chicago, Illinois
 Morton International, Inc., Chicago, Illinois
 Munsingwear, Inc., Minneapolis, Minnesota
 National Starch & Chemical Corporation, New York, New York
 National Sponge Cushion Company, Inc., Pico Rivera, California
 Nicholson File Company, East Providence, R.I.
 Old Peoria Company, Minneapolis, Minnesota
 Oxford Chemical Corporation, Chamblee, Georgia
 Philip Morris, Inc., New York, New York
 Ray-O-Vac Division, ESB, Inc., Madison, Wisconsin
 Wm. B. Reily & Company, Inc., New Orleans, Louisiana
 Rheem Manufacturing Company, Chicago, Illinois
 Jos. T. Ryerson & Son, Chicago, Illinois
 SCM Corporation, New York, New York
 St. Charles Manufacturing Company, St. Charles, Illinois
 Sherwin-Williams Company, Cleveland, Ohio
 A. O. Smith Corporation, Milwaukee, Wisconsin
 Specialty Manufacturing Company, St. Paul, Minnesota
 Stauffer Chemical Company, New York, New York
 Stewart Company, Dallas, Texas
 Swinrite, Inc., Van Nuys, California
 Joe Thiele, Inc., San Antonio, Texas
 Time, Inc., Chicago, Illinois
 Triangle Publications, Inc., Philadelphia, Pennsylvania
 True Temper Corporation, Cleveland, Ohio
 Union Carbide Corporation, New York, New York
 U.S. Plywood-Champion Papers, Inc., Hamilton, Ohio
 Vick Manufacturing Division, Richardson-Merrell, Inc., Philadelphia, Pa.
 Vistron Corporation, Cleveland, Ohio

Walgreen Company, Chicago, Illinois
 West Chemical Products, Inc., Long Island City, New York
 Western Electric Company, New York, New York
 Westinghouse Electric Corporation, Pittsburgh, Pennsylvania
 Wood-Mosaic Corporation, Louisville, Kentucky
 Woodward, Wight & Company, Ltd., New Orleans, Louisiana

APPENDIX B

ITOFCA, Inc., 1967-68

OFFICERS

President: William F. Cassidy, Jr., Traffic Manager, Joanna Western Mills, Chicago, Ill.
Vice President: George A. McElroy, General Manager, Traffic and Transportation, Ceco Corp., Chicago, Ill.
Secretary: William C. O'Connor, Traffic Manager, The Anaconda Co., New York, N.Y.
Treasurer: Robert J. Tyler, Traffic Manager, Chemetron Corp., Louisville, Ky.,

DIRECTORS

Boyd, Don A., Commerce Counsel, E. I. duPont deNemours & Co., Inc., Wilmington, Del.
 Fenaroli, Al J., Manager, District Services, Union Carbide Corp., New York, N.Y.
 Harmon, Lou B., Director of Traffic, Kaiser Aluminum & Chemical Corp., Oakland, Calif.
 Hillenbrand, George, Jr., Traffic Manager, Time, Inc., Chicago, Ill.
 Krause, Frank, Director of Traffic, P. Lorillard Co., New York, N.Y.
 Lacey, Hugh, General Traffic Manager, Jos. T. Ryerson & Son, Inc., Chicago, Ill.
 Lewis, Sheldon R., Manager Traffic Service, General Electric Co., New York, N.Y.
 Moore, Allan N., Director of Traffic, Interlake Steel Corp., Chicago, Ill.
 O'Neill, Frank L., Director of Traffic, Minnesota Mining & Mfg. Co., St. Paul, Minn.
 Reed, John R., Traffic Manager, W. W. Grainger, Inc., Chicago, Ill.
 St. Amant, Julius C., Secretary-Treasurer, Geo. H. Lehleitner & Co., Inc., New Orleans, La.
 Scharoun, Fred A., Manager of Transportation-West, Western Electric Co., New York, N.Y.
 Sutherland, Kenneth J., General Manager of Traffic, Sherwin Williams Co., Cleveland, Ohio.

Mr. FRIEDEL. Thank you very much.

Are there any questions, Mr. Ronan?

Mr. RONAN. You say you have 120 members in your organization?

Mr. ALLEN. Yes, sir.

Mr. RONAN. One of the gentlemen earlier mentioned that in the Chicago area there are 14,500 manufacturers. Is that true?

Mr. ALLEN. I don't know the number, sir. I know there is a large number.

Mr. RONAN. In other words, your association takes care of a very limited number, from what I can see, the larger corporations, larger shippers, and apparently does not get down to the smaller shippers.

Mr. ALLEN. I think there are very large corporations in our organization, yes, there are also medium size and also fairly small. The size of the corporation does not mean too much. A member has to want to participate. We don't solicit any membership. There are things he has to do to make his participation worth while.

Mr. RONAN. Is there a fee?

Mr. ALLEN. Yes, sir, there is an initiation fee of \$500 per member and there are annual dues of \$200.

Mr. RONAN. Thank you.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. No questions, Mr. Chairman.

Mr. FRIEDEL. Mr. Allen, on page 7, I am trying to follow your logic, in the third paragraph you say "this bill, if enacted, in my opinion will not result in reduced costs to the public—it will mean reduced costs to the forwarders, and increased profits to the forwarder, but there is nothing inherent in this bill that will mean that the shipping public will have a lower transportation bill." If the public would not benefit how would it benefit the shippers' association? I don't follow your logic.

Mr. ALLEN. I think the position of the forwarders is that if the law is changed and they are able to contract for rates with the railroads they are going to have lower cost. The inference is that they will pass this along—

Mr. FRIEDEL. You say "this bill, if enacted, in my opinion will not result in reduced cost to the public."

Mr. ALLEN. Yes, sir.

Mr. FRIEDEL. I just could not follow your logic there that it would hurt the shippers' association.

Mr. ALLEN. If you go back, it is my opinion that when Congress granted the freight forwarders the right to contract with the motor carriers it did not necessarily follow that you had reduced costs. Apparently as one of the freight forwarders brought out today, there are still some problems in conjunction with short-haul transportation and one of the purposes of the amendment to section 409 permitting contracts with the motor carriers was to solve that very problem.

Mr. FRIEDEL. Are you familiar with the proposed amendment to the bill offered by the shippers' association that they be included in this?

Mr. ALLEN. No, sir, I am not.

Mr. FRIEDEL. Would you be in favor of the bill if that were included?

Mr. ALLEN. Our directors have not considered that question and I would not feel qualified to answer.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. I would like to know what your general position is on whether or not there should be special contracts at all that are contracts outside the regularly published rates and tariffs that are filed by the railroads.

Mr. ALLEN. I think there are many problems in this area in fairness to the freight forwarders. I think I would have to confine my discussion to piggyback. Piggyback is relatively new. I have some figures here that I think are indicative of the problem. Here again, taken from the Interstate Commerce Commission, Bureau of Economics. For 1965 these figures show that plan 1 accounted for 23 percent of the total cars moved in piggyback but only 13 percent of the revenue.

Plan 3 accounted for 26 percent of the cars moved and 22 percent of the revenue. I think there are instances where there are some problems in this area. For example, going to the west coast, and incidentally, sir, it is somewhat difficult to talk about these plan 1 rates because they are contract rates and it is not easy for a freight forwarder or shipper to find out exactly what these are. I would hope they would all be in tariff form from that point of view.

But to the west coast, as far as we can determine, apparently the motor carriers are permitted to ship 80,000 pounds on a car at the same price as shippers are only allowed to ship 60,000 pounds. I think there are many inequities in that area. However, the existence of those inequities in my opinion would not warrant aggravating the situation further as would be proposed by this bill.

Mr. ADAMS. How about rolling it back in the area of motor carriers and special contract with the freight forwarders?

Mr. ALLEN. My position has always been that the law as originally passed in 1942, section 409, is correct. I recall it very well. The original law as passed did not permit contracts. It gave the freight forwarders a period of time in which to eliminate so-called concurrences they had with motor carriers. The time was extended and it was extended again. I think it was extended two or three times. Then in 1950 you had the present law which came into effect which I was not in favor of, and I did not believe was good transportation.

Mr. ADAMS. Thank you, Mr. Chairman.

Mr. FRIEDEL. The hearing will stand recessed.

If we get permission we will come back at 2 o'clock.

We will recess until 2 o'clock and try to finish up the other witnesses for today.

Thank you, gentlemen.

(Whereupon, at 12:20 p.m., the subcommittee recessed, to reconvene at 2 p.m.)

AFTER RECESS

(The subcommittee reconvened at 2 p.m., Hon. Samuel N. Friedel, chairman, presiding.)

Mr. FRIEDEL. The committee will come to order.

We have a continuation of the hearings on H.R. 10831, to amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads.

Our first witness this afternoon will be Mr. D. R. Macdonald, general traffic manager, City Products Corp., Des Plaines, Ill.

STATEMENT OF DOUGLAS R. MACDONALD, PRESIDENT, TERMINAL FREIGHT COOPERATIVE ASSOCIATION, CHICAGO, ILL.

Mr. MACDONALD. Thank you, sir.

Mr. Chairman, my name is Douglas R. Macdonald. I am general traffic manager of City Products Corp. My company is a member of Terminal Freight Cooperative Association, a nonprofit shippers association comprised of 42 companies, as shown on the list, submitted herewith. This association ships to and from most major cities in the United States and has been in existence for more than 25 years. Our operations are basically similar to a freight forwarder in our use of railroads and motortrucks as the underlying carriers.

I am president of the Terminal Freight Cooperative Association and a member of the executive committee which controls its affairs. I am authorized to speak for the Terminal Freight Cooperative Association and for the companies who belong to the association.

We are opposed to the provisions of H.R. 10831 for three major reasons:

1. We do not believe a railroad should charge a lesser amount to a freight forwarder than to a shippers association such as ours for identical services under identical conditions. Section 1(5) of part I of the Interstate Commerce Act reads in part as follows:

All charges made for any service * * * shall be just and reasonable * * *.

We believe that to be just and reasonable, rates must be identical for identical service.

We are not opposed to the principle of point rates or contract arrangements between basic transportation carriers such as railroads, motortrucks, or steamship lines. These companies own equipment, and perform their basic transportation service for the general public at rates and charges published in tariffs and available to all users. Shippers associations, such as ours, purchase the services of the railroads and motortrucks at rates and charges published in tariffs. We feel that a freight forwarder purchasing the same service under the same conditions should pay the same published rates and charges.

2. If a freight forwarder needs special rates for unusual conditions of tonnage, transit time, or other requirements, he can secure them through present ratemaking procedures. The important point is that these special rates will be published in tariffs and available to any other freight forwarder, shippers' association or shipper who has similar unusual conditions or requirements.

The freight forwarders, in using and correlating the services of the railroad and motor trucks as underlying carriers, are performing a valuable service to the public. All the members of Terminal Freight Cooperative Association use freight forwarder services. It is important that the freight forwarders remain in a strong, healthy financial position and continue their valuable services to the public. However, we believe they can continue to operate effectively within the present framework of rates and services published in tariffs by the underlying carriers, just as shippers' associations do.

3. There are no effective means of assuring that the rates granted to freight forwarders under section 409(a) will be, as the bill provides, "just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants or any other freight forwarder and shall be consistent with the national transportation policy declared in this act."

Nor, might we add, are there any safeguards that such terms, conditions, and compensation are not prejudiced against other users of the carriers.

Although the act sets out that contracts should be subject to the above standards and that the ICC can hold hearings and investigate whether the contracts are, in fact, in accordance with these standards, either on its own motion or on any other interested party's motion, this is not possible as a matter of practicality. The burden of proof is on the complaining party, either the aggrieved shipper or the ICC, and these parties certainly would not have access to the facts and figures necessary to determine if the contract is just, reasonable, equitable, and within the National Transportation Policy.

The fact that so few contracts have been challenged successfully in the history of this act shows there is no practical way of testing whether the contracts are just, reasonable, and equitable within the

national transportation policy. Without an effective way of testing whether a contract, in fact, complies with the standards, the standards themselves are of absolutely no value and leave solely to the judgment of the freight forwarders and carriers whether the contracts are just, reasonable, equitable, and within the national transportation policy.

Thank you for your time, and we urge your consideration in voting against H.R. 10831.

(The membership list referred to above follows:)

MEMBERSHIP LIST OF TERMINAL FREIGHT COOPERATIVE ASSOCIATION

Allied Purchasing Corp., New York, N.Y.	General Dynamics Corp., San Diego, Calif.
American Biltrite Rubber Co., Chelsea, Mass.	Graham-Brown Shoe Co., Dallas, Tex.
American Home Products Corp., New York, N.Y.	Jorries Furniture, San Antonio, Tex.
Associated Dry Goods Co., New York, N.Y.	Lifetime Foam Products, Inc., Franklin Park, Ill.
Austin Shoe Stores, Dallas, Tex.	May Department Stores Co., St. Louis, Mo.
Barrows N. Central Furniture Co., Phoenix, Ariz.	Meier & Frank Co., Inc., Portland, Oreg.
The Boeing Co., Seattle, Wash.	Fred Meyer, Inc., Portland, Oreg.
Broadway-Hale Stores, Inc., Los Angeles, Calif.	North American Aviation, Inc., El Segundo, Calif.
Ceco Corp., Cicero, Ill.	Northrop Corporation, El Segundo, Calif.
City Products Corp., Chicago, Ill.	Quaker Industries, Inc., Antioch, Ill.
Cleveland Chair, Cleveland, Tenn.	Rohr Corporation, Chula Vista, Calif.
Cluett, Peabody & Co., Inc., New York, N.Y.	Scruggs-Vandervoort-Barney, Inc., St. Louis, Mo.
Coast to Coast Stores, Minneapolis, Minn.	Sears, Roebuck and Co., Chicago, Ill.
The Coleman Co., Wichita, Kans.	Simpsons-Sears Ltd., Toronto, Ontario, Canada.
Continental Can Co., New York, N.Y.	Skagit Corp., Sedro-Woolley, Wash.
DeSoto Chemical Coatings, Inc., Des Plaines, Ill.	Solar Division of International Harvester Company San Diego, Calif.
Dohrmann Co., San Francisco, Calif.	State Stove and Manufacturing Co., Ashland City, Tenn.
Donahue Sales Corp., Milford, Conn.	Uniroyal, New York, N.Y.
Endicott Johnson Corp., Endicott, N.Y.	Van Waters & Rogers, Inc., Seattle, Wash.
Federated Department Stores, Cincinnati, Ohio	Warwick Electronics, Inc., Chicago, Ill.
Geigy Chemical, Yonkers, N.Y.	Wm. E. Wright & Sons Co., West Warren, Mass.

Mr. FRIEDEL. I want to thank you, Mr. Macdonald, for a short statement which is to the point.

I want to refer to your statement on page 2, where you say:

If a freight forwarder needs special rates for unusual conditions of tonnage, transit time, or other requirements, he can secure them through present rate-making procedures.

Mr. MACDONALD. That is right.

Mr. FRIEDEL. Is that the law today?

Mr. MACDONALD. That is what basically takes place today. The railroads have their ratemaking bureaus, and the freight forwarder is enabled thus to approach the railroad through the bureaus and apply for rates.

In other words, say a movement from New York to San Francisco, Transcontinental Freight Bureau, Southern, you can name all of them.

Mr. FRIEDEL. They can do that under the present law?

Mr. MACDONALD. Yes.

Mr. FRIEDEL. They want to enter into contracts, the same as truckers do. Do you claim they can enter into contracts under the present law?

Mr. MACDONALD. No, I am saying they have the ability to approach the railroads for lower rates. These rates, if agreed on by the underlying carriers, would be available to all shippers, including the freight forwarders. The level of these rates could be comparable with the truck rates.

Mr. FRIEDEL. You are with the shippers association?

Mr. MACDONALD. That is right.

Mr. FRIEDEL. Could you approach the railroads and try to agree with them, or do you have to go to the ICC?

Mr. MACDONALD. No, the application would be made to the railroads, and then it would have to be published in tariff form, and it is possible to have a lower rate suspended at that area. In other words, if for good reason appearing to the Commission, upon protest of other shippers, for example, protest could result in suspension of these rates.

Mr. FRIEDEL. Do you know any reason why the freight forwarders are asking for the amendment?

Mr. MACDONALD. The board of directors of Terminal Freight can only conclude that they are asking for preferential treatment rather than for equality of treatment. Because the services utilized by the freight forwarders are identical in almost all instances with that of a shipper association such as Terminal Freight. We load the boxcars, as an example, at New York, move them to Chicago, where they break bulk, or Los Angeles, or San Francisco. This is the identical service being performed today by a freight forwarder, the only difference being, of course, that our service is limited to our members rather than being held out to the public in general.

Mr. FRIEDEL. Mr. Pickle?

Mr. PICKLE. Mr. Macdonald, I had to be out of the room to make a phone call and I did not hear your complete statement.

I want to refer, though, to the first page, in which you list one of the reasons for your opposition to the bill. You say, "We do not believe a railroad should charge a lesser amount to a freight forwarder than to a shippers association."

Mr. MACDONALD. That is right.

Mr. PICKLE. If the bill is passed, are you saying that the railroads would charge a lesser amount to a freight forwarder than to a shippers association?

Mr. MACDONALD. The avenue is open for such a preference.

Mr. PICKLE. What you are saying is that you are fearful it will lead to that?

Mr. MACDONALD. That is right.

Mr. PICKLE. Your statement is a positive statement that they would automatically do that?

Mr. MACDONALD. I believe this would be the end results. There would be no reason for the legislation if it was not contemplated that it would result in a lower level of contract rates than is available today under the present tariff rates.

Mr. PICKLE. Can you help me by saying in your own words in what way would this give a preferential rate to a freight forwarder if they were able to negotiate with the railroads, as outlined by this bill?

Mr. MACDONALD. May I use strictly hypothetical examples.

We will say the freight, all kinds, rate between New York and Chicago is \$2 per hundred pounds. Now, this is a published tariff rate. It is entirely possible, with the tonnage involved, that the railroads would be receptive to a contract with the freight forwarders of, say, \$1.75 per hundred pounds, applying only for the freight forwarders.

Mr. PICKLE. I beg your pardon.

Mr. MACDONALD. Applying only for the freight forwarders.

Mr. PICKLE. Let's assume that this is so.

Mr. MACDONALD. Right.

Mr. PICKLE. You would give the freight forwarder—the railroad would be giving them a little less rate, and you are saying, then, that your association couldn't avail themselves of that rate?

Mr. MACDONALD. No.

Mr. PICKLE. Suppose you chose to ship your goods, turn it over to a freight forwarder. Would you do that?

Mr. MACDONALD. No, sir; because our level of rates would be lower than the freight forwarder's rates applying to the general public. The freight forwarder makes his money on the difference in the amount paid to the underlying carrier and his total expense and the amount charged to the general public.

In other words, for that \$1.75 underlying cost, applying between New York and Chicago, this rate may be, as an example, \$5 per hundred pounds. Now, this includes his pickup or delivery, his loading cost, cost of loading the boxcar or piggyback trailer.

Mr. PICKLE. One of the gentlemen testified this morning that if this proposed bill became law, that this would have a beneficial effect to the shipping association.

Mr. MACDONALD. I fail to see how it possibly could. I believe it was Mr. Allen who preceded me, prior to the lunch recess, that indicated that, shall I say, the loss of revenue of 25 cents per hundred pounds, that I used in my example from New York to Chicago, would have to come from somewhere. It would have to come out of the coffers of the railroads.

Now, carrying this forward, if this was not a good, economical, shall I say, contract, on the part of the railroads, they would have to look elsewhere for additional revenues and we, of course, under those circumstances would be fearful that they would apply another general rate increase, which to me would mitigate against the shippers.

I can't see anything in the legislation as proposed that is beneficial to a shippers association.

Mr. PICKLE. On the other hand, this right is given to the motor freight carriers; that is, if you want to turn it over to a carrier, he can negotiate, and therefore he can have a reduced rate.

Mr. MACDONALD. That is right, under parts I, II, and III of the act, it is possible to file joint rates between various modes of transportation.

However, the original intent of the legislation was to hold the freight forwarder in a rather duality of character. To his customer, the shipper, he was a common carrier. To the carrier, he was nothing more than a shipper, and so what I am saying, sir, is that here we have two identical situations, our terminal freight operation and a freight forwarder, and there is a preferential treatment being given to the freight forwarder, which I don't believe is justified.

Mr. PICKLE. Thank you.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. Mr. Macdonald, as president of your association, you say in the statement you are authorized to speak for the association, and for the 42 companies who belong to the association.

Mr. MACDONALD. Yes, sir; I have—

Mr. DEVINE. Does that represent the members of your association?

Mr. MACDONALD. Yes, sir.

Mr. DEVINE. You have some very substantial companies you are speaking for. Would you say that your position is that of the Boeing Co., Continental Can Co., Federated Department Stores, General Dynamics, North American Aviation, and Sears, Roebuck?

Mr. MACDONALD. Yes, sir; all of those.

Mr. DEVINE. You have some pretty substantial voices in there.

Mr. MACDONALD. Yes, sir.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Most of us are in a little bit of a fog here.

May a freight forwarder, when he puts together a carload—I understand that he is only allowed to accept less than a carload or less than a truckload quantity.

When he puts together a carload of commodities or merchandise, or whatever it is, may he negotiate in any way under present laws and regulations a rate from a railroad less than the ICC regulated rate for that certain haul?

Mr. MACDONALD. I am going to have to say that to my knowledge the answer to that is "No," other than going through the normal ratemaking procedures, such as I outlined before.

Mr. KUYKENDALL. There is no way that a piggyback man, who is a member of your association—

Mr. MACDONALD. No, we are not allowed to.

Mr. KUYKENDALL. Say one of the trucklines goes to a railroad; may he negotiate a piggyback rate less than the ICC rate for the haul; is that correct?

Mr. MACDONALD. Yes.

Mr. KUYKENDALL. So we have one man negotiating for the hauling of a trailer load of goods for less than another man can haul it.

Mr. MACDONALD. Normally the motor hauler is performing services greater than—

Mr. KUYKENDALL. I am talking about the man who is going to put that trailer on the railroad and pays the railroad. That has nothing to do with services. I am not talking about what he charges his customer. I am talking about what you pay the railroad.

Mr. MACDONALD. Right.

Mr. KUYKENDALL. A trucker can pay the railroad less money to take the same trailer over the same distance than a forwarder can for the same goods?

Mr. MACDONALD. Or any other shipper.

Mr. KUYKENDALL. Or any other shipper?

Mr. MACDONALD. Right.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Mr. Macdonald, are you familiar with the amendment that the Shippers Association of Baltimore has proposed?

Mr. MACDONALD. I am sorry, sir, I did not hear about that proposal until I entered the room this morning, and it was not considered at all in our testimony or in our conversations.

Mr. FRIEDEL. You are not prepared to speak for or against the amendment?

Mr. MACDONALD. It has a lot of ramifications as far as I am concerned, and I would therefore not want to speak for the association on that.

Mr. FRIEDEL. Thank you very much.

Our next witness will be John V. Hoey, Jr., president, National Textile Traffic Bureau, Inc.

Mr. Hoey?

(No response.)

Mr. FRIEDEL. Mr. Harvey A. Burke, manager, Physical Distribution, Buxton, Inc., Springfield, Mass.

**STATEMENT OF HARVEY A. BURKE, MANAGER, PHYSICAL
DISTRIBUTION, BUXTON, INC., AGAWAM, MASS.**

Mr. BURKE. Mr. Chairman, as I said this morning, I want to be brief. My name is Harvey Burke, and I am the manager of physical distribution for Buxton, Inc., located at Agawam, Mass. We are primarily in the manufacture of leather goods and jewel cases and belts.

In that our company is directly involved in distributing our products to all parts of the country, we want to speak in favor of this particular bill for two reasons, mainly. We are interested in service and, of course, cost to our customer.

Through experience we find that the freight forwarder has been able to give us far better service—quicker service. This is the lifeline of getting our goods to our particular customers. We use all modes of freight, through the rails, air, and truck, but the most consistent service that we can get has been through the freight forwarder.

We ship quite a bit of our goods to the west coast. They cut our loadtime down, through their handling, by considerable time.

The other point is the possible savings to our customer. I say to our customer, and I am sure that other people here ship as well on a collect basis; so, if there is any saving that is going to be realized through this, it is going to go direct to our customer. We, therefore, would be in favor of this bill.

That is the end of my statement.

(Mr. Burke's prepared statement follows:)

**STATEMENT OF HARVEY A. BURKE, MANAGER OF PHYSICAL DISTRIBUTION, BUXTON,
INC., AGAWAM, MASS.**

Thank you for allowing me to appear in behalf of my company favoring the House of Representatives Bill H.R. 10831.

My name is Harvey Burke. I am Manager of Physical Distribution of Buxton, Inc., Agawam, Massachusetts. Buxton, Inc., manufactures men's and women's accessories, leather goods, jewelry cases and belts. Buxton, Inc., has manufacturing plants at Agawam, Mass., Attleboro, Mass., and Los Angeles, California. We employ in excess of 1500 people in the manufacturing of our products.

In my capacity as Manager of Physical Distribution, I am responsible for the shipment of our products from our manufacturing plants, as well as our distribution centers in Los Angeles and San Francisco, Calif.; Evanston, Ill.; Dallas,

Tex.; Atlanta, Ga.; Metuchen, N.J. In facilitating our logistic problems, we use all modes of transportation, including motor carrier, Railway Express, air freight and freight forwarder. Because of the nature of our products, which as you know are in the consumer product field, we ship from our distribution centers to almost every city, town and burg in the United States. It is also significant that our shipments are normally small shipments or package freight and often fall in the category of minimum shipments. Because of the freight forwarder's ability to handle small shipments, we use the freight forwarder to a major extent in transporting our goods. During the year 1967, our total shipments moving in freight forwarder service exceeded three million pounds. This represents about $\frac{2}{3}$'s of our total shipping tonnage. Again, I emphasize the important fact that this tonnage is made up of many small shipments to retail stores everywhere in the United States.

We urge passage of H.R. 10831 primarily because it gives the freight forwarder a right to make contracts with the railroads, a privilege the motor carrier presently enjoys and which the freight forwarder must have in order to remain competitive. It is essential to our business that all modes of transportation be equal so that we may have an opportunity to market our goods throughout the United States. As an example of the importance of the freight forwarder to us, during the year 1967 our firm's shipments of a bulky product going to the West Coast was suddenly jeopardized because of our inability to ship the product on a competitive basis. While we were well acquainted with the problems that the various carriers were encountering in order to handle this bulky product, we could not be sympathetic simply because it would put us out of business on the West Coast with this product. Frankly, the freight forwarder because of his unique ability to handle bulky freight was the only mode of transportation that came to our rescue while competitive modes of transportation refused to make any effort to assist us. It is quite possible that under other circumstances we might have been confronted with just the opposite situation, that is to say that the freight forwarder would not assist us whereas another mode would solve the problem. The importance of bringing this example to your attention is that in this particular instance we had access to more than one type carrier to solve our problem. It is for this reason that we are so strongly in favor of H.R. 10831 which merely assures that the freight forwarder will remain equal and competitive with other carriers in interstate commerce.

We feel that the necessary safeguards exist in the Interstate Commerce Act and specifically in part IV, 409(b), wherein all contracts must be filed with the Interstate Commerce Commission for review, investigation, and approval. Passage of this legislation is to the best interest of the shipping public.

Mr. FRIEDEL. Do you have any questions?

Mr. PICKLE. Are you a shipper association, a representative of a shipper association?

Mr. BURKE. No, sir. I am a distribution manager for a private company, Buxton, Inc.

Mr. PICKLE. You represent just this one company, Buxton?

Mr. BURKE. That is correct.

Mr. PICKLE. Thank you.

Mr. FRIEDEL. You ship small shipments, less than carload lots?

Mr. BURKE. I would say that better than 90 percent of our shipments are in a minimum class.

Mr. FRIEDEL. And you use freight forwarders in doing this?

Mr. BURKE. Yes.

Mr. FRIEDEL. And to all parts of the United States; is that correct?

Mr. BURKE. That is correct.

Mr. FRIEDEL. Do you have any problems with the railroads in getting shipments to certain areas?

Mr. BURKE. We have problems in certain areas on pickup. We haven't had this problem with the freight forwarders. To the west coast, for instance, we were getting delay of up to 14 days. We have

gone through and made a study as to what we have done, and the freight forwarder has cut it down to 7 days. Our product is of high value. This means you have an inventory element from time to time.

Mr. FRIEDEL. In other words, you get better service from a freight forwarder than you do from the railroads; is that it?

Mr. BURKE. We get it through the freight forwarder.

Mr. FRIEDEL. But you get better service through the freight forwarder than from the railroad?

Mr. BURKE. That is correct.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. Mr. Burke, you are manager of physical distribution for Buxton. What does that mean, shipping department?

Mr. BURKE. No, sir. I have the responsibility of getting our product to all parts of the world, and also maintaining distribution service in all parts of the world. I manage distribution centers, and I have a staff which runs these.

Mr. DEVINE. You say on page 2 of your statement that the freight forwarder is important to you because of your "inability to ship the products on a competitive basis."

Would you enlarge on that a little bit?

Mr. BURKE. The context of that was that we had a recent situation on the west coast where we could not expand our business. Our major competitor is located in the Midwest. Our product, as well as theirs, is a fair trade item. We ship, say, a \$5 wallet to the west coast. This gentleman also ships a \$5 wallet to the west coast. Then the prime factor becomes as to what the freight is that is involved.

I will have to say the product is almost equal in quality as such. So, therefore, we would not be able to expand our operation out there.

Mr. DEVINE. Is that generally the same problem in shipping from the Midwest to Massachusetts?

Mr. BURKE. I am quite certain—I will not go on record as saying this—that they ship from there by freight forwarder as well.

Mr. FRIEDEL. Mr. Kuykendall?

Mr. KUYKENDALL. Mr. Burke, what do you hope to gain from the passage of the bill you are recommending passage of?

Mr. BURKE. I am hoping this would give us lower cost, or certainly maintain the cost of freight.

Mr. KUYKENDALL. Who is going to pay the difference in this income, here, to the industry?

Mr. BURKE. I am concerned with actually who is going to get the savings. I hope it will be the retailer.

Mr. KUYKENDALL. You are primarily here to get the savings; is that correct? I don't blame you.

Mr. BURKE. Savings for our particular customer, which is the consumer.

Mr. KUYKENDALL. Most men in your position are interested in the stockholders, too.

Mr. BURKE. Yes, sir.

Mr. KUYKENDALL. Why do you think that the freight forwarders who are here asking for this legislation for survival, they say, were able to, without this legislation, give you such a tremendous advantage when you switched to them?

Mr. BURKE. I don't believe it is a point of survival, personally. As

I mentioned before, I like to see these people improve their scope of operation, and this is why I would give this testimony on their behalf.

Mr. KUYKENDALL. What percentage of your overall freight would you say stays in a truck from the time you release it until the time it arrives at a retail store?

Mr. BURKE. Stays in a truck?

Mr. KUYKENDALL. Yes.

Mr. BURKE. I would say 90 percent or better, to the time it gets to the ultimate consumer.

Mr. KUYKENDALL. How much of this goes piggyback?

Mr. BURKE. I would say two-thirds of it.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Thank you very much, Mr. Burke.

Our next witness will be Mr. Bernard Handelsman, president of the Textile Association of Los Angeles.

STATEMENT OF BERNARD J. HANDELSMAN, PRESIDENT, TEXTILE ASSOCIATION OF LOS ANGELES, LOS ANGELES, CALIF.

Mr. HANDELSMAN. I would like to make my statement a matter of record and paraphrase it, if I may.

Mr. FRIEDEL. Just a minute until we get copies of the statement.

All right, you may proceed, Mr. Handelsman.

Mr. HANDELSMAN. Thank you.

My name is Bernard Handelsman. I am president of the Textile Association of Los Angeles. Our association is made up of many members.

Our sources are located in many of the Eastern, Northeastern and Southern States. It is estimated that our membership in dollar volume to California soft goods industry in excess of three-quarter billion dollars a year of textile and allied products.

As independent representatives, representing these textile industries on the west coast, we compete, using the following accommodations: styling, fashion trends, textures of new fabrics, etc. It is very important to our customer to have the product availability of these new fabrics, and this is based on the foresight and willingness of our mills and industry to invest in the idiosyncracies and the idocies of a fashion-conscious American public.

Actually, this industry on the west coast has made the average American woman and average American man the best dressed in the world today. We are the fashion and manufacturing leaders in sportswear. We can only have equal competitive opportunity, if all the segments involved in making our products available to the California market (which includes the movement of shipments, practically all of which are l.c.l. shipments) that all these specialized services to our industry have equal competitive opportunities.

Thank you, sir.

(Mr. Handelsman's prepared statement follows:)

STATEMENT OF BERNARD J. HANDELSMAN, PRESIDENT, TEXTILE ASSOCIATION OF LOS ANGELES, LOS ANGELES, CALIF.

Please accept my grateful thanks for allowing me to appear before your Committee to testify in favor of House of Representatives Bill H.R. 10831. My name is Bernard Handelsman. I am president of the Textile Association of Los

Angeles. Our membership is made up of 654 men and women representing in excess of 1500 sources of textile and allied products. These sources are located in the New England area, the Mid-northeastern States, the Southeastern States and the Mid-eastern States. It is estimated that our members ship in dollar volume to California soft goods industry in excess of $\frac{3}{4}$ billion dollars a year of textile and allied products. Our members do business with every conceivable user of textile products which would include the apparel industry, the home furnishing industry, the aero-space industry and many manufacturers of industrial textile products. Since our State produces a very minimal source of materials and as pointed out the majority of our sources are two to three thousand miles away from California, our members use all modes of transportation to move their products transcontinentally. These products move in quantities making up weights from 10 lbs. to 60,000 lbs. per shipment. However, at this point, it is important to emphasize that while the 60,000 lb. shipments are few and far between, the majority of our shipments move in quantities of less-than-carload lots predominantly made up of 150 lbs. to 500 lbs. per bill of lading.

It is also significant to point out that textile products are more often bulky and take up a greater space in a transport conveyance than do other type raw materials; e.g., the weight of several cartons of textiles could well be replaced by three to four times the weight in hardware items, such as hand tools, or iron bolts or nuts. One could visualize several drums of chemicals weighing three times that of textile shipments using the same cubic space. In other words, there are a number of peculiar qualities distinctively identified with the movement of textile products.

Since early in the 1940's, the freight forwarder has led the fight amongst the modes of transportation to accommodate the unusual qualities of the movements of textile products. It is significant that the majority of our raw products are moving transcontinentally today in the services of the freight forwarder.

During this period of upward spiralling costs, our members are deeply concerned and anxious about their ability to continue to sell their products competitively in the California and west coast markets. The movement of freight is a prime factor in maintaining this competitive position particularly in terms of the western markets vs. the eastern markets where the source is closer to the eastern manufacturer. It is therefore vitally important that modes of transportation remain competitive.

It is vitally important that no discrimination exists between forwarder and motor carrier. A discriminatory freight cost favoring one mode over another could eventually create unfair competition amongst the suppliers using transcontinental carriers. Obviously, if a supplier had access to favorable freight costs he could better sell his product than a supplier with a similar product who could not utilize this same carrier. In such a case I can visualize our member spending long hours searching for a means of remaining competitive if he is to continue to sell his product in the California market. The Act to regulate interstate commerce came into existence with the purpose of protecting the public from such an eventuality.

The freight forwarder, moving freight on a single bill of lading under the Interstate Commerce Act, in less-than-carload quantities is essential to our market. He must be permitted to make contracts with the railroads in the same manner as the motor carrier. Motor carriers who are the chief competitors of the freight forwarder have the right to make contracts with the railroads. Obviously, this gives the motor carrier an unfair competitive advantage over the freight forwarder. Such a condition could be most destructive to our California industries. The economy of the Nation in terms of transportation can only remain healthy providing all modes of transportation are working under equal regulations.

Mr. FRIEDEL. Mr. Pickle?

Mr. PICKLE. Does your company, Textile Associates of Los Angeles, classify yourself as a "shipper" or a "shipping association"?

Mr. HANDELSMAN. No, sir. We are an association of textile representatives only. We are an association to help and to work with the textile—individual textile—representatives for our own mutual benefit. We are in no way involved in any product. We are a non-profit-making association of textile mill representatives and salesmen.

Mr. PICKLE. Under the law, wouldn't you classify yourself as a "shippers' association"?

Mr. HANDELSMAN. No, sir. We do not have a product. We are in no way involved with a product. Our individual members sell textiles and have them shipped to their customers or local stocks, but the Textile Association of Los Angeles has no product to sell or ship.

Mr. PICKLE. You use freight forwarders now as a mode of transportation in preference to other modes?

Mr. HANDELSMAN. Yes. I use it as a representative of textile mills, and most of our members use it as representatives and salesmen of textile mills, but the Textile Association of Los Angeles itself has nothing to do with the movement of freight.

Mr. PICKLE. You didn't read your entire statement. You summarized it. I appreciate that, but I assume that one reason you are in favor of the bill is that it will not only give you extra service, but cheaper rates?

Mr. HANDELSMAN. That isn't necessarily the reason I am appearing in favor of the bill. Primarily, I am appearing in favor of the bill because the problem of the textile fashion industry is one in which a tremendous amount—practically all our energies—are involved in the designing and selling of new fabrics, of fashion fabrics, possibly 2 years in advance of their being available to the public. We are so involved in the actual manufacture, styling, and selling of these fabrics that we are trying to eliminate any problem that might exist in moving this product from one place to another.

Right now the competition in our industry is in styling, is in product. It is not in the movement of product, and we want to keep it that way.

Mr. PICKLE. In other words, you are not concerned primarily about what kind of rates you get, what kind of contracts or agreements are reached. All you want is quick service and you think this will give you quick service?

Mr. HANDELSMAN. Correct, sir.

Mr. PICKLE. I don't question you. I am just trying to understand.

Isn't it true that normally when you ship by rail it is a long haul and a slow movement?

Mr. HANDELSMAN. It is always by rail, and I have been in this industry on the west coast for 22 years. I have never shipped any other way than by rail—that is, by freight forwarders—that I can remember.

This primarily means that I do not have to look for a shipper. When I have a shipment coming to me, all I do is order it from my home office. They contact the various mills or printing plants, which can be in any small town on the east coast, and they ship it directly to me, and I don't have to look for that shipment.

Mr. PICKLE. If you ship now almost exclusively by rail, how is this bill going to give you quicker service? How is it going to help you?

Mr. HANDELSMAN. This bill will make the freight forwarder and the motor carrier equal as to the service they can give me and the people I represent. Therefore, we will not have to look for shippers or shipping costs and services as a competitive factor.

Mr. PICKLE. Are you saying that if we pass the bill this might create such competition that the carrier then would be able to ship it faster to you than by rail?

Mr. HANDELSMAN. Not necessarily faster, but in the overall picture they might have an opportunity to drive the freight forwarder to such a position that he doesn't, or he isn't able to give us the service he is giving us now, and then we would have to go out and look for somebody to pick up some small shipment, which might be 150 pounds in some small community in Tennessee, and we just cannot be involved in that type of competition.

Mr. PICKLE. Mr. Chairman, that is all I have.

Mr. FRIEDEL. Mr. Devine?

Mr. DEVINE. I have no questions.

Mr. FRIEDEL. Mr. Adams?

Mr. ADAMS. I have a problem with the idea we are going to avoid the regular rate structure and set up a special contract basis of rates. I heard you say several times you wanted to make the freight forwarder equal with the trucker in making special contracts with the railroads.

As I understand it, the only contract that can be made at the present time would be that type of operation. Under plan 1 there are only certain points where the trucker can obtain the rate, to points where he has a certificate of necessity. There was a plan that was set up for a while, and that gave special contract rights to freight forwarders and others, which were, in the opinion of the ICC anyway, lower than, and not competitive with, what they were giving to the truckers.

At the present time this bill is not to give the freight forwarders the right to carry just between where truckers can presently serve, but across the whole board, which would mean that you would establish a special category of contracts outside of the published rates that would be noncompetitive with the truckers.

So I don't follow your conclusion that this is to make them equal.

Mr. HANDELSMAN. The truckers now also have that opportunity.

Mr. ADAMS. Under what plan or basis do they have an open special contract rate?

Mr. HANDELSMAN. I don't think I could answer that particular question.

Mr. ADAMS. I don't think you can, because I don't think they do. The second point with it is that truckers and railroads are competitive as carriers. A railroad would be cutting off its nose to spite its face to offer a rate to a trucker which is in competition with it, that is superior to what they would give to a freight forwarder.

On the other hand, to give to a freight forwarder or to a shipping association, which would be in competition with the trucker, a specialized rate outside of the published tariff would upset what we presently have, and that is what I hope witnesses will be addressing themselves to.

I don't see they are going to change the railroads at all, or change the truckers at all, or change the pickup services at all.

It seems to me that in this bill we are going to slice up the pie a little differently among whoever is there. Isn't that right?

Mr. HANDELSMAN. It is very difficult for me to answer a question of that sort, because I am basically not a freight man. I am sure that there will be others who can answer that.

Mr. ADAMS. I won't belabor it, then. I will wait for somebody else.

Mr. PICKLE (presiding). Mr. Kuykendall?

Mr. KUYKENDALL. What is considered the weight of a truckload?

Mr. HANDELSMAN. A truckload of fabric, you mean, sir?

Mr. KUYKENDALL. Yes.

Mr. HANDELSMAN. I would consider a carload would be approximately 60,000 pounds.

Mr. KUYKENDALL. What is the maximum amount you may ship by freight forwarder?

Mr. HANDELSMAN. I have never reached that point.

Mr. KUYKENDALL. You say 60,000 pounds?

Mr. HANDELSMAN. As a full carload shipment, but I have never shipped a full carload shipment.

Mr. KUYKENDALL. What is the largest amount you have shipped?

Mr. HANDELSMAN. I think my largest shipment at one time was approximately 6,000 pounds, but I may have as many as 10 different shipments on any one day.

Mr. KUYKENDALL. Is it your understanding that a truck forwarder may accept a full truckload?

Mr. HANDELSMAN. That situation has never come up. I have never been refused the picking up of a shipment or the delivery of a shipment by a freight forwarder.

Mr. KUYKENDALL. But you don't know how much they consider a carload or truckload?

Mr. HANDELSMAN. No, sir. It has never come up.

Mr. KUYKENDALL. Thank you, Mr. Chairman.

Mr. PICKLE. Thank you, Mr. Handelsman, for your testimony.

Mr. HANDELSMAN. Thank you very much.

Mr. PICKLE. Our next witness is Mr. Anthony George, who represents Georges Carriers, Inc., of New York.

Is Mr. George here?

(No response.)

Mr. PICKLE. I call next, then, to the witness stand Mr. J. R. Evans, traffic manager, National Lock Co., Rockford, Ill.

I assume that these gentlemen will file statements.

The next witness will be Mr. Charles B. Ratliff, representing the Morven Freight Lines, Inc., of Morven, N.C.

Is Mr. Ratliff here?

(No response.)

Mr. PICKLE. We are making considerable progress while I am chairman.

Mr. FRIEDEL. Our last witness will be Mr. Harold H. Stevens, general traffic manager, Carstensen Freight Lines, Inc., Clinton, Iowa.

All right, gentlemen, we are still in session and we are liable to call any minute, so the meeting will stand adjourned until tomorrow morning at 10 o'clock.

(Whereupon, at 2:50 p.m. the committee adjourned, to reconvene at 10 a.m., Wednesday, January 24, 1968.)

FREIGHT FORWARDER—TOFC CONTRACTS

WEDNESDAY, JANUARY 24, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2133, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The committee will now come to order. This is a continuation of the hearings we are holding on H.R. 10831, to amend section 409 of part IV of the Interstate Commerce Act, as amended.

Our first witness this morning is Mr. Beardsley, general counsel of the American Trucking Associations.

STATEMENT OF PETER T. BEARDSLEY, GENERAL COUNSEL, AMERICAN TRUCKING ASSOCIATIONS

Mr. BEARDSLEY. Mr. Chairman, members of the committee, just for the record my name is Peter T. Beardsley, and I am general counsel of the American Trucking Association, Inc., 1616 P Street NW., Washington, D.C.

I might add, as I am sure you know, we are the national trade association for the trucking industry representing all forms of motor carriage for hire.

We appreciate the opportunity to appear here today to record our opposition to H.R. 10831. This bill would enable freight forwarders to enter into contracts with railroads for the transportation of forwarder traffic at rates below those charged other shippers for the same service.

We are strongly opposed to contract rates between freight forwarders and railroads. In addition, we believe the time is long past due when forwarders should be divested of the privileged position they enjoy by virtue of section 409 of the Interstate Commerce Act. I am referring, of course, to their right to make contracts with motor carriers whereby forwarder traffic is handled at much lower rates than that of similar traffic of other shippers.

These forwarder contract rates with motor common carriers are subject to the limitation that where the line haul involved "between concentration points and break bulk points in truckload lots * * * is for a total distance of 450 highway miles or more" the contracts may not be for less than the motor carriers' published rates.

We note that H.R. 10831 does not propose to similarly limit the favored treatment which it would extend to forwarder use of rail

transport. We hasten to add, however, that even if such a provision were included, it would not cure the inherent vice of the proposed legislation.

Hearings were held on similar proposed legislation in the 84th Congress in 1956, but it was not enacted. The House bill, H.R. 9548, would have amended section 409 of the Interstate Commerce Act to allow freight forwarders to enter into or operate under contracts with railroads "governing the utilization by such common carriers by railroad and the compensation to be paid therefor, for line-haul movement of freight loaded in or on trailers or other containers and transported on railroad cars suitable for such use."

In short, the proposed 1956 legislation would have allowed forwarders to contract with railroads for lower than published rates in connection with so-called piggyback movements. The forwarders claimed that such legislation was needed because there was "no practical basis on which freight forwarders can legally utilize piggyback service, and second, because the motor carriers who compete with forwarders for traffic already are authorized to use the service on a contractual basis." (Hearings, Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce, 84th Cong., second sess., p. 1158.)

Whatever may have been the validity of the claim, in 1956, that forwarders could not use piggyback service, there can be no such claim today. In fact, a very heavy proportion of forwarder traffic now moves in rail piggyback service.

In the recent hearings conducted by the Surface Transportation Subcommittee of the Senate Commerce Committee on mandatory joint rates and through routes, the forwarder spokesman claimed that legislation such as that under consideration here is needed for "equality of regulatory treatment." (Hearings on S. 751, S. 753, and S. 1768, p. 162.)

H.R. 10831 will not achieve equality of regulatory treatment. It will simply intensify an already evil situation, transportationwise, by multiplying the opportunities for forwarders to take advantage of the carriers who transport their traffic.

The proper way to achieve such equality is to repeal the provisions of section 409 of the Interstate Commerce Act. This would place all shippers on an even keel. At the same time it would bring to life the hitherto largely dormant provisions of section 408, which would continue to allow forwarders to have their shipments moved at lower rates than that of other shippers, provided only that the forwarders show—as they have always claimed they can—that the transportation of their traffic is less costly to the carriers which handle it than the traffic of other shippers.

This is the solution which our executive committee, composed of representatives of 51 State trucking associations, at its regularly scheduled meeting on Thursday, January 18, 1968, unanimously directed us to seek. I might add that our executive committee is composed of 105 members, representing all forms and species of motor carriers, for-hire and private.

H.R. 14733, introduced by Congressman Adams, would achieve that result—repeal of section 409.

Freight forwarders, of course, have been in business for many years. They were originally successful because of the unwillingness or inability of the railroads to move small shipments with reasonable dispatch. The forwarders solicited these small shipments on the same rate basis as the rail less carload charges, and promised faster service than the railroads gave. By consolidating these small shipments into volume lots, the forwarders were able—at one and the same time—to get the much better service the railroads provided for carload traffic, and to live off the spread between the relatively high less carload rates they charged the shipper and the significantly lower volume rates they paid the railroads.

Thus the forwarder achieved the status of a sort of “middleman” in the transportation field. In their relations with the underlying shippers, forwarders accept the responsibility of a common carrier. In their relations with the various common carriers which actually transport the freight, forwarders are shippers—shippers who constantly are seeking special and favored treatment.

The very definition of a “freight forwarder” in section 402 of the Interstate Commerce Act makes the forwarder’s status clear. He is—

- (1) a person other than a carrier subject to parts I, II, or III of the Interstate Commerce Act;
- (2) who assumes common carrier responsibility with respect to shipments tendered by the shipping public;
- (3) who undertakes the assembling and consolidation of shipments, and the break bulk and distribution thereof; and
- (4) who uses, for all or any part of the transportation of shipments moving in forwarder service, the services of a rail, motor or water common carrier regulated by the Interstate Commerce Commission.

Early in the day, when the railroads became aware of the inroads by the forwarders into what they considered their exclusive domain, they attempted to charge the forwarders their less carload rates with respect to each individual shipment which the forwarders tendered in consolidated volume lots. Had the railroads succeeded, the forwarders, of course, would have been out of business. But the forwarders contended that their relationship to the railroads was that of a shipper, and that the railroads had to charge them the same rate as they did other shippers for the same volume of traffic.

They were successful in their contention. The Supreme Court, in *Interstate Commerce Commission v. D. L. & W. RR.*, 220 U.S. 235 (1911) said:

The contention that a carrier, when goods are tendered to him for transportation, can make the mere ownership of the goods the test of the duty to carry or, what is equivalent, may discriminate in fixing the charge for carriage, not upon any difference inhering in the goods or in the cost of the service rendered in transporting them, but upon the mere circumstance that the shipper is or is not the real owner of the goods, is so in conflict with the obvious and elementary duty resting upon a carrier, and so destructive of the rights of shippers, as to demonstrate the unsoundness of the proposition by its mere statement.

And in *C., M., St. P. & P.R. Co. v. Acme Fast Freight*, 336 U.S. 465, 467-68 (1949) the Supreme Court said:

In its relations with its customers, a forwarder is subjected by the act to many of the requirements and regulations applicable to common carriers under parts I,

II, and III of the act. . . . In its relations with these carriers, however, the status of the forwarder is still that of a shipper.

I might add parenthetically here, if I may, it seems to me a little bit late in the day for anyone to express surprise that the ICC or anybody else would consider that forwarders occupy a dual capacity.

Before Federal regulation of either motor carriers or forwarders, motor carriers transported forwarder traffic on a contract basis. When motor carriers came under Federal regulation in 1935, these contract arrangements were declared unlawful by the ICC, whose decision was ultimately upheld by the Supreme Court in *U.S. v. Chicago Heights Trucking Co.*, 310 U.S. 344, 60 S. Ct. 931 (1940).

In its unanimous opinion the Court noted that "forwarders are shippers protected by the Interstate Commerce Act" and that the Commission's action in holding the contract arrangements unlawful was an exercise of its "power to protect and maintain a transportation system free from partiality to particular shippers."

The Court also noted that "forwarders in using railroads enjoy no special tariff rates and pay the same published carload and less than carload rates that other shippers pay."

It was certainly the intention of Congress, in enacting Federal regulation of freight forwarders, to maintain that situation.

When the legislation to provide Federal regulation of freight forwarders (S. 210) was being considered by the House, Congressman Wolverton referred to the abuses which had arisen by virtue of the "large volume of tonnage which (forwarders) control (and use) as a means of inducing the rail lines to establish rates specially designed to accommodate this particular (forwarder) traffic."

He noted that "by playing one railroad against another and by playing railroads against motor carriers, the forwarders have been able to obtain concessions from the railroads which have greatly aided them in extending their operations." He quoted from the decision of the Interstate Commerce Commission in *Freight Forwarding Investigation* (229 ICC 201, 302 (1938)), as follows:

The significant fact is that each railroad is constantly in jeopardy of losing its forwarder traffic to a competing railroad unless it allows or condones certain practices which are economically unsound, legally questionable, or clearly unlawful.

Congressman Wolverton then referred to some of these "preferential arrangements so secured by the forwarders," as follows:

- (a) Occupancy of railroad facilities at inadequate rentals;
- (b) The loading and unloading of forwarder freight at below cost charges;
- (c) The performance of special train and switching service not provided for shippers generally; and
- (d) The observation and application of such "methods and rules as in effect enabled forwarders to have their traffic transported at much more favorable rates of compensation than other shippers could secure."

And he stated "that there should be an end to abuses which impair the revenues of the carriers whose services are utilized and their ability to serve the public in an efficient manner." (87 Cong. Rec. 8217 (1941).)

In his remarks, Congressman Wolverton referred to the fact that "forwarders have favored the authorization of joint rates as a perma-

ment matter." His comments are particularly pertinent in connection with H.R. 10831; and I might say particularly pertinent in connection with the contention made by the forwarder witness yesterday as to what the intention of Congress was when it first regulated freight forwarders:

Upon most careful consideration, however, your committee has concluded that the likelihood of abuse is so great, and injury to the underlying carriers so probable, as to make it imperative, in the interest of the public and for the good of the transportation system of the country as a whole, that Congress should adopt the definite policy of forbidding such rates.

* * * * *

The principle underlying reason why the forwarders desire to obtain authority to make joint rates with the actual carriers whose services they utilize, is in order to enable them to secure transportation at a less price than the regular rate of the carrier, and at a price which will not be open and available to other shippers. Even were such authority surrounded with all possible safeguards, the tremendous bargaining power which the larger forwarders would have by reason of the great amount of traffic which they control, would inevitably enable them to divert from the carriers performing the actual transportation important amounts of revenue greatly exceeding the value of the service contributed by the forwarders themselves. (Id., 8218)

The fear expressed by Congressman Wolverton of the forwarders' power, by virtue of the volume of freight they control, to force concessions from carriers remains entirely justified. The great bulk of the forwarding business is concentrated in the hands of four or five large forwarders or forwarder groups.

One forwarder "family," United States Freight Co., controls a dozen or more freight forwarders, and accounted for \$230.5 million, or almost 44 percent of the nearly \$527 million of forwarder revenue reported for 1966 to the ICC by 61 class A forwarders.

The same combine paid out over \$152 million for purchased transportation in 1966, which constituted 44 percent of the total transportation purchased by these same 61 class A forwarders.

Our organization has opposed the forwarders' continuing efforts, over many years, to achieve a highly favored position in transportation and to enjoy the benefits of either shipper or carrier status whenever one or the other would best suit their convenience and pocket-book.

Almost 18 years ago, we opposed the provisions now found in section 409, whereby forwarders are given the privilege of playing off one motor carrier against another, with the ultimate result that they pay, for essentially the same service, considerably lower rates than other members of the shipping public. See hearings on H.R. 5967, Subcommittee on Transportation of the House Committee on Interstate and Foreign Commerce, 81st Congress, second session (1950), pages 148-181.

In our testimony we pointed out that enactment of the legislation which amended section 409 as it presently reads would ignore the findings and conclusions arrived at by the Interstate Commerce Commission after thorough review of a voluminous record of hearings it conducted in relation to the subject involved.

Nevertheless, the legislation was enacted. The amendment to section 409, of course, placed the forwarders in the same position with respect to contract rates with motor carriers that they had occupied prior to regulation of motor carriers.

This same legislation changed the definition of freight forwarder to specifically recognize the obligation, which forwarders have always had, of common carrier liability in their relations with their customers. This, of course, in no way altered the forwarders' relationship to the carriers regulated under parts I, II, and III of the act.

In the hearings on H.R. 9548 in the 84th Congress, to which I have referred, an ATA witness pointed out that the fears we expressed at the time section 409 was amended to allow forwarders to make contract rates with motor carriers had been substantiated. He referred to our testimony in 1950 in which we had opposed the amendment of section 409 to allow forwarders to make contract rates with motor common carriers.

He noted that we had said that forwarders would obtain rate concessions from the motor carriers; that because the ICC's authority to administer the provisions of section 409 was extremely limited it would, at best, be able to make only a token effort to police the contracts; and that section 409 had proven to be weak and completely ineffective.

If any further proof of that, Mr. Chairman, is needed, I think the letter which the Commission directed to you under date of January 23, with respect to amendments which they say are needed, even if this bill is approved, clearly indicates their present inability in any real way to regulate the operations which are going on now pursuant to section 409.

He further stated:

In all my experience in the transportation field over the years, and in contacts with our carriers and their representatives, I have found that no section of the Forwarder Act is subject to so much criticism as is section 409 (a). I know of no provision that has caused so much frustration among our motor carriers in their dealings with their freight forwarder friends as has this provision.

I am not unmindful of the fact that section 409 was the outgrowth of effort to compromise conflicting interests. The difficulties predicted by our industry have mushroomed into an unbearable situation. For example, the section authorizes motor carriers to establish just and reasonable conditions and compensation, but no one seems to be able to determine where the burden of proof lies in establishing the reasonableness of the level of the compensation. Proceedings before the Commission have been frustrating and unavailing.

Then too, in the second proviso, the term "in truckload lots" is used. The absence of any definition of the term "in truckload lots" has rendered this limitation completely ineffectual.

There have been patent departures from the provisions but there appears to be no penalty for the departures. (Hearings, Subcommittee on Transportation and Communications of the House Committee on Interstate and Foreign Commerce, 84th Cong., second sess., p. 815 (1956).)

I think the Commission said the same thing in the letter I just referred to. To which I would only add that in the intervening years the situation has not improved. The Commission can still apparently do nothing to assure that the "contract" rates which the forwarders pay motor carriers are reasonable or, for that matter, that they even equal the cost of performing the service.

The bill under consideration would compound the problem by vastly increasing the ability of forwarders to profit—not because of the service they render—but because of the economic power they wield through the tonnage they control.

One of the numerous witnesses who testified in opposition to H.R. 9548 in 1956 was the late Fred Carpi, vice president of the Pennsylvania Railroad Co.

He concluded his statement by saying that :

The eastern railroads for which I speak earnestly ask that there be no relaxation from the salutary principle adopted by the Congress in the original well considered legislation, that freight forwarders should pay the published rates of the railroads for all services rendered to them.

He summarized the forwarder position and rebutted it so well that his reasoning bears repeating today (hearings, supra, pp. 1211-1212) :

* * * the principal argument offered by the proponents of H.R. 9548 is that freight forwarders are in competition with motor common carriers, that the latter can make joint rates with railroads covering piggyback service, and that unless contract rates between railroads and forwarders for such services are authorized, the forwarder will be prejudiced in such competition.

The principal answers to this argument may be summarized as follows :

1. Freight forwarders and motor common carriers are not comparable types of transport agencies.

Motor carriers, like railroads, provide actual physical carriage and supply the necessary facilities therefor. Moreover their operating routes are fixed as to location. Ownership or control of the facilities for physical carriage by freight forwarders is not essential to their operation, and they customarily provide little physical transportation service. Also they can shift their operations to different routes as they wish.

There is, therefore, no such similarity in their situations as to require an identity or similarity of treatment. This is doubtless the basic reason why Congress authorized joint rates between railroads and motor carriers and not with forwarders.

2. The relation between railroads and motor carriers in the piggyback operation is that of connecting carriers participating in joint rates. A freight forwarder, not being a physical carrier, cannot be said to connect with a physical carrier, and cannot properly be a participant in joint carriage under a joint rate.

* * * * *

Normal competition between carriers for the traffic of the shipping public should rest upon the relative economies inherent in the several types of carriage. But authorizing forwarders to make contracts covering their rail service would not award their traffic to the carrier or types of carrier having the lowest real costs, but would throw it to the lowest bidder without regard to the relative economies actually inherent in the several types of carriage or as among individual carriers.

I would say, Mr. Chairman, that that is just as true with respect to the present situation in which motor carriers or at least some of them handle the traffic for much less than the going rates for other shippers.

In conclusion let me say with deference, that allowing forwarders to contract with motor carriers for lower rates than those paid by other shippers of similar goods was a bad mistake.

The forwarders now ask you to compound that error. Not satisfied with their free rein to obtain unreasonably low rates from motor carriers by virtue of the traffic they control, they again seek to increase their profits, by increasing their ability to play railroads against motor carriers.

For the reasons so clearly expounded by Congressman Wolverton when Congress first regulated freight forwarders, we ask that you reject H.R. 10831.

At the same time, we urge that you do equity in the area involved; that is, that you take away the privilege the forwarders enjoy—with no economic justification therefor—to make what amount to secret contracts with motor carriers at unconscionably low rates, by repeal of section 409 of the Interstate Commerce Act. To that end, we urge that you enact H.R. 14733.

Mr. Chairman, that completes my statement.

Mr. FRIEDEL. In the early part you said you would be in favor of H.R. 14733, repealing section 409 of the Interstate Commerce Act. You are in favor of that?

Mr. BEARDSLEY. Yes, sir.

Mr. FRIEDEL. Would you be in favor of repealing the right that you have to negotiate with the railroads?

Mr. BEARDSLEY. I am not in favor of repealing any joint rates between carriers if that is what you mean, Mr. Chairman.

Mr. FRIEDEL. Is it just because of competition or are you fearful that the freight forwarders will get more business if this bill went through and they could give better service to the public?

Mr. BEARDSLEY. The freight forwarders in my estimation are entitled to get as much business as they can on the basis of legitimate competition. In that sense I am talking about the freight forwarders traditional function of consolidating small shipments into large ones and living on the spread between the rates they charge and the difference they pay.

I don't think anybody, carrier or forwarder or anyone else, has the right to in effect get rate concessions not on the basis of the ability to handle the traffic at lower cost but simply because they have a tremendous amount of tonnage which they say, "Here it is, bid for it."

Mr. FRIEDEL. You realize that there are a great many shippers who can't get their products to the different markets and the freight forwarders and also the shipping associations do a wonderful job on less than carload lots.

I think the general public benefits by that, yes.

Mr. BEARDSLEY. Yes, I don't doubt that. I was sort of frankly amused yesterday when one of the forwarders remarked something about the selectivity of motor carriers.

I think of all the people who should be talking about selectivity that it ill behooves any forwarder to do it. I think the motor carriers are handling the bulk of the small shipment traffic particularly at outlying points.

I would not have made any remarks about this except for a previous remark of a forwarder witness because I don't criticize anyone for wanting to make a living in the job he is doing.

The problem of the small shippers by and large I think is simply that a lot of people expect a lot of service for less money than it costs to render it.

Mr. FRIEDEL. I have been told that the motor carriers, short haul, would be in favor of the bill. It is only the ones that have the long haul who are opposed to this bill.

Mr. BEARDSLEY. I don't believe that, Mr. Chairman. I certainly think this: The forwarders have succeeded over the years in finding carriers which for one reason or another, take a situation, where a carrier has a backhaul situation where he may take forwarder traffic at much less than his going rates. This is for the traffic he can get, but he can't get this at going rates.

You certainly can't divide the motor carrier industry and say only the long-haul carriers would be opposed to this and the short-haul

carriers would be in favor of it. That is not the situation I am certain.

Mr. FRIEDEL. On the first page you say:

This bill would enable freight forwarders to enter into contracts with the railroads for the transportation of bulk traffic at the rates below those charged other shippers.

Mr. BEARDSLEY. Yes.

Mr. FRIEDEL. Do you think they would get rates lower than the rates you get today?

Mr. BEARDSLEY. We don't get below—we don't get lower rates from the railroads. This is a situation where two common carriers join together to file a joint rate. I don't know what they would get. I know they don't intend to enter into any contract rates with the railroads which are not lower than they are now paying.

Mr. FRIEDEL. Mr. Pickle.

Mr. PICKLE. Thank you, Mr. Chairman.

Mr. Beardsley, I was unavoidably detained and did not get here to hear your whole statement. I am going to read it carefully. I am interested in getting your views. I hope that I will have a chance to visit later with you if you—if all the questions have not been brought out at this hearing.

Now the hearings that have been going on thus far have had a lot of talk about giving the freight forwarder the right to make contract rates with the rails and particularly they point out because of the innovations in shipping, containerization, this creates the need for a change in law.

Now as a practical matter if this particular bill, H.R. 10831, were passed, what type of rail transportation would most be used by the freight forwarders? Would it be a specific TOFC type of expansion or would this be a new approach? What is your judgment?

Mr. BEARDSLEY. This is an assumption on my part, Mr. Pickle. More and more as the years go by the forwarders are getting more and more into the piggyback service. It represents a better service than boxcars.

Certainly I don't criticize them for wanting that piggyback service which they get under plans 3 and 4.

Mr. PICKLE. If TOFC then were the expanded area and it would be used by the freight forwarders too, what specific plan would most create competition for you as a trucker?

Mr. BEARDSLEY. I am not certain that I understood what you said, Mr. Pickle. The forwarders would presumably continue to rely on the plans 3 and 4 rates of the railroads to move their tonnage.

Mr. PICKLE. Actually *Ex parte* 230 sets out plans 1, 3, 4, and what—5?

Mr. BEARDSLEY. Yes.

Mr. PICKLE. I assume that the ICC felt this was an attempt to equalize the problem involved. Then it really addresses itself to the services to be met under these plans rather than rates of contract?

Mr. BEARDSLEY. Yes.

Mr. PICKLE. There is a possibility that under *Ex parte* 230, the ICC could make further recommendations that might address themselves to the problem involved rather than relying on specific legislation.

Mr. BEARDSLEY. There is nothing about the Commission's decision in *Ex parte* 230 as I read it or understand it that in any way goes, for example, to the level of the rates or anything of that nature.

As you pointed out that dealt essentially with the service to be provided and to whom it was to be provided, not at what rates it was provided.

Mr. PICKLE. I am a little surprised that you would recommend the repeal of section 409. I see in your testimony that you think then it probably was a mistake to have allowed the freight forwarder to negotiate with the motor carriers for a rate?

Mr. BEARDSLEY. Yes, sir.

Mr. PICKLE. Therefore you want to take that away. I assume then this will let everything operate on a published rate basis?

Mr. BEARDSLEY. No; as I pointed out section 408 would remain in the act. Section 408 says that the motor carriers can charge forwarders less rates than they charge the general shipping public if the forwarders can show as I pointed out, as they always have claimed they can, that the transportation of their traffic is less costly than the transportation of other shippers' traffic.

Section 408 would still allow motor carriers to quote lower rates to forwarders but they would have to make this showing, not on the basis of how much traffic we have and what do you bid for it.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Let me continue on Mr. Pickle's line for a moment. In the matter of section 408 you suggested that if the forwarder can prove to the carrier that the cost of handling is less than normal freight he may be given a lower rate.

I suppose in case of this decision on the part of the carrier to give a reduced rate, if this were being questioned this would have to be done through the ICC; is that right?

Mr. BEARDSLEY. Yes, sir.

Mr. KUYKENDALL. On whom does the burden of proof lie, with the shipper, the carrier or the ICC, or the plaintiff in this case, to prove what the cost of handling really is?

Mr. BEARDSLEY. The section itself does not say on whom the burden of proof would lie. This is one of the problems.

Mr. KUYKENDALL. Whom would you assume it would lie with, the plaintiff?

Mr. BEARDSLEY. I would assume it would lie probably with the plaintiff.

Mr. KUYKENDALL. Would it be a competing truckline?

Mr. BEARDSLEY. Yes.

Mr. KUYKENDALL. Do you know of such a case?

Mr. BEARDSLEY. No, because the forwarders have not chosen to use 408. Those rates have to be published. You have to make proof that these differences in the charges are justified by differences in the conditions under which the freight is transported.

That is the real reason as the forwarder witness said yesterday that assembly and distribution rates under 408 are not satisfactory. He meant they were not satisfactory to the forwarders. I can understand why they would not be.

Mr. KUYKENDALL. This is strictly a hypothetical question. I am asking for a personal answer here. Which would you object to the

most—the idea of an advantageous rate being given by a truckline to forwarders—do you object most to that being passed on in the form of a competitive rate or forwarder—

Mr. BEARDSLEY. I would like to put it this way, Mr. Kuykendall. Under provisions of 408 a motor carrier would see what another motor carrier was going to charge for the transportation of forwarder traffic. He would then have the right to file a complaint with the Commission charging that this rate was unreasonably low considering perhaps the nature of traffic or any number of reasons. Now he would be put to the proof. Now if he failed to show that his contention was correct; that is tough.

That situation prevails every day all over the transportation field. The mere fact that he said the rates were unreasonably low would not mean that he could prove they were.

Then if he could not then those rates under 408 would stay effective. He would have to prove his point. I see nothing wrong with that. No carrier has the right to demand that another carrier handle shipment at rates that he, the demanding carrier, charges?

I think he has the right to insist that the other carrier may not burden and weaken the rate structure and ability of all carriers to handle traffic by quoting rates which are not compensatory, to use the Commission's usual term, under the circumstances that we are talking about.

Mr. KUYKENDALL. In other words, you object primarily to the use of this advantage for unfair competition?

Mr. BEARDSLEY. Yes.

Mr. KUYKENDALL. For the sake of the record and the edification of one of the members of the subcommittee, would you tell me how the joint rate is published?

Am I right in assuming that here is the way a joint rate might take place? I am going to go back to my district now, that we have a place down in Arkansas that is not rail connected, the truckline would pick up or make up a truckload and he would bring that truckload to Memphis and then go piggyback to Knoxville.

When you talk about a published joint rate, of course the customer in, let us say, Pine Bluff, Ark., would be quoted one rate to Knoxville. Is this right?

Mr. BEARDSLEY. That is right and it would be the motor carrier rate.

Mr. KUYKENDALL. What do you mean by joint rates?

Mr. BEARDSLEY. I mean that the railroad and the motor carrier agree between themselves as to what their division of the charges that are charged the shipper will be.

Usually depending on the quantum of transportation or work involved, through whose terminals the freight goes or over whose docks it goes.

Mr. KUYKENDALL. Is there a set piggyback rate from Memphis to Knoxville?

Mr. BEARDSLEY. Quite frequently.

Mr. KUYKENDALL. It is not set by ICC?

Mr. BEARDSLEY. No, rates ordinarily are not set by the ICC to begin with. The carriers have the initial job of setting them.

Mr. KUYKENDALL. Would there be a set piggyback rate from Memphis to Knoxville on interstate commerce?

Mr. BEARDSLEY. Yes, you mean—

Mr. KUYKENDALL. Let us say you were in Memphis—would you pay always exactly the same thing to Southern Railroad to haul piggyback from Memphis to Knoxville?

Mr. BEARDSLEY. Yes, I think they would. This does not mean that after a while, for example, one side or the other might not suggest there should be consideration that the rate be changed up or down, that the division of that rate be changed up or down. As far as the motor carrier movement is concerned, the motor carrier publishes the rate from Pine Bluff.

We will say the rate is a dollar. The shipper tenders that traffic to the motor carrier. The motor carrier has in his tariff a statement that says "Unless you tell me you do not want me to use piggyback service I reserve the right to use it or not as I deem best in moving your shipment from Pine Bluff to what was the other point?"

Mr. KUYKENDALL. Pine Bluff to Knoxville.

Mr. BEARDSLEY. To Knoxville.

Mr. KUYKENDALL. You mentioned deciding on the share of joint costs between Pine Bluff and Knoxville. Don't they just quote you a rate?

Mr. BEARDSLEY. Yes, but I don't think they just reach up in the air and quote you a rate. I don't think the rates are made that way or the divisions of rates are made that way. There is undoubtedly a discussion between these two carriers both of whom are carriers and who are utilizing their services jointly to perform this service for the shipping public.

True, eventually these things come out in the form of a certain charge for a trailer but I don't believe that the railroad on the one hand or the motor carrier on the other just reaches up in the sky and says I want so much and the other says I will give you so much. There is an individual investigation made of the cost of each performing that service. The railroads are not joining with the motor carriers to provide piggyback to help motor carriers.

Mr. KUYKENDALL. They compete with each other?

Mr. BEARDSLEY. Of course they do. In most instances where railroads are joining with the motor carriers to provide plan 1 service the railroads are satisfied that otherwise it is business that is going all the way by highway.

Mr. KUYKENDALL. Would they be under any burden to prove that they are not quoting below cost?

Mr. BEARDSLEY. They would be; there is nothing in the law to stop another railroad from contending that the rates—

Mr. KUYKENDALL. You say there is a law that would prevent if there was a plaintiff to prove it.

Mr. BEARDSLEY. Yes.

Mr. KUYKENDALL. The railroad may not quote you a rate for piggyback service below their cost of doing business, is that right?

Mr. BEARDSLEY. This gets to the question of division of the through charge. There is a law that says the Commission can pass on those divisions and determine whether they are reasonable.

Mr. FRIEDEL. May I interrupt you for a moment?

Mr. KUYKENDALL. Certainly.

Mr. FRIEDEL. I think Mr. Kuykendall is talking about plans 2, 3, and 5 and we are talking about plan 1. I think it is confusing the record.

Mr. BEARDSLEY. I don't mean to confuse it. Would it help if I shortly described my understanding of the various plans?

Mr. KUYKENDALL. I am trying to learn something. I don't know what plan I am talking about.

Mr. BEARDSLEY. I will give you my understanding. There are a lot of refinements of these plans but they generally are numbered 1, 2, 3, 4, 5. One is a so-called substituted service where the motor carrier and the railroad get together, and as I said before the motor carrier publishes in its tariff that it will use the services of the railroads between the points where the railroad has its ramp.

A motor carrier can't do that unless it has authority to serve those points. The Commission has recognized this as essentially a joint rate, through route between two common carriers.

Plan 2 is a completely all rail rate in which the railroad performs the whole service, utilizing its trailer to go to the shipper's dock and pick up the freight and it moves to the rail ramp and the railroad takes it on to destination. A complete service.

Plan 3 is a so-called open tariff under which the railroad charges the published rate for the transportation of loaded trailers, usually two to a flatcar. This is a plan that moves, I think, significant forwarder tonnage.

I might say on plan 3 the trailer has to be furnished by the shipper, whoever he may be. The railroad does not undertake to furnish the trailer.

Plan 4 is the same as plan 3 except that there the shipper has to furnish both the trailer and the flatcar.

Plan 5 is what I would call an end-to-end movement, again involving joint rates, but through routes between railroads and motor carriers in which the shipment moves part of the way by rail and the rest of it—the rest of the way by motor or vice versa.

Mr. KUYKENDALL. The present law says that you may not give the forwarder the reduced rate over 450 miles; is that right?

Mr. BEARDSLEY. In truckload lots.

Mr. KUYKENDALL. Let us assume and talk about a haul of 500 miles. You mentioned 408 as being an area of negotiation, possible negotiation, that I assume you recommend that the forwarders use. Do they habitually use section 408 in distance over 450 miles?

Mr. BEARDSLEY. They don't habitually use 408 for anything. They don't like it for the reasons I previously stated.

Mr. KUYKENDALL. That is all they have for over 450 miles.

Mr. BEARDSLEY. That provision is in 409 of the act, not 408.

Mr. KUYKENDALL. Section 409 is up to 450 miles.

Mr. BEARDSLEY. That contains the provision that motor carriers must charge their published tariff rates for distance over 450 miles but the language is so indefinite when it says in truckload lots.

Mr. KUYKENDALL. Let me make the question clear. You mentioned that there is a section, I thought it was 408, whereby a freight forwarder may if he can show that his cost of doing business to the railroads is less than the normal obtain a lesser rate, on that basis.

You mentioned in your testimony about——

Mr. BEARDSLEY. I said with respect to the motor carriers.

Mr. KUYKENDALL. Yes, I am talking about motor carriers. I have switched back to motor carriers. Are they using this right which is given to them by 408?

Mr. BEARDSLEY. Mr. Kuykendall, they are not using, as far as I know, anything under 408. They don't want 408 rates because they are required to show that the lower rates that they get are justified by the differences in the cost of handling the traffic.

Even if they could show a differential it would not probably be anything like the differential they presently enjoy by virtue of their bargaining ability. Consequently they have no use for 408 rates.

Mr. KUYKENDALL. They cannot bargain for anything over 450 miles?

Mr. BEARDSLEY. The statute says they can't but the Commission says in its letter it is very ineffectual because the language says in truck-load lots.

Mr. KUYKENDALL. I am talking about over 450 miles.

Mr. BEARDSLEY. Supposing a motor carrier enters into an agreement with the forwarder which I understand is being done not too infrequently which quotes a so-called any quantity rate, so much a hundred pounds for any quantity.

The claim is made that is not a truckload rate even though the forwarder tenders 30,000 pounds of freight. Where you get your long-distance movements, I believe that by and large the railroads have them now and probably would have them almost under any situation that really reflected the cost of performing it because they will quote lower rates than we can quote for significant tonnage over long movements.

Mr. FRIEDEL. Mr. Beardsley, I have one question; were you here yesterday?

Mr. BEARDSLEY. Yes, sir; I was.

Mr. FRIEDEL. Yesterday's witness, Mr. Morrow, testified that in executive 230 the Commission prescribed exactly what Congress has refused to authorize by change in the law and found that the motor carriers may ship their freight in trailers by rail and pay the open tariff rates but they could use plan 1 and ship their trailer by rail and pay an undisclosed contract charge to the railroads.

I have listened this morning to your condemnation of the ability of large shippers, whether you call them carriers or not, who have goods transported under undisclosed contract charges rather than published rates.

My question is, Why should you have the right to piggyback under plan 1 under a negotiated contract any more than anyone else?

Why should you not, as a carrier, when utilizing the services of another carrier, do so under plan 4 where you enter into joint rates as envisioned under plans 2 and 3 where the shippers pay the published rates?

Mr. BEARDSLEY. When you say plan 4 I believe you mean plan 5.

Mr. FRIEDEL. Yes, plan 5.

Mr. BEARDSLEY. The answer to your question is that motor carriers and railroads are each of them common carriers. Historically common carriers have entered into joint rates and made arrangements between themselves as to what the division of those joint rates will be.

That is the basis on which I believe that these common carriers should be allowed to continue to do that same thing. Joint rates are

necessary between common carriers because every carrier does not serve every point.

Mr. FRIEDEL. Then it should apply to both.

Mr. BEARDSLEY. All common carriers in their relationship to each other. The forwarder is not a common carrier in its relation to other common carriers no matter what they say.

Mr. FRIEDEL. Plan 1 is joint contract.

Mr. BEARDSLEY. Plan 1 is commonly referred to as substitute service. The thing that I—that intrigues me so much is that everyone talks as though it only went in one direction.

The railroads have historically for years used the motor carriers, sometimes their own subsidiary, sometimes other ones under the same deal in the reverse direction, where they have substituted motor carrier service for the railroad service.

But the Commission has recognized, a few technicalities aside, that the practical operation of plan 1 is for all intents and purposes a joint rate through service between common carriers.

Mr. FRIEDEL. Part 5 is negotiated contract.

Mr. BEARDSLEY. No, sir, it is a different type of a joint rate between common carriers. Essentially the difference is that a motor carrier under plan 1 is utilizing the railroad to operate between points it can serve.

Under plan 5 the motor carrier and the railroads get together and stretch out the operations that each of them can serve by going together, putting together. That is what I referred to earlier as an end-to-end operation as distinguished from simply substituting the service of one carrier for another between the points involved.

Mr. FRIEDEL. Do you have the sole privilege to do that, the truckers rather than the forwarders?

Mr. BEARDSLEY. The water carriers would have it if their operations physically lent themselves to that operation.

The water carriers would have it. Any common carriers, water, motor, or rail, are privileged to join together and make joint rates for through routes. In fact there is quite a movement on now not only to allow them to do it as a matter of privilege but to require them to do it as a matter of mandate.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Does a joint rate have to originate with the trucker?

Mr. BEARDSLEY. Either carrier can originate the movement under a joint rate.

Mr. KUYKENDALL. In other words, the railroad may contract to haul from A to B to C by truck on his rail freight, is that right?

Mr. BEARDSLEY. No, sir. What is actually done under joint rate is that the two carriers get together, and I am not a technical tariff man, let me be the first to confess that, but they agree between themselves—I am not talking about plan 1 piggyback, that is a little bit different—but they agree between themselves that the rate between here and there will be so much money. They also agree as to how they are going to divide that rate.

Mr. KUYKENDALL. May a shipper deal only with the railroad even though the last 150 miles of the trip will be by truck?

Mr. BEARDSLEY. The shipper ordinarily as a practical matter deals with the carrier who picks up his freight. He may know that the shipment is going to move joint rate but his contract is with the carrier who comes to his dock and picks up the shipment.

Mr. KUYKENDALL. It may be any combination of rail or truck?

Mr. BEARDSLEY. Yes.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. No questions.

Mr. FRIEDEL. I want to thank you very much, Mr. Beardsley.

Mr. BEARDSLEY. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. J. William Harrell, Baltimore Shippers & Receivers Association, Inc. With him there will be Ronald N. Cobert, Esq.

**STATEMENT OF J. WILLIAM HARRELL, GENERAL MANAGER,
BALTIMORE SHIPPERS & RECEIVERS ASSOCIATION, INC.; ACCOMPANIED BY RONALD N. COBERT, GENERAL COUNSEL, AMERICAN
INSTITUTE FOR SHIPPERS ASSOCIATIONS, INC.**

Mr. HARRELL. I intend to introduce my written statement into the record. I will say no more unless the chairman would like me to identify myself and say who I am and what I am doing.

Mr. FRIEDEL. You may do that. I understand you have an amendment to offer?

Mr. HARRELL. First, I am John William Harrell. I am the general manager for the Baltimore Shippers & Receivers Association in Baltimore. I am authorized to testify here in behalf of Baltimore Shippers and its membership of 478 small and large manufacturers.

I am also the chairman of the board of the American Institute for Shippers Associations which represents shipper associations all over the country. Mr. Cobert is the general counsel of both of these associations.

Mr. FRIEDEL. Thank you, Mr. Harrell.

Your full statement will be included in the record at this point.

Mr. HARRELL. Thank you, Mr. Chairman.

(Mr. Harrell's prepared statement follows:)

**STATEMENT OF J. WILLIAM HARRELL, GENERAL MANAGER, BALTIMORE SHIPPERS &
RECEIVERS ASSOCIATION, INC.**

My name is J. William Harrell. I am General Manager of Baltimore Shippers & Receivers Association, of Baltimore, Maryland. I have been authorized by the association to testify in opposition to H.R. 10831 unless it is amended to include within its scope shippers' associations operating under section 402(c) of the Interstate Commerce Act.

Baltimore Shippers & Receivers Association, Inc., is a non-profit membership association incorporated under the laws of the State of Maryland. We are an association of 478 Baltimore and national shippers and operate under section 402(c) of the Interstate Commerce Act. We arrange for the movement of freight in interstate commerce for our members on a non-profit basis for the purpose of securing economical transportation through volume rates. The association, which has been in existence for 20 years, ships freight between points in the State of Maryland and points in the States of California, Illinois, Missouri, Louisiana, and Michigan. The association arranges for the movement of diverse commodities through the instrumentalities of rail and motor carriers. Baltimore Shippers & Receivers Association, Inc., as all other shippers' associations, operates physically in a manner similar to interstate freight forwarders which

are subject to regulation by the Interstate Commerce Commission under part IV of the Interstate Commerce Act.

Baltimore Shippers & Receivers Association opposes H.R. 10831 in its present form for several reasons. First, we believe that the railroads should not be in the position to discriminate against shippers' associations by negotiating a lower rate with the freight forwarder for the latter's traffic. It is our position that this discrimination would be evident since the railroad performs the exact same service for both freight forwarders and shippers' associations. As I have indicated, freight forwarders and shippers' associations physically operate in the same manner. Second, it is our position that if the freight forwarders and railroads should negotiate rates lower than the prevailing tariff rates, then Baltimore Shippers & Receivers Association will be placed in the position of subsidizing the operations of the freight forwarders on the same type of transportation services. The railroads at the present time are continually seeking increases in rates to justify their low net revenue operations. These increases would be magnified to shippers' associations, such as our association, if the railroads reduced their rates to the freight forwarders.

However, Baltimore Shippers & Receivers Association would not object to H.R. 10831 if the bill is amended to include within its scope shippers' associations operating under section 402(c) of the Interstate Commerce Act. We support the position of the national trade organization, the American Institute for Shippers' Associations, Inc., which is submitting an amended bill to the subcommittee. We see substantial benefits accruing to shippers if these associations are included in H.R. 10831. Because of the nature of a shippers' association being non-profit, the association passes all savings back to the membership. Therefore, if the association is able to obtain a lower rail rate, then those savings will be passed back to the shippers who are members of the association. The same is not necessarily true with the freight forwarder who is neither required to nor has a history of passing back savings to its accounts.

We urge that H.R. 10831 be defeated unless it is amended to include shippers' associations.

Mr. HARRELL. One other thing. After Mr. Cobert concludes his remarks I am sure he will be in a position to answer any questions because he is very well versed in this field.

Mr. FRIEDEL. Mr. Cobert.

Mr. COBERT. Mr. Chairman, members of the subcommittee, my name is Ronald N. Cobert, and I am general counsel for both Baltimore Shippers and American Institute for Shippers' Associations. We have a statement which I will ask be admitted into the record and with the indulgence of the subcommittee I would ask to summarize our position and set forth certain additional comments which have been prompted by the record today.

Mr. FRIEDEL. Your full statement will be included in the record.

Mr. COBERT. Thank you, sir.

(Mr. Cobert's prepared statement follows:)

STATEMENT OF RONALD N. COBERT, GENERAL COUNSEL, AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS, INC.

My name is Ronald N. Cobert, I am General Counsel of the American Institute for Shippers' Associations, Inc. (AISA). We oppose H.R. 10831 in its present form; however in the event that this Bill is deemed worthy of passage, AISA urges this Subcommittee to adopt the amended Bill which I am attaching to my testimony. The amended language which we propose is underscored in the attachment.

American Institute for Shippers' Associations, Inc. is a nonprofit Delaware trade organization doing business in the District of Columbia. The membership of AISA which numbers 50 is composed of shippers' associations and groups operating under section 402(c) of the Interstate Commerce Act. These associations operate in interstate commerce throughout the United States. The purposes of AISA include the promotion and protection of shippers' associations and the mandate to act as a representative of and spokesman for shippers' associations before the Congress of the United States.

The purpose of my testimony today is twofold. First, AISA voices its opposition to H.R. 10831 for reasons to be set out below. Second, my testimony will spell out the operations, both practical and legal, of shippers' associations which establish that the latter operate physically in the same manner as the freight forwarder. We conclude therefore that if H.R. 10831 is to be passed, it should also extend privileges to shippers' associations.

In order to establish that there is no justification or public interest in passage of the bill it is necessary to discuss the history of section 409 of the Interstate Commerce Act. Until the early twenties in this Country freight forwarders were limited to operations between points served by railroads. The advent of motor carriage proved a real boon to the forwarder because it enabled him to expand and improve his service. There developed arrangements between freight forwarders and motor carriers whereby two types of motor services were commenced. First, motor carriers moved less-than-truckload freight to a consolidating station of the forwarder or distributed less-than-truckload freight from a forwarder's break-bulk station to ultimate consignees. This became known as an assembling and distribution service. The second type of motor service was that in which motor carriers were used for shorter distances either between consolidating stations or in a terminal to terminal service, *i.e.*, between concentration and break-bulk stations. Thus it can be seen that while the first type of service was strictly complementary to rail service, the second type had characteristics which were both complementary and in substitution of rail service.

Prior to regulation of either the motor carrier or freight forwarder these two transportation organizations had numerous joint rate arrangements. In other words, while the forwarder charged his shipper account a through rate, the motor carrier would receive from the forwarder an agreed division of that through rate. These joint arrangements were found unlawful by both the Commission and the Courts. When part IV of the Interstate Commerce Act was passed, Congress saw fit to enact section 408 thereof which was a substitute for the joint rate arrangements which existed between the forwarder and the motor carrier.

In the years immediately following the freight forwarder legislation, section 408, pertaining to the establishing of assembling and distribution motor rates lower than local rates, was not accepted nor used generally at that time. Such nonacceptance of section 408 appears to have prompted passage of the present section 409 which enabled forwarders and motor carriers to make lawful agreements for motor service at compensation less than that afforded by those carriers to shippers generally. The exception, however, is that no compensation to motor carriers for terminal to terminal over 450 miles could be less than the legal rate under tariffs filed by the motor carrier with the Commission. That exception thus applies to "terminal to terminal" operations over 450 miles. Thus Congress under present section 409 recognized no justification for lower "terminal to terminal" rates than offered to shippers generally. Section 409 as originally contemplated appears to have attempted to alleviate any problems that existed under joint assembling and distribution services and not "terminal to terminal" services.

H.R. 10831 in its present form would give to the forwarders the right to negotiate lower terminal to terminal charges with the railroads. Such a right is contrary to the basic philosophy behind the Interstate Commerce Act and the National Transportation Policy. There is little or no difference in the cost of handling terminal to terminal traffic of forwarders and in the cost of handling nonforwarder carload or truckload traffic. Thus a lower rate to the forwarder for the same service would be discriminatory on its face. The Nation's shippers' associations, especially since they operate physically in the same manner as a freight forwarder, would be forced to subsidize the freight forwarder at the expense of the associations' memberships. By the very nature of its nonprofit membership status a shippers' association operating under section 402(c) of the Act passes back to its member shippers all savings. Likewise, its member shippers must absorb any cost increases. The result is that manufacturers and retailers throughout this Country will be indirectly forced to pay higher freight charges through the passage of this legislation. Moreover, in answer to any claims that shippers will benefit from H.R. 10831 because of lower forwarder rates, we contend that such is a spurious justification. First, H.R. 10831 contains no provisions making it mandatory that savings be passed back. Second, history exhibits a failure by the forwarders to return some of the benefits derived through such innovations as piggyback rail service and rates.

Today, any legislation which impairs the operations of shippers' associations is detrimental to the national economy. These associations serve a wide range of economic interests and are important distribution instrumentalities. A recent study conducted under AISA direction of six shippers' associations having a total of 951 shipping members established that the numerous member companies whose distribution is aided by their associations cover a broad range of manufacturing activity. All major manufactured product groupings included in the Standard Industrial Classification employed by the Bureau of the Census were represented by the associations except primary metal products and transportation equipment. Shippers' associations provide a valuable economic function through their freight consolidation and as a result, the traffic tendered to carriers has highly favorable transportation characteristics. Shippers' associations play a significant dual role in the national transportation picture. On the one hand, these associations provide significant revenue to the common carrier tendering the most favorable type of traffic, while, on the other hand, these associations enable their shipping members, whether manufacturers or retailers, to attain the lowest possible transportation costs. This dual role will be significantly impaired by passage of H.R. 10831 in its present form.

The only possible manner in which passage of H.R. 10831 could be justified without substantially impairing the national transportation system is to include shippers' associations within the scope of the Bill as set forth in the attachment. The practical effects of the inclusion of associations would be (1) the removal of the possibility of discrimination on similar traffic, and (2) the existence of some assurance that savings will be returned to the shippers.

Both the Interstate Commerce Commission and the federal courts have recognized that the physical operations of an association operating under 402(c) of the Interstate Commerce Act closely parallel the physical operations of a regulated freight forwarder as defined in Section 402(a)(5) of the Act. *Baltimore Shippers and Receivers Association v. Public Utilities Commission of the State of California*, 268 F. Supp. 836 (N.D. Calif. 1967), *aff'd. per curiam*, No. 846, Jan. 15, 1968 (S. Ct.); *National Motor Freight Traffic Association v. New Hampshire Shippers Co-operative, Inc.*, 323 I.C.C. 658 (1964). In other words, shippers' associations under the law perform for their members the same physical services that freight forwarders offer to the general public for compensation, that is, they provide for assembly and consolidation of shipments of their members, provide for break-bulk and distribution of such shipments, and use regulated railroads, motor carriers or water carriers for the whole or any part of the transportation of such shipments.

Passage of H.R. 10831 without the inclusion of shippers' associations would frustrate and be inconsistent with section 2 of the Interstate Commerce Act. That section declares unlawful and directly prohibits a railroad from receiving less compensation from any person for service rendered that it receives from any other person for performing "a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances and conditions." The conditions and circumstances under which the freight forwarder and shippers' association tender traffic to a railroad are exactly the same.

AISA urges defeat of H.R. 10831. If such is not defeated in its entirety, AISA urges that H.R. 10831 be amended to include within its scope shippers' associations operating under section 402(c) of the Interstate Commerce Act.

Mr. COBERT. The position of the American Institute for Shippers' Associations is to oppose this legislation in its entirety. We feel, however, that should the subcommittee accept the legislation then we ask that the bill be amended to include within its scope shippers associations operating under section 402(c) of the Interstate Commerce Act.

Justification for our opposition to this bill dictates briefly some history of the legislation antedating sections 408 and 409 of the Interstate Commerce Act.

As this subcommittee has already heard, prior to regulation of motor carriers and freight forwarders, situations existed where there were joint rates in existence between the forwarders and the motor

carriers. These joint rates were basically for assembling and distribution operations and not for terminal-to-terminal operations.

An assembling and distribution operation is the operation by a motor carrier for a forwarder in either assembling merchandise to bring to a consolidation point or distributing the merchandise at the break bulk point for the freight forwarder. This is as opposed to terminal-to-terminal operations in which freight moves for shorter distances between consolidating stations or in a terminal-to-terminal service, that is, between the concentration and break bulk points of the freight forwarder.

Joint assembling and distribution rates were the situation that existed when legislation came about in 1942. In order to keep that situation status quo Congress inserted section 408 into the Interstate Commerce Act. However, section 408 did not accomplish everything that here the forwarders wanted it to accomplish and therefore section 409 was included in 1950. However, we contend that both of these pieces of legislation, namely sections 408 and 409, were designed to satisfy any problems that existed with respect to assembling and distribution operations.

This was the basic problem. Now what we have here being proposed by the freight forwarders is to negotiate rates on terminal to terminal operations with the railroads. It has to be terminal-to-terminal for basically these are the only services that a railroad holds out for the freight forwarders.

Everybody testifying here has apparently failed to realize one point. Section 409, first of all, is not quite as simple as the freight forwarders would have us believe. It goes a lot further than simply negotiating a transportation rate with the railroad. It goes into such matters as leasing, for example, which presently must be published in a tariff. Now when we look at this terminal-to-terminal operation that the railroads will be able to negotiate on with the freight forwarders we find one thing exists there that does not exist with an assembling and distribution operation.

The thing that is different is that on a terminal-to-terminal operation everybody is in the same boat. The railroad handles that type of traffic no different than it would handle the traffic of a nonforwarder such as the shippers association.

Therefore, as my statement contends, the shippers association here are urging this committee to recognize that a discrimination will be worked upon the shippers association by passage of this bill. This we contend will do violence to certain principles under the Interstate Commerce Act such as section 2.

We further contend that this is no justification at this time for the passage of H.R. 10831 in its present form. For example, I point to the hue and cry raised by Mr. Chambers of Clipper Carloading in his statement. He has attempted to say that this legislation is necessary for economic reasons. However, Mr. Beardsley of ATA referred to certain 1966 statistics and a figure of \$526 million for the freight forwarders in that year.

Those same statistics published by the Interstate Commerce Commission also show an average operating ratio of 87.31 percent, the lowest in years for the freight forwarders.

Certainly they don't appear to be in any dire need for profits in 1966. Now, very simply, I would like to point out practically what could happen to shippers associations if this legislation is passed in its present form. Let us take the situation on a plan 4 piggyback movement from Chicago to the west coast. Today the plan 4 movement, two trailers on a flatcar between these two points is approximately \$950. The predominant users of plan 4 between Chicago and Los Angeles are shippers associations and freight forwarders. Let us assume that this legislation is passed and the freight forwarders are able to negotiate a lower rate. So he comes in and he is able to negotiate a \$750 rate from Chicago to the west coast.

Now the only other really predominant movers over that line are shippers associations. We assume the railroads are reasonable businessmen and they have to maintain their profits on each individual operation.

Therefore it is conceivable that the railroads will increase their plan 4 piggyback rates from Chicago to Los Angeles on a plan 4 movement and they might increase it by the same increment, namely, \$200.

This would mean that the shippers associations could be paying conceivably \$1,100 where the freight forwarders are paying \$750.

Now what does this do? It simply means that the members of the shippers associations, some small and some large manufacturers, will have to bear the difference or they will have to be the ones that are bearing the brunt of the lower negotiated rate by the freight forwarder.

There have also been some statements made on this record that perhaps shipper associations are very limited in operation and, therefore, it would not be in the public interest to include them in this legislation.

I simply wish to point to my statement which shows the fact that in certain studies made by the American Institute shippers associations handle every conceivable classification of property.

I would like to also point out that shippers associations operate throughout the United States and they operate, they handle many commodities for many shippers, and they have been growing basically since the advent of the piggyback plans in 1958 at a substantial increase.

Shippers associations are not quite as limited as the freight forwarders would have this subcommittee believe. We have certain problems. We have to worry about the antitrust laws quite frankly. We can't just willy-nilly refuse membership to anybody because somebody on the board of directors may have a quarrel and does not particularly like a potential member. So we have to be fair. We can set up certain guidelines but they have to be reasonable guidelines and we have to apply those guidelines reasonably.

I would ask then that if the subcommittee believes that this is good legislation, and we do not believe it is good legislation primarily, I would ask that the subcommittee, in order to remove any discrimination that may fall on shippers' associations, include shipper associations within the scope of this bill.

At the end of my prepared statement I have set forth our proposed amendment in two pages. The italicizing sets forth what we propose

the amendment language to be. We ask that the subcommittee accept that amendment.

Mr. FRIEDEL. Your amendment will be included in the record.

Mr. COBERT. Thank you.

(The document referred to follows:)

AMERICAN INSTITUTE FOR SHIPPERS' ASSOCIATIONS' PROPOSED AMENDMENTS TO
SECTION 409 OF PART IV OF THE INTERSTATE COMMERCE ACT

A BILL To amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads *and between shippers' associations and railroads*

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That subsection (a) of section 409 of the Interstate Commerce Act (49 U.S.C. 1009(a)), as amended, is amended to read as follows:

"SEC. 409. (a) Nothing in this Act shall be construed to prevent freight forwarders subject to this part *and shippers' associations excluded from regulation under 402(c) of this part* from entering into or operating under contracts with common carriers by railroad subject to part I of this Act, or from entering into or continuing to operate under contracts with common carriers by motor vehicle subject to part II of this Act, governing the utilization by such freight forwarders *and shippers' associations* of the services and instrumentalities of such common carriers by railroad or motor vehicle and the compensation to be paid therefor: Provided, That in the case of such contracts it shall be the duty of the parties thereto to establish just, reasonable, and equitable terms, conditions, and compensation which shall not unduly prefer or prejudice any of such participants or any other freight forwarder *or shippers' association* and shall be consistent with the national transportation policy declared in this Act: And provided further, That in the case of line-haul transportation by common carriers by motor vehicle between concentration points and break-bulk points in truckload lots where such line-haul transportation is for a total distance of four hundred and fifty highway miles or more, such contracts shall not permit payment to such common carriers by motor vehicle of compensation which is lower than would be received under rates or charges established under part II of this Act."

SEC. 2. The heading of section 409 is changed to read as follows: "UTILIZATION BY FREIGHT FORWARDERS AND SHIPPERS' ASSOCIATIONS OF SERVICES OF COMMON CARRIERS BY RAILROAD AND BY MOTOR VEHICLE."

Mr. COBERT. Thank you. In conclusion our contention is that shippers' associations are essential today to the national transportation policy and the national transportation picture. Perhaps shippers' associations today represent the last frontier of savings for many small manufacturers.

At the same time while the association provides substantial tonnage to the carriers they pass back whatever savings they can obtain in their operations to their members by the very nature of the operations of the shippers' association.

We would not want to see the shippers' associations' movement in this country hurt in any way. We believe that H.R. 10831 in its present form is detrimental to the association movement and, therefore, we oppose this bill.

But should the bill have merit in your eyes we ask that you include shippers' associations within its scope.

Thank you.

Mr. FRIEDEL. Include what?

Mr. COBERT. Include the shippers' associations within the scope of the proposed legislation.

Mr. FRIEDEL. Include the amendment?

Mr. COBERT. Include the amendment; yes, sir.

Mr. FRIEDEL. First could you outline the difference between a shippers' association and a freight forwarder?

Mr. COBERT. The Supreme Court probably summarized it very succinctly in 1911 in the *Delaware Lackawanna* case referred to in Mr. Beardsley's statement when they simply said that associations are organizations of shippers and there are no middleman profits involved such as when a freight forwarder is utilized.

So what we have basically in a shippers association is a nonprofit membership organization in which the savings are passed back to the members.

Mr. FRIEDEL. Thank you.

Mr. Devine.

Mr. DEVINE. Mr. Cobert, I take it that you are in opposition to the legislation and yet you offer an amended bill which includes the association. Now which route would your association prefer, that there be no legislation or you want to have the same privilege extended to the freight forwarders?

Mr. COBERT. We propose that there be no legislation initially because we feel with the proposed bill in its present form the ones that will be substantially hurt will be the shippers associations.

However, in order to prevent being hurt if the bill is passed we ask for the amendment. Our basic position is that we oppose the legislation.

I would say we would be acceptable to the bill passed with the shippers association included.

Mr. HARRELL. My position would be that I would support it with the amendment. With the amendment I would support the bill.

Mr. FRIEDEL. I want to thank you very much, Mr. Harrell and Mr. Cobert. Our next witness is Mr. John Oliva, attorney, Charter Oak Shippers Cooperative Association, Fairfield, Conn.

Could you enter your statement in full in the record?

STATEMENT OF JOHN A. OLIVA, COUNSEL, CHARTER OAK SHIPPERS COOPERATIVE, INC., OF CONNECTICUT

Mr. OLIVA. I will submit my statement for the record.

Basically, Mr. Cobert has set forth the position of our association. The Charter Oak Shippers Cooperative Association has approximately 150 members, primarily Connecticut manufacturers.

They include large manufacturers but in number the number are greater in quantity in small manufacturers. We feel that the legislation as proposed is not in the public interest, is not in the interest of shipper associations.

We also feel that if you find that the legislation is in the public interest that shippers associations should be included within the ambit as the amendment proposes.

Basically the association feels that no shipper should be treated differently from another shipper by allowing them contract rates. Our position is that we would much rather see no legislation than legislation with us included in it.

We would much rather see no legislation come out and no contract rates be permitted to freight forwarders.

(Mr. Oliva's prepared statement follows:)

STATEMENT OF JOHN A. OLIVA, COUNSEL, CHARTER OAK SHIPPERS COOPERATIVE ASSOCIATION, INC.

Mr. Chairman and members of the committee, my name is John A. Oliva. I am a member of the firm Sachs, Sachs & Sachs, New Haven, Connecticut. Our firm acts as counsel for Charter Oak Shipper Cooperative Association, Inc. I have been requested by the association to speak on its behalf regarding House bill H.R. 10831. I am honored and pleased to appear before you on behalf of the association.

Charter Oak Shippers Cooperative Association, Inc. is a non-profit, non-stock corporation organized and existing pursuant to the laws of the State of Connecticut. It has approximately 150 members, most of whom are manufacturing concerns closely related to Connecticut's industrial economy. The association was formed for the purpose of securing the benefits of car load, truck load or other volume rates by consolidating and distributing freight for its members on a non-profit basis. The association is of the opinion that the enactment of H.R. 10831 would not be in the public interest. It is our understanding that this bill would enable freight forwarders to negotiate rates with individual railroads on a contract basis as contrasted to the present situation which requires freight forwarders to pay the rail carriers in accordance with published tariffs. Our objection to the Bill is predicated on a very basic premise. We do not believe that any class of shipper should be allowed to negotiate contract rates with a non-contract carrier operating in interstate commerce. We are reminded that the original Act to regulate commerce throughout the States was in part an outgrowth of abuses which arose by reason of the ability of certain individual shippers to withhold shipments from the railroads unless they received favored treatment.

The result was that in many instances others were required to pay charges and rates sufficient to make up the difference. We cannot supply you with statistical computations or join in the so-called battle of statistics because of a limited staff. The railroad industry was recently granted a nationwide increase in rates. At the time of this increase the railroad industry clearly indicated that the increase was not sufficient to produce the revenue necessary to keep the industry functioning efficiently. We are of the opinion that if the freight forwarding industry is allowed to negotiate contract rates with rail carriers the only result that could transpire would be a demand for the rest of the shipping public to make up any loss of revenues. We are further of the opinion that savings which might be achieved by the ability of the freight forwarding industry to negotiate favorable contract rates will not be passed on to the customers of the freight forwarder. In the 1942 Transportation Act the freight forwarding industry was allowed to make contracts with carriers up to a distance of 450 miles and at that time many forwarders provided services within a 450 mile radius. This is no longer true today. The so-called short haul service is practically non-existent within the forwarding industry. In addition to the many instances where the forwarding industry has curtailed its areas of operation, the average weight of shipments handled by the freight forwarding industry has increased in the last 10 years. Thus, in 1955 the average weight of a shipment handled by a freight forwarder was 362 lbs. Ten years later in 1965 it was approximately 495 lbs.

It is respectfully submitted that the forwarding industry could, by the utilization of modern railroad services such as the plan 2½, 3, and 4 piggyback services, achieve a goal of providing a solution to the small shipment problems which face today's individual shipper. Our association has utilized and will continue to utilize piggyback services to effectuate solutions to the small shipment problem of its members.

We realize that the work of this committee requires you to weigh many statements, findings, and data which will be presented to you concerning the bill in question. We also realize that your committee may determine that it would be in the public interest to enact the proposed legislation. If your committee feels that the public interest would be best served by the enactment of the proposed legislation we would submit that the legislation should be amended so that non-profit shippers' associations would be in the same position as the freight forwarders. We would point out that in many instances shippers' associations such as Charter Oak have provided answers to their individual member's small shipment problems, in addition to providing services to areas which the freight forwarding industry does not provide. We are of the opinion that unless the ship-

pers' association, indeed, any shipper, is also given the right to negotiate contract rates, the incentive to achieve just, reasonable and equitable terms, conditions and compensations may not exist.

I wish to thank you very much for the opportunity of appearing before your committee.

Mr. FRIEDEL. Thank you.

Mr. DEVINE. That position is slightly different from the preceding witness.

Mr. OLIVA. We say we would much rather see no legislation whatsoever, but if you are going to have legislation, and you find it is in the public interest, we would like to be included within the ambit.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. In your opinion do we at the present time have some contract rates that are discriminatory either so far as motor carriers are concerned or freight forwarders? Do we have any of these contract rates, in your opinion, at the present time that are unfair?

Mr. OLIVA. I can see the distinction that the motor carriers make with regard to through joint rates providing service——

Mr. ADAMS. I am not talking about joint rates. I can understand the joint rate situation because you need that between carriers of different modes than can go all the way.

There has been some confusion, at least in my mind, as to whether at the present time the situation is equal in terms of published rates being applied to everybody or are there some special contract rates that you believe are unfair?

Mr. OLIVA. It is my opinion that I do not like the plan 1 rates because, it would be my opinion, they are not true joint rates.

However, I think the Commission has indicated that they are in essence joint rates. The matter on the freight forwarders and the 450-mile situation, I don't see where it is being utilized.

As I pointed out in my statement, when the bill was originally enacted regulating freight forwarders there were many freight forwarders that provided freight forwarding services within a 450-mile radius.

Today that service is almost nonexistent. I don't see where the 450-mile section at the present time is creating discrimination between freight forwarders and shippers associations because of its nonutilization.

Mr. ADAMS. In other words, the provision does not discriminate because it is not being used?

Mr. OLIVA. That is right.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Philip Kraemer, director of transportation, Maryland Port Authority.

STATEMENT OF PHILIP G. KRAEMER, DIRECTOR OF TRANSPORTATION, MARYLAND PORT AUTHORITY

Mr. KRAEMER. My name is Philip G. Kraemer. As director of transportation of the Maryland Port Authority, I am here to urge the passage of H.R. 10831, a bill to permit freight forwarders to enter into contracts with railroads.

The Maryland Port Authority, as you know, is an instrumentality of the State of Maryland charged with the duty, among others, of

protecting and fostering the commerce of the ports of the State of which Baltimore is the most important. In the effectuation of our statutory mandate to promote the port, the Maryland Port Authority owns and operates marine terminals and maintains field offices, both in this country and abroad.

During the past decade, the port authority and private industry have expended more than \$50 million in port improvements to maintain present business and to make it possible to compete for new business.

Recently the port authority completed a detailed analysis and study of the traffic handled through the port of Baltimore over the past decade and the projected needs of the port in the foreseeable future. This staff study is very comprehensive setting forth a 10-year program for the continuing development and modernization of the port of Baltimore to which the port authority has committed itself.

Included in this program is the expenditure of an estimated \$1 million for a bridge crane for the efficient handling of containers and approximately \$10,730,000 for the construction of three new berths at the Dundalk Marine Terminal between 1968 and 1971, two of which would be adaptable for use as public container berths and would have equipment capable of handling railroad piggyback service.

As this study evolved, it became increasingly apparent that as a result of the so-called container revolution, more and more freight would be moved via this method. It has been estimated that eventually approximately 80 percent of the general cargo will move in containers. To keep pace with this change, all phases of transportation will be subject, in varying degrees, to new methods of operations. Perhaps the biggest change will occur in the inland transportation because the economies to be realized will result from door-to-door operation.

To perfect door-to-door operation will require, in effect, a new concept under which the inland point of origin or destination will become the export or import origin or destination for billing, customs clearance, et cetera. Shippers and receivers will, in our opinion, demand such service. This demand is already being satisfied through the movement inland of containers and trailers, or bogies, owned by various steamship lines.

This in and of itself has created great problems because steamship lines have traditionally never moved beyond the port terminal and therefore have now entered the field of inland transportation, which is an area unfamiliar to them.

The area of billing, rating as well as operational problems are far from resolved and various groups, including the Federal Government, are actively studying the problem, seeking as an ultimate a new and streamlined system which is adaptable to this mode of transportation. The most serious problem in this door-to-door operation exists in the area of small shipments which because of their size do not fill a container.

This requires consolidation which can, in our opinion, be most economically done at the inland point of origin. This has been the area of activity of the freight forwarders, some of whom have adopted their domestic methods into the international field.

I think, for example, of Universal Carloading, D. C. Andrews, and others who have published special tariffs and hold themselves out to

provide a through bill of lading and a through service from inland origin to foreign inland destinations. Perfecting of such a system requires a clear-cut definition of the status of freight forwarders as well as delineation of their rights and obligations with respect to other common carriers which must be employed to do the physical handling and movement of the freight.

The freight forwarders position has been recognized by the Federal Maritime Commission in docket 815, "Common Carriers by Water, Status of Express Companies, Truck Lines and Other Non-Vessel Carriers" (6 FMB-245).

With regard to water transportation this decision made the following finding:

We conclude that a person or business association may be classified as a common carrier by water who holds himself out by the establishment and maintenance of tariffs, by advertisement and solicitation, and otherwise to provide transportation for hire by water in interstate or foreign commerce, as defined in the Shipping Act, 1916; assumes responsibility or has liability imposed by law for the safe transportation of the shipments; and arrange in his own name with underlying water carriers for the performance of such transportation, whether or not owning or controlling the means by which such transportation is effected, is a common carrier by water as defined in the Shipping Act, 1916.

Perhaps the most significant factor in this finding is the determination that the forwarder, in accepting the through-transportation liability, has the status of a common carrier. Insofar as the inland transportation is concerned, the freight forwarder, although regulated, is not given true carrier status, particularly insofar as railroad transportation is concerned.

We therefore feel that it is imperative that if the transportation system of the United States is to be responsive to the changing needs, that the freight forwarder be permitted to negotiate with other common carriers for the transportation of his commodities. Essentially, he is negotiating for transportation as a carrier in furtherance of a shipping contract and we feel he should be in no different position than any other transportation mode.

It would appear to us that unless this is accomplished the economies and the full use of true intermodal transportation will not be achieved. There is a definite need for organizations such as freight forwarders who operate in an area; namely, the handling of small shipments which are not either attractive or remunerative to either railroads or trucklines.

This is evidenced by various prohibitions and methods by which both railroads and trucks attempt to discourage this type of freight in their respective services.

This however, is a very important segment of our export and import business, and in many cases, if not all cases, involves the high-priced goods moving in international trade.

Much will be said about the ability of other forms of transportation to handle this business. Our investigations have developed that the consolidation and handling of through export shipments is a specialty and cannot be handled by mixing the export or import shipments with domestic shipments.

It is for this reason that we have in the past supported freight forwarders such as D. C. Andrews who have secured authority to specifi-

cally handle export and import consolidated shipments from inland points to foreign destinations.

Additionally, such movements not only expedite the flow of export and import business but minimize the handling at seaboard ports which in turn reflects itself in the economies of more efficient terminal facilities.

In view of this growing need for new concepts in true intermodal transportation, we support this bill which, in our opinion, will perfect one of the missing links in the new and approved methods of handling foreign commerce and therefore urge the early adoption of this proposed legislation.

Mr. FRIEDEL. I want to thank you, Mr. Kraemer. It is always a pleasure to have anyone from the Maryland Port Authority. I think you have done a wonderful job. Your statement has brought in a new aspect entirely. I think it is worth consideration. I want to thank you. Are there any questions, Mr. Adams?

Mr. ADAMS. Yes.

Mr. Kraemer, I take it your position is that you should have a series or the ability to have a series of negotiated contract rates as opposed to published rates in order to save a particular segment of shippers traffic that is not being handled by motor carriers or by railroads or is being discouraged by them.

My question to you is this: Do you think we should handle this by establishing special categories of rates through contracts that are not known or not published or should we try to do something with the published rates; for example, increase the differential between the l.c.l. and the regular rate to give these people a margin within which to operate?

At least, then, everybody would know what the rate was.

Mr. KRAEMER. In this whole picture the shipper will always know the rate, it will be a published rate. The savings will come in the method of handling, the method of interchange, and the ability to negotiate a contract.

In other words, what I am saying is that this is a new idea, a through movement idea I think we are getting closer and closer on the part of the physical transportation of transporting units rather than worrying about whether this is this commodity, that commodity, and so forth.

In other words, the transportation will be of a unit or box.

Mr. ADAMS. I don't understand when you say "everybody will know the rate." That is why I asked the question. We have had several people allude to the fact that when you get into the area of special shippers making special contracts for transportation with the carriers, then other competitors in the field simply don't know what the other shipper is obtaining for a rate.

If I am wrong about that I would like to know.

Mr. KRAEMER. They don't know what arrangements have been made between one carrier and/or another. Assuming now that the forwarder is considered a full carrier he makes his contracts for whatever underlying transportation he needs.

However, insofar as the shipping public is concerned they will be able to go to his tariff and find out that then it cost so much to ship from one point to another. In other words, the trend is, for example,

there is a tariff now on file with the FMC, it has not been approved yet which a steamship line is publishing from anywhere in England via Felixstowe to anywhere in the United States via New York. The price there is what the shipper will pay. What he does not know is who will do part of it except the water part.

They reserve the right to use any and all means of inland transportation. This now has been filed and is under consideration. The problem is who is responsible, who is going to do what, and how is it going to operate?

The shipper does not know this. All he will know is that he will have a bill of lading from a steamship line. The inland transportation, he just sits and waits until he gets it because he won't know how it will be carried.

In the ultimate the bill of lading would be given by the forwarder and he would be the one whom they would look to for this whole movement.

Mr. ADAMS. We will get into a situation then between the shippers by common carriers, the freight forwarder, the trucker, and others vying to see who can make the best deal with the railroad.

Mr. KRAEMER. The best deal, assuming of course that everybody is making money at it. I am not trying to suggest that we are going to get in a problem where somebody is going to do it for nothing or lose money.

Everybody will but there will be different arrangements, different through routes, in other words, we are getting back to what we used to have as the old dispatchers where you did not talk about railroads, you used a certain dispatch route which was a combination of railroads and you shipped via that dispatch route, the underlying transportation was all worked out between the parties to the route.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Devine.

Mr. DEVINE. I have no questions.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. My understanding is that our function on this committee in a case like this is twofold. One is to do the best we can to insure fairness between the parties here.

To that extent we are kind of referees. The other is overriding benefit to this shipping public. Some of the testimony of this last element that we are primarily responsible for seems to have been left out.

Now as to the ignorance of the rate that is charged to a forwarder or to a trucker by a railroad, I believe you said in your testimony in answer to Mr. Adams' question that the shipper will always know.

Actually as far as I am concerned the private citizen or the company that pays the freight is the shipper. Everybody between him and the other end is just part of the chain.

He is the guy that keeps us all. He pays my salary and yours, too. So let us talk about him when we consider as to who really knows the rate.

That man does not really know the rate. Now we have had representatives of industry groups here testify in favor of this legislation with the assumption that they would benefit directly from this reduced cost.

And let us say that if this were a known and provable fact, any assurance that this would happen, why then it certainly would be a point on this side of the argument.

We have no way of knowing this at all. You made another assumption that along the lines of ordinary good business practices that would be true, that nobody would be losing money. But we have this thing called predatory competition hanging over these types of hearings.

Whether this big concern says I am not foolish enough to get involved in there or this other one says that, we know it has happened if you allow predatory competition to take place.

One of the things that I fear in fairness here is the idea that the railroad may actually be able to play the forwarder against the truckline and indirectly damage the truckline through an indirect form of predatory competition.

Mr. KRAEMER. I think there is always this possibility. I think the possibility is starting to level out with the new establishment of marketing sections in railroads and why I say that is that I had occasion to work on a piece of business last week and the railroads said that they could not put in the rates competitive with another carrier because their marketing people said there just was no money in it.

Now on the other side of the coin we have established in the Port of Baltimore a system where on container freight the shipper will have to worry only about three possible things.

The inland transportation, the ocean transportation and possible transportation in the foreign country. This means that for the first time the steamship line is taking care of the terminal charges.

This was always a great bugaboo, particularly when you got charged one thing one time and another thing another time. This now we have worked out so that a shipper on container coming through our port has no terminal charges. The steamship line pays it.

He just delivers it. This we feel is a step along the line in this type of operation. But there still remains the problem on the small shipments; in fact, one answer to this is the establishment of consolidation firms, and another is in the process of being established, a second concern which is located on the field which will accept these small shipments and do what they call stuffing into containers and then give them to the steamship line?

The question here though is that the savings cannot be always achieved. The steamship lines are not set on this because they give normally a 10-percent discount on the door-to-door and only a 5-percent discount on terminal-to-door, so to speak.

Now the question is in this type of operation can the shipper realize the 10 percent or will he only give 5? Now if the forwarders can negotiate, these consolidation points will in effect move inland. When it comes to the port it will be a completely loaded box delivered to the steamship line and considered a door-to-door movement.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Thank you very much, Mr. Kraemer.

Gentlemen, we have 20 witnesses and 16 more to be heard today. We are trying to get permission to sit while the House is in session. Are there any witnesses here today who would like to have their statements included in the record? If so, they may do so right now.

Our next witness will be Mr. Charles Washer, transportation counsel for the American Retail Federation.

**STATEMENT OF CHARLES A. WASHER, TRANSPORTATION
COUNSEL, AMERICAN RETAIL FEDERATION**

Mr. WASHER. Thank you, Mr. Chairman, I would like to introduce the statement in the record and I will paraphrase it in the interest of time.

Mr. FRIEDEL. Your whole statement will be included in the record.

Mr. WASHER. There are 50 State associations that are members of the American Retail Federation, approximately 28 national associations in the transportation council. They are in opposition to the bill as it is now written and have suggested precisely what later the Interstate Commerce Commission has come out with subsequent to our statement.

In other words, we believe that the safeguards should be added to section 409 as presented by the Interstate Commerce Commission in the letter yesterday.

I think it is important because Mr. Morrow, for example, indicated that the Commission had complete control over the contract rates that were established under section 409. On page 2 of my statement I indicate what the unfortunate results were when the Commission attempted to exercise control.

That is why they have urged the Commission, as we do, to first make the amendment to section 409 to give more effective control over any contract rates.

I think this is in the interest of preserving free competition. Secondly, in the statement we point out the reasons why we do not feel that the legislation is needed. The freight forwarders are in a healthy condition and the situation in regard to rate published under the Reed-Bullwinkle Act are satisfactory.

I might indicate for the record, for the staff to note, the Commission report on the status of the freight forwarder industry, quite complete, issued in September 1967 in Transport Economics published by the Interstate Commerce Commission.

For those reasons we urge that you consider those amendments before you consider adopting this proposal.

(Mr. Washer's prepared statement follows:)

**STATEMENT OF AMERICAN RETAIL FEDERATION BY CHARLES A. WASHER,
TRANSPORTATION COUNSEL**

The Transportation Committee of the American Retail Federation is opposed to the proposed amendment to Sec. 409 without the incorporation of an additional amendment that will make Sec. 409(b) effectively represent the intent of Congress. When the existing Sec. 409 was adopted in 1950, it was thought that the contracts between forwarders and motor carriers (which were to have "just, reasonable, and equitable terms, conditions, and compensation . . . consistent with the national transportation policy"), were subject to Commission regulation under Sec. (b) which provides that the Commission may, after hearing, prescribe the terms, conditions, and compensation of such contracts.

The Commission, in 1953, did undertake such an investigation in MC-C-1394 with unfortunate results and, in 1954, recommended corrective legislation stating:

"We referred in our last annual report to our requiring forwarders and motor carriers to furnish detailed information as to traffic tendered to or handled by motor carriers under contracts filed under the terms of amended section 409. This step was taken in a proceeding looking to the determination of the reasonableness or lawfulness in other respects of some of the contracts so filed. Our attempts during the current year to subject certain of these to investigation have

disclosed some defects in section 409. Thousands of such contracts have already been filed and others are being filed daily. Without some strengthening and implementing of our power to investigate and to correct abuses after they are discovered, the regulation of freight forwarders in the public interest will be seriously hampered. Accordingly, we are recommending amendment of section 409 so as (1) to place the burden of proof on makers of the contracts that such contracts, when subjected to formal investigation, are not inconsistent with the provisions of this section; (2) to prohibit contracts at compensation which is lower than the motor carriers' tariff rates in all cases where the line-haul transportation is for a total distance of 450 miles or more; and (3) to provide penalties for any rebate, concession, or discrimination resulting from the transportation of property at compensation less than that specified in the contracts." *Interstate Commerce Commission 68th Annual Report, Page 23.*

The Commission, in ensuing years, continued to urge the enactment of remedial legislation. In 1956, as to a comparable bill in the 84th Congress, H.R. 9548, the Commission again expressed the need for regulatory powers. We urge it today as an absolute necessity and request that H.R. 10831 be so amended.

That is not to say that we believe that the legislation of H.R. 10831 is needed. The rate-making procedures established by the Congress under the Reed-Bulwinkle bill provide a sound method of establishing just and reasonable rates, subject to I.C.C. regulation, for all users of railroad services alike. The current need for I.C.C. authority to prescribe joint rates and through rates, after hearing, should not be confused with this issue since its objective is the efficient and economic combination of the nation's basic transportation facilities by the operating carriers themselves. A freight forwarder, by the nature of his operation, can and does utilize these basic carrier services today.

Further, there is nothing in the freight forwarder industry today that indicates any necessity for special consideration in view of increasing profits, increasing revenues, and a healthy operating ratio, unless it is found in the areas which the forwarders, although authorized to do so by the Commission, refuse to give service or do so only with the imposition of extra arbitrary charges.

In fact, Congress might hesitate to grant unregulated bargaining on millions of dollars worth of transportation between railroads and forwarders—two industries that have become increasingly concentrated in fewer companies.

We trust that the Congress, before any consideration is given to the section 409 amendment proposed by H.R. 10831, will add the amendment giving the Interstate Commerce Commission the authority to regulate the contract provisions in the public interest as was the intent of the Congress in creating the present section 409.

Thank you for the privilege of presenting these views.

Mr. FRIEDEL. Thank you, Mr. Washer. Are there any questions?

Our next witness will be Mr. Stanley Foster, executive vice president, Ratner Manufacturing Co., San Diego, Calif.

I would like to mention that Congressman Van Deerlin is away on official business. He wanted me to extend every courtesy I can. I will say that Congressman Van Deerlin is a very good friend of mine.

STATEMENT OF STANLEY FOSTER, EXECUTIVE VICE PRESIDENT, RATNER MANUFACTURING CO., SAN DIEGO, CALIF.

Mr. FOSTER. Thank you, sir.

Mr. FRIEDEL. Would you like to file your full statement for the record, or do you wish to read it into the record?

Mr. FOSTER. Yes; I would like to read it, if I may.

As the chairman mentioned, my name is Stanley Foster. I am executive vice president of the Ratner Manufacturing Co., with offices in San Diego, and president of the Vista Slack Corp., of Chula Vista, Calif.

Ratner Manufacturing Co. and Vista Slack Corp. are engaged in the manufacturing of men's apparel, including men's suits, sportswear, and slacks. I believe that our manufacturing plants in the San Diego and

the Chula Vista area, the largest nondefense, nongovernment employers in San Diego County, are second only to the aircraft industry in the number of people employed.

A considerable cost of our business is the cost of transportation and most of these transportation costs are attributed to the movement of raw materials from the textile producing centers in the East and Southeast of the United States.

While we use all modes of transportation in satisfying our logistics problems, we are somewhat limited in our access to as many carriers as the manufacturers in the Los Angeles and San Francisco areas. For this reason we specify carriers or modes of transportation that have made a special effort to service the San Diego and Chula Vista areas.

During the year 1967, Ratner Manufacturing Co. will have purchased and transported into their manufacturing plants in the San Diego and Chula Vista area in excess of one and a half million pounds of raw materials. This freight has moved transcontinentally at our cost. While this is a sizable figure in terms of freight tonnage, it is most significant that this total tonnage is made up of many daily less-than-carload lots of small shipments.

In other words, on a given day our manufacturing plants may receive upward of 25,000 pounds, total of woolen piece goods, made up of 25 individual shipments from 25 sources, each the equivalent of 1,000 pounds.

Of course this is only an example; however, it is a most real problem characteristic of our business. It therefore becomes most important that we have available to us modes of transportation that are equipped to handle small quantities of freight from shippers located throughout the eastern portion of the United States and that this mode of transportation can transport this freight expeditiously to San Diego and the Chula Vista area.

I emphasize San Diego and Chula Vista in contrast to a major terminal area, such as Los Angeles or San Francisco. This method of transportation also must make available to us competitive freight rates, again in terms of our competition in the major terminal areas.

Ratner Manufacturing Co. has found the freight forwarder to be best equipped of all types of transportation to handle our freight problems. It is for this reason that we are much concerned about the inequity that exists in the interstate commerce regulations favoring the motor carrier and putting the freight forwarder at a disadvantage.

This hearing today and the outcome of it is most important to our companies in terms of remaining competitive with other areas of the country. We strongly favor H.R. 10831 because it gives the freight forwarder equal rights with other forms of transportation.

The amendment to the Interstate Commerce Act, section 409(a) will allow the freight forwarder, as a common carrier, to make contracts with the railroads, a privilege the motor carrier presently enjoys.

In stating my case before this committee, I would be remiss were I to speak exclusively of the importance of this amendment and its passage to my company.

The passage of H.R. 10831 has extreme importance and significance to the entire San Diego and Chula Vista area. The general shipping and receiving community consists of multitudes of small businesses

dependent on supply of all types of products and materials from again major supply areas in the East and Southeast.

These small businesses by their very nature, receive small shipments. The geographical location of San Diego and Chula Vista is such that it is off the main line of transportation and thus becomes what is known in the parlance of transportation people, as an off-line area. As a matter of fact, gentlemen, we have often been considered a stepchild by the transportation industry since their major attention has been turned toward the large industrial centers.

Further, with such diverse type businesses there is no concentration of any single type freight commodity coming to the area. It is for this reason that the majority of small shipments, and as for that matter most less-than-carload shipments moving transcontinentally, are transported in the service of the freight forwarder.

The freight forwarder, under Interstate Commerce Act, part IV, is now in the primary business of handling less-than-carload shipments. He is concerned with the small shipper and the small consignee in contrast to any group of shippers or consignees who might gather together developing freight from a single terminal area, such as New York City and shipping to a single terminal area, such as Los Angeles using the facilities of straight rail or motor carrier. So again, it is for this reason that our companies are vitally interested in the freight forwarder being able to compete with all modes of transportation.

I urge passage of H.R. 10831 not only because it will assure competition between the modes of transportation serving our companies, but also because it will offer the same assurance to the community of businesses in the San Diego and Chula Vista area. I believe, and have been told by the freight forwarders who serve us, that their ability to make more flexible arrangements with the railroads will make it possible to improve and possibly expand their service to the San Diego and Chula Vista area.

Because this amendment of section 409(a) of the ICC Act clearly spells out that all conditions and compensations arrived at between the freight forwarder and the railroad be filed and approved by the Interstate Commerce Commission, the best interests of the public will always be served.

With such a safeguard I can see no reason why any other mode of transportation or any large business interests such as oil companies, steel companies, automobile manufacturers, foodstuff suppliers, etc. will object to the passage of H.R. 10831 if they are now anxious to serve the entire public to its best interests.

The passage of the bill does nothing more nor less than give the freight forwarder equality with other modes of transportation. And insofar as the large business interests are concerned, they are rarely users of freight forwarders, being mostly users of railroads, shipping in full carlots at extremely favorable rates.

One can only conclude that those voices saying nay to this amendment wish to stifle competition in interstate commerce, where long ago the Congress of the United States took measures to protect against such action to the public's detriment through the creation of the act to regulate interstate commerce.

Mr. FRIEDEL. Thank you very much, Mr. Foster for a fine statement. Are there any questions?

Mr. ADAMS. Yes. On page 2, what is this inequity?

Mr. FOSTER. It is my understanding that the motor carriers have the right to negotiate rates directly with the railroads. Our concern in this matter is that our freight originates from off-line points and is delivered to an off-line point.

We are concerned that if they can negotiate directly that the major transportation markets will be far better served than we are. We are concerned that if the freight forwarder is at a disadvantage that all service through the freight forwarder may suffer.

Mr. ADAMS. Are you not aware that the freight forwarder has the right to make contracts with the railroads for piggybacking?

Mr. FOSTER. I am aware of that situation. Our problem in our particular industry is that we develop so many small shipments that have to be picked up in small lots that I am not sure whether the bulk of that goes by piggyback or by rail car.

I would assume that piggyback would require also a substantial pickup of shipments from one point. Our original points are the small mill communities in the South and in the Northeast, particularly in the Southeast area of the country.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Devine?

Mr. Kuykendall?

Mr. KUYKENDALL. May I ask one quick question? Do you expect this advantage that you suggest would come about by H.R. 10831 would automatically result in lower rates for you?

Mr. FOSTER. My particular concern at the moment is to the service rather than the rate itself.

Mr. KUYKENDALL. Are you not getting good service now?

Mr. FOSTER. We are getting fine freight forwarding service. It is the only method of transportation we have found that gives us good service.

Mr. KUYKENDALL. Are you happy with their service now?

Mr. FOSTER. Extremely.

Mr. FRIEDEL. Our next witness is Mr. Sam Hall Flint, chairman of the legislative committee, the National Industrial Traffic League, vice president of the Quaker Oats Co.

STATEMENT OF SAM HALL FLINT, CHAIRMAN, LEGISLATIVE COMMITTEE, THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE; ACCOMPANIED BY LESTER J. DORR, EXECUTIVE SECRETARY

Mr. FLINT. With your consent I would like to ask Mr. Lester J. Dorr, executive secretary of the National Industrial Traffic League, to sit at the table with me.

Mr. Chairman and members of the subcommittee, my name is Sam Hall Flint. I appear in opposition to this bill on behalf of the National Industrial Traffic League in my capacity as chairman of its legislative committee. I am also a member of the league's executive committee. I am regularly employed as vice president of distribution of the Quaker Oats Co., of Chicago, Ill.

IDENTITY AND INTEREST OF THE NATIONAL INDUSTRIAL TRAFFIC LEAGUE

The National Industrial Traffic League, which I shall sometimes refer to as the league, is a voluntary organization of shippers, shippers associations, boards of trade, chambers of commerce and other entities concerned with rates, traffic, and transportation. The members of the National Industrial Traffic League are located throughout the United States, consist of enterprises large, medium, and small, and use all modes of transportation by land, sea, and air.

Carriers are ineligible for membership in the league.

I would like to say at this point our members not only use but they need all the agencies of transport. The league has absolutely no malicious intent toward any form of transport. Traditionally and consistently we have been concerned with and desire that there be strong, viable competition between all the agencies of transport but under circumstances which promote sound conditions in the transportation industry.

For the more than 60 years of its existence, the National Industrial Traffic League has been dedicated to the development and maintenance of sound conditions in transportation, having in mind the needs of the Nation, the carriers, and the shippers. To that end the members, committees, and officers are constantly studying and acting upon policies with respect to transportation.

Among other things the league has frequently presented its views to the Congress on proposed transportation legislation. We appreciate very much the opportunity afforded us to do so today.

The league opposes the proposed legislation on the grounds that (1) it will give freight forwarders excessive and unnecessary economic power to obtain purchased transportation at dangerously low levels; (2) it will result in excessive pressures on rail carriers to provide transportation services to freight forwarders at levels which are inconsistent with economically sound operations; (3) the deficiencies in rail revenues from freight forwarder traffic will have to be made up on higher rates paid by the public; and (4) shippers other than freight forwarders will be paying substantially more than the freight forwarders for the same transportation services from the railroads.

LEGISLATIVE PROPOSAL HERE UNDER CONSIDERATION

The subcommittee is here considering amendments to subsection (a) of section 409 of the Interstate Commerce Act—49 U.S.C. 1009 (a)—as amended. The amendments as proposed by the freight forwarder industry are in the nature of additions to present subsection (a) of section 409 of the Interstate Commerce Act and are indicated by italic:

SEC. 409. (a) Nothing in this act shall be construed to prevent freight forwarders subject to this part *from entering into or operating under contracts with common carriers by railroad subject to Part I of this act, or from entering into or continuing to operate under contracts with common carriers by motor vehicle subject to part II of this act, governing the utilization by such freight forwarders of the services and instrumentalities of such common carriers by railroad or motor vehicle and the compensation to be paid therefore; Provided that in the case of such contracts it shall be the duty of the parties thereto to establish just, reasonable, and equitable terms, conditions and compensation which*

shall not unduly prefer or prejudice any of such participants or any other freight forwarder and shall be consistent with the national transportation policy declared in this act: And provided further, that in the case of line haul transportation by common carriers by motor vehicle between concentration points and break bulk points in truckload lots where such line haul transportation is for a total distance of four hundred and fifty highway miles or more, such contracts shall not permit payment to such common carriers by motor vehicle of compensation which is lower than would be received under rates or charges established under Part II of this Act.

SEC. 2. The heading of section 409 is changed to read as follows: Utilization by Freight Forwarders of Services of Common Carriers by *Railroad and by Motor Vehicle*.

The effect of the proposal is to give to freight forwarders the right of a contract basis of charges on forwarder freight moved by railroad, comparable to the contract basis presently provided by section 409(a) on forwarder freight moving by common motor carrier but without the limiting proviso now in effect in the latter case which requires the payment of rates on no less than the tariff basis when in truckload lots in line haul transportation between concentration points and break bulk points for a distance of 450 or more highway miles. To such a change, the members of the National Industrial Traffic League are emphatically opposed.

While the prior history of section 409 probably will be adequately developed by other witnesses, for the purpose of this statement it is summarized as follows: Original section 409 of the Freight Forwarders Act outlawed joint rates and concurrences between forwarders and common motor carriers in favor of so-called assembly and distribution rates. In the 1946 amendment to section 409—H.R. 2764, 79th Congress—Congress, at the request of the forwarders and with the acquiescence of shippers, turned over the whole question of the rate relationship between forwarders and motor carriers to the Interstate Commerce Commission, as a body expert in the subject matter and required to exercise its best judgment and discretion within the guidance provided by the national transportation policy.

The Commission, after a proceeding involving over 2 years of hearing and consideration—docket 29493—found unlawful truckload terminal-to-terminal charges on less than a tariff basis (272 ICC 413). As to assembly and distribution traffic the Commission found handling of such movements at less than tariff rates to be proper but subject to further consideration with respect to the adequacy of the compensation in particular proceedings.

H.R. 10831 would now extend to railroad shipments the same freedom of contract without the 450-mile proviso.

During the second session of the 84th Congress, your subcommittee had under consideration a bill, H.R. 9458, to amend section 409 of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads for the movement of trailers on flat-cars.

In opposing the bill at that time, the league pointed out that the one distinctive characteristic of forwarders which existed at the time of their first regulation and remains today is their dual character, operating on the one hand in the relation of common carrier to their own shippers, and on the other hand as shippers utilizing the services of the underlying common carriers.

Accepting as valid the idea that the shipper-carrier relation carries with it the obligation of publishing and payment of tariff rates, Congress in 1950 did set up a limited exception dealing with common motor carrier handling of forwarder shipments of certain size and for certain distances.

The fear then expressed by the opponents for such a proposal, including the National Industrial Traffic League, that the breach once made would immediately be subjected to an attempt to widen it into the field of rail transportation became a reality in 1956.

Congress very wisely took no action on the proposal at that time but shippers are once more confronted with a similar proposal.

The valid differences existing in 1956 which fully justified refusal to extend further the concept of contract rates exist today. All of the reasons previously advanced against approval of such contract rate principle in any degree are particularly important in connection with rail lines.

Such contract basis is contrary to the whole scheme of for hire carrier regulation as embodied in the Interstate Commerce Act. The national transportation policy again cannot possibly be furthered by permitting members of one agency to obtain transportation service performed by the members of another agency unless the tariff rates are open to all who use the latter agency.

This thought was expressed by the Commission in its docket 29493 decision (Freight Forwarders, Motor Common Carriers, Agreements 272 ICC 413, 450) when it said:

When forwarders operate under agreements in the handling of terminal to terminal traffic by which they obtain transportation from motor common carriers at compensation less than would accrue under the tariff rates of the latter, they depart from their proper sphere as transportation agencies, and are improperly invading the recognized field of other carriers. This is contrary to the national transportation policy.

The ill effects of such departure are even more apparent when the underlying carriers involved are railroads than when they are motor carriers. In the first place the stake involved is much larger. As reported in its 81st annual report to Congress for 1967 by the Interstate Commerce Commission class A freight forwarders in 1966 paid \$345.9 million for purchased transportation. Of this amount, \$170.1 million was paid to railroads; \$80.8 million was paid to common motor carriers. To the extent that this tonnage and this revenue may be a basis for undue pressure, or may be a method of unjust bargaining, the amount at stake is obviously much greater when railroads are involved.

Furthermore, the possible range of departure from a normal basis of compensation—accepting for the moment the published tariff rate as the normal basis—is much greater in the case of rail lines than in the case of motor carriers.

If a motor carrier publishes a particular rate on a particular traffic open to the public, the extent to which that motor carrier can go below such rate on a contract basis for a freight forwarder is severely limited.

The spread between the tariff rate, presumably on a profitable basis, and any lower figure which might be the subject of contract is comparatively small in the case of motor carriers, probably on the order of 10 to 15 percent.

In the case of rail lines, however, with a much higher percentage of fixed cost and a much wider spread between out-of-pocket cost and fully allocated cost, the rail lines under the pressure of traffic necessity may be able and feel compelled to go very much below published tariff rates to their own detriment and the detriment of other rail patrons.

While we are mindful of the provisions of section 409 (b) as to the filing of contracts between freight forwarders and common carriers, we must be frank to state that the lack of actual knowledge about these contract arrangements is highly objectionable. As a practical matter in my opinion the shippers throughout the country do not have access to these contracts or any comprehensive knowledge of the actual basis of forwarder payments to motor carriers.

While part 500 of title 49 of the Code of Federal Regulations covers the matter of filing such contracts at the Commission obviously the details of such contracts are not available to the shipping public and to others concerned as is the case with freight rates, charges, and other provisions contained in published tariffs filed by the carriers in the usual manner with the Interstate Commerce Commission and made generally available to the shipping public.

In all candor the so-called protective provisions of section 409 (a) offer no real protection to the shipping public, or to individual shippers, because the burden of trying to enforce such protective conditions would be extremely complex, time consuming, expensive and, we are afraid, illusory.

The tonnage volume controlled by freight forwarders, reflected in the revenue figures I have quoted above is obviously enormous. It should be kept in mind that this volume, so largely concentrated in the hands of the freight forwarders, provides just as tremendous bargaining power as it would in the hands of an individual industry. Or a small group of individual industries who have control over such tonnage.

Realizing that bargaining power in the hands of an industry requires steps to prevent its abuse, under the Interstate Commerce Act, the Commission has set up a system of rate regulation, published tariff rates, mandatory payment of such rates by all who use them, freedom from unjust discrimination, undue preference and prejudice, and so forth. These same protections are equally required to prevent abuse of bargaining power in the hands of freight forwarders.

I wish to make it perfectly clear that the league is opposed to the present provisions of section 409. It regards the proposed amendment as producing an even greater evil and as compounding an existing evil, which should not be permitted by the Congress.

As recently as November 1967 the members of the league at their annual meeting in New York reaffirmed the league's policy relating to freight forwarders. This review and reaffirmation was, I might add, the direct result of our consideration of this pending legislation, H.R. 10831.

League policy J-2 is as follows:

Charges paid by freight forwarders to underlying carriers:

a. Freight forwarders should pay for the transportation services of underlying carriers at the published and filed tariff rates of those carriers, such rates being open and available to all shippers generally for similar services and under similar transportation conditions.

b. No "through" rates, nor divisions of such rates shall be established between freight forwarders and their underlying carriers.

c. No "contract" rates shall be established between freight forwarders and their underlying carriers.

The proposed bill does not provide the 450-mile limitation presently incorporated in section 409(a) with respect to contracts between freight forwarders and motor common carriers. We have earlier indicated our unalterable opposition to this bill. At this juncture we merely state that the 450-mile limitation on freight forwarder-motor carrier contract rates should not be forgotten.

In earlier unsuccessful attempts by the freight forwarders to obtain legislation permitting them to make contracts with railroads, they made reference to piggyback service. As of now, our information is that a very heavy proportion of freight forwarder traffic now moves in rail piggyback service. To be sure the freight forwarders have to comply with published tariffs of the railroads. We would point out that that is exactly the situation with respect to shippers.

The proposed legislation is not excusable or required as a necessary measure to assist freight forwarders as a hard-pressed segment of the transportation industry. The freight forwarders as a group have been achieving extremely profitable and healthy operating results. The recently released "81st Annual Report of the Interstate Commerce Commission," covering the fiscal year ended June 30, 1967, develops several indicia of this freight forwarder health and prosperity including an 80 to 50 ratio of revenue from forwarder operations to net investment in transportation property plus working capital (i.e., pretax return on net investment), and a 56 to 75 ratio of net income to shareholders' equity (i.e., return on net worth). The comparable figures for the last 10 years show the same general health and are reproduced from table 59 at page 166 of the 81st annual report:

RATES OF RETURN OF CLASS A FREIGHT FORWARDERS, 1957-66

[In percent]

Year ended Dec 31	Ratio of revenue, less transportation taxes from forwarder operations to net investment in transportation property plus working capital	Ratio of net income to shareholders' equity
1957	44.43	21.99
1958	40.29	21.39
1959	40.13	19.53
1960	29.20	14.47
1961	55.76	30.76
1962	64.93	30.76
1963	60.34	30.71
1964	52.31	25.86
1965	93.21	58.30
1966 ¹	80.50	156.75

¹ Data of 1 large corporation in process of reorganization under ch. X of the Bankruptcy Act have been omitted from this item. Inclusion of such data would have distorted ratio of net income to shareholders' equity.

Mr. FLINT. These high returns on equity achieved by the freight forwarders can be compared with the annual rate of profit after taxes on stockholders' equity for manufacturing corporations of 13.4 being achieved in the fourth quarter of 1966 according to the Quarterly Financial Report for Manufacturing Corporations, prepared by the Federal Trade Commission and Securities and Exchange Commission.

Freight forwarders historically live off the differential between the rates they charge and the levels at which they purchase transportation from other modes of carriers, including railroads. The rates they charge in transporting small shipments which they then consolidate are generally at or near the level of rates on the same size small shipments published by the motor carriers.

The forwarders thus thrive within the differential or so-called small shipment arbitrariness. That differential has been growing in recent years, and there is reason to believe that it will continue to grow, leaving the freight forwarders with a larger margin between revenues and cost. The forwarders' economic health under such conditions argues strongly against granting them the additional leverage contemplated in the proposed legislation.

The simple fact is that the effect of the proposal before you today would be to place the freight forwarders in the role of preferred rail shippers. In the past and at the present time, freight forwarders are required to use published railroad tariff rates and charges, on file with the Interstate Commerce Commission, which are available to all shippers alike.

The National Industrial Traffic League opposes the proposed amendment to section 409(a) which would allow a freight forwarder to get together with the railroads and agree on a level of charges. We see no reason why the freight forwarders should not utilize the published railroad tariff rates and charges, just as do shippers, large, medium, or small, or shippers' associations.

We are genuinely concerned that using the bargaining powers they would have in conjunction with this proposed amendment, these freight forwarders will exact unduly low or otherwise economically unsound rates from the railroads, and the burden of this will fall directly upon the shipping public. This is intolerable and unjustified.

In summary, the National Industrial Traffic League urges Congress to reject in its entirety H.R. 10831. It urges that the contract rate basis sought by the freight forwarders be not extended to encompass railroads.

As users of transportation, freight forwarders are to be recognized as shippers.

The Supreme Court of the United States in *Chicago, Milwaukee, St. Paul, and Pacific Railroad Company v. Acme Fast Freight*, 336 U.S. 465, in 1949, pointed out, and I quote:

In its relations with these carriers (under parts I, II, and III), however, the status of the forwarder is still that of a shipper.

A major purpose of the freight forwarders in seeking this legislation is transparent. They are seeking substantially cheaper purchased transportation from the railroads.

If they succeed in this, they will obtain substantially lower rates than other shippers for the same service. Further, the economic burden of such reductions in the cost of purchased rail transportation by the freight forwarders will have to be borne by shippers generally.

This is not in the public interest and this proposed "private interest" legislation should be rejected. The National Industrial Traffic League asks that H.R. 10831 be disapproved.

On behalf of the league, I wish to state our appreciation for the opportunity to appear and express our views in opposition to H.R. 10831.

Mr. FRIEDEL. Thank you very much for your statement. Do you have any questions, Mr. Adams?

Mr. ADAMS. I have one. On page 11 you have a very interesting concept set forth that the differential is growing that is available to the freight forwarders.

Since you have a great deal of statistical information and work in this field is it your feeling and your statement here that the motor carriers and the railroads are moving out of the small shipment business, the l.c.l. business and small pick up business, and therefore the small shipper is now and in the future going to have to, probably, pay higher rates which will provide a greater differential for the freight forwarders?

Mr. FLINT. Basically what I intended was that the difference between the carload rates applying on smaller shipments was increasing. In each one of these general rate increases with which we are confronted—

Mr. ADAMS. It is less and less attractive we will say for motor carriers to handle this and therefore those left in the field are charging more for it?

Mr. FLINT. That is right.

Mr. ADAMS. And also as then it becomes less attractive competitors tend to move out of the field?

Mr. FLINT. That is right. The railroads as you know have very largely moved out.

Mr. ADAMS. I understand there is almost no l.c.l. handled by the railroads?

Mr. FLINT. That is correct, very little of it left.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. On page 12 of your statement you state: "If they succeed in this, they will obtain substantially lower rates than other shippers for the same service." Would they get lower rates than the truckers get today?

Mr. FLINT. I would think probably they would. This is a matter of speculation I would think. Actually the distinction made there was between other shippers, the relationship of the motor carriers—

Mr. FRIEDEL. With the shipper and not carriers, is that it?

Mr. FLINT. Yes, sir; I was speaking of shippers; that is right.

Mr. ADAMS. Mr. Chairman, could I interject here?

Mr. FRIEDEL. Yes.

Mr. ADAMS. Describe for me the limitation on what can be done by truckers and under plan 1 in making special contracts for carrying the piggyback goods?

Is there a limitation on there which says you must either charge the shipper no more than the established motor truck rate between the areas or is there a limitation on that?

Mr. FLINT. No, sir; under plan 1, as I understand it—I stand subject to correction—the railroads and motor carriers are allowed to make contacts.

But this is, if I may make this distinction, this is in the form of a substituted service. In other words, the motor carriers have authority, they have equipment—

Mr. FRIEDEL. Again, is it that they cannot charge the shipper any more than what is the published truck rate between those two points?

Mr. FLINT. That is right; they can't charge the shipper any more.

Mr. ADAMS. The trucker can put it on the railroad if he wants or he can ride it between the points, but his rate to the shipper must be what he says it is?

Mr. FLINT. That's right.

Mr. FRIEDEL. Also truckers can enter into contracts with the railroads?

Mr. FLINT. Yes, sir.

Mr. FRIEDEL. That is for reduced rates?

Mr. FLINT. That is right; as a substituted service.

Mr. FRIEDEL. Gentlemen, the meeting will stand in recess until 2 p.m. We have asked for permission to sit while the House is in session this afternoon and I am confident that it will be given.

Mr. FLINT. Thank you very much, sir.

(Whereupon, at 12:15 p.m., the subcommittee recessed, to reconvene at 2 p.m.)

AFTER RECESS

(The subcommittee reconvened at 2 p.m., Hon. Samuel N. Friedel, chairman, presiding.)

Mr. FRIEDEL. The subcommittee will come to order.

Our first witness this afternoon will be Mr. Leonard Joseph, executive director of the Manufacturers & Wholesalers Association, San Francisco, Calif.

Is your statement brief?

STATEMENT OF LEONARD JOSEPH, EXECUTIVE DIRECTOR, MANUFACTURERS & WHOLESALE ASSOCIATION OF SAN FRANCISCO

Mr. JOSEPH. I would like to file my statement for the record and make a brief oral statement.

Mr. FRIEDEL. Fine.

Mr. JOSEPH. Mr. Chairman, my name is Leonard Joseph. I am executive director of the Manufacturers & Wholesalers Association of San Francisco, a position which I have held for the past 16 years. The association is composed of about 100 small manufacturers and wholesalers of apparel.

We are not a shippers association but the individual member firms ship freight, mostly textiles and apparel, by rail from the east coast and the South, from hundreds of locations, in small shipments to the San Francisco area. These are less-than-carload lots and are almost entirely handled by freight forwarders.

The speed of delivery and the cost of delivery are vital to the members of our industry who must compete with manufacturers in many places who are much closer to their sources of raw materials and textiles.

The freight forwarders who serve us advise us that they can improve and expand services and at least hold the line on steadily rising costs if they can make contracts with railroads. Our board of directors believe this and felt it important enough, therefore, to send me here to urge you to pass H.R. 10831. Thank you.

(Mr. Joseph's prepared statement follows:)

STATEMENT OF LEONARD JOSEPH, EXECUTIVE DIRECTOR, MANUFACTURERS AND WHOLESALE ASSOCIATION OF SAN FRANCISCO

I wish to thank your committee for giving me this opportunity to appear before you today and to testify in favor of House of Representatives bill, H.R. 10831.

I would like to introduce myself to the committee. My name is Leonard Joseph. I am executive director of the Manufacturers and Wholesalers Association of San Francisco. The Manufacturers and Wholesalers Association of San Francisco is made up of over 100 manufacturers and wholesalers of men's, women's and children's ready-to-wear.

My board of directors requested that I appear before your committee in favor of H.R. 10831 as our directors believe that the Interstate Commerce Commission Act as it is today is discriminatory against the freight forwarding industry. Freight forwarders, under the present Interstate Commerce Act, do not have the right to make contracts with the railroads, whereas the trucking industry enjoys this privilege. We believe, and have been told by the freight forwarders who serve our industry, that if they have the right to make more flexible arrangements with the railroads they will be able to improve and possibly expand their services. The freight forwarders are governed by tariffs and we feel that one mode of transportation should not have an advantage over any other mode.

Our industry, which is probably the most competitive in the world, has thrived on competition. I am sure the Department of Commerce figures will bear out that the apparel industry is second to the food industry in manufacturing. The total membership of the Manufacturers and Wholesalers Association of San Francisco receives less-than-carload lots of freight from small packages to larger shipments and for over 25 years has used freight forwarder service. The association I represent receives finished goods as well as piece goods in the San Francisco area from the east and southeastern states in excess of 60,000,000 pounds a year. California has become second to New York in apparel manufacturing and if all the freight received by apparel manufacturers and wholesalers and the retailers in California was added up I can assure the members of the committee that this would amount to over 250 million pounds consisting of small shipments to one State, California, in one year.

From my background and knowledge I am quite positive that the freight forwarding industry has received and is receiving the bulk of this freight. If the freight forwarders are permitted to make contracts with the railroads on an equal basis with the trucking industry, our industry would have to benefit from an expanded service that the freight forwarders would be able to give as a result of the passage of H.R. 10831.

Again, I wish to thank the members of the committee for permitting me to testify on behalf of the Manufacturers and Wholesalers Association of San Francisco in favor of this bill.

Mr. FRIEDEL. I want to thank you for your brief statement. You have come right to the point. They feel it would be cheaper if the freight forwarders could make contracts with the railroads.

Mr. JOSEPH. That is our understanding, yes, sir.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. What do you mean by expand service?

Mr. JOSEPH. I think that expanded services probably mean faster delivery times and delivery from more points than now exist.

Mr. KUYKENDALL. You feel you are not getting as good service as you would like?

Mr. JOSEPH. Yes, I think we are getting a good service now, but I feel it could be a better service both on delivery time and the cost factor.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Thank you.

I am going to call Mr. Leonard A. Cohn, purchasing and traffic manager of Koret of California.

**STATEMENT OF LEONARD A. COHN, PURCHASING AND TRAFFIC
MANAGER, KORET OF CALIFORNIA, INC.**

Mr. COHN. I would like to submit my statement for the record. I will read a brief part and paraphrase.

My name is Leonard A. Cohn, purchasing and traffic manager for Koret of California. We do a business of over \$38 million a year and ship over 4 million pounds a year of less-than-carload freight by freight forwarder service. The large majority of our shipments originate in the South and in the Southeast and are 300, 500 pounds, 2,000, 5,000-pound shipments. Daily shipments are made from the mills because in a fashion business we have a fast turnover.

We cannot accumulate goods. It is necessary for us to use freight forwarders to consolidate service. The apparel industry, which next to foodstuffs is one of the largest industries in the world, secures their fabrics from mills which for the most part are located in rural areas in the Southern States. It certainly seems to our company that the railroads should have available to them the right to deal with freight forwarders on at least as flexible and favorable a basis as they deal with motor carriers. The railroads will still have control of the arrangements based on contracts to the same degree—indeed to a greater degree—than under published rates. The railroads as well as the freight forwarders would therefore benefit themselves and their customers.

In summation, we feel that it is only healthy for the economy of the Nation to have all modes of transportation working under similar regulations. My company is opposed to one form of transportation having an advantage over another form offering similar services.

(Mr. Cohn's prepared statement follows:)

**STATEMENT OF LEONARD A. COHN, PURCHASING AND TRAFFIC MANAGER, KORET OF
CALIFORNIA, INC.**

I wish to thank the Committee of Interstate & Foreign Commerce for permitting me to testify today on the House of Representatives Bill No. 10831.

My name is Leonard A. Cohn. I am purchasing agent and traffic manager for Koret of California. Koret of California is one of the nation's largest manufacturers of women's wearing apparel. Our volume of business is over \$38,000,000 a year. Besides the manufacture of women's apparel, Koret of California also owns Koratron and its patents covering permanent press wearing apparel. Koratron has licensees throughout the United States, Canada, and practically every country of the world. Koret of California receives over four million pounds of less-than-carload freight a year and all of it moves via freight forwarder service and we find freight forwarder service extremely satisfactory.

I appear before the Committee with the consent of our top management who are in favor of the passage of House bill 10831, as our company believes the Interstate Commerce Act in its present form is highly discriminatory by not permitting freight forwarders to have the right to make contracts with the railroads. We claim this is discrimination between one mode of transportation and another because the Interstate Commerce Act in its present form permits trucking companies to make such contracts with the railroads. Our company is aware of the importance of freight forwarders due to the vast amount of freight they generate. Freight forwarders by the nature of their business convert vast quantities of miscellaneous less-than-carload or less-than-truckload freight into carload or volume lots. The flow of this type of traffic is relatively steady and predictable, permitting advance planning which also permits the railroads to plan in advance the allocation of railroad equipment. We know from our experience with freight forwarders that their long distance hauls move almost exclusively by railroad. It is our belief if H.R. 10831 is passed that freight forwarders will be able to expand their service into areas which they cannot effectively serve.

The apparel industry, which next to food stuffs is one of the largest industries in the world, secures their fabrics from mills which for the most part are located in rural areas in the southern states. It certainly seems to our company that the railroads should have available to them the right to deal with freight forwarders on at least as flexible and favorable a basis as they deal with motor carriers. The railroads will still have control of the arrangements based on contracts to the same degree—indeed to a greater degree—than under published rates. The railroads as well as the freight forwarders would therefore benefit themselves and their customers.

In summation, we feel that it is only healthy for the economy of the nation to have all modes of transportation working under similar regulations. My company is opposed to one form of transportation having an advantage over another form offering similar services.

In closing, permit me to again thank the Committee for permitting me to testify in favor of House bill 10831.

Mr. FRIEDEL. Thank you, Mr. Cohn. Are there any questions?

Mr. KUYKENDALL. Mr. Cohn, what percent of the mileage is used by your firm for delivering to wholesalers and retailers?

Mr. COHN. I am concerned with in-bound freight from the East, in other words, the raw materials, trimmings, fabric.

Mr. KUYKENDALL. What percentage of that freight in tonnage would you say, that arrives at your plant, has had piggyback service during its trip?

Mr. COHN. Straight rail cars to my knowledge; none.

Mr. KUYKENDALL. Either a rail car without being trucked or on piggyback.

Mr. COHN. A piggyback load, it could have been consolidated in a piggyback load.

Mr. KUYKENDALL. In other words, how much of your stuff goes over rails as compared to highways?

Mr. COHN. Probably 90 percent of it.

Mr. FRIEDEL. Over the rails?

Mr. COHN. Over the rails because it is picked up and consolidated at consolidation points and then moved by rail.

Mr. KUYKENDALL. I can't get it here. All the manufacturers say 75 to 90 percent of their stuff come by rail and then they turn around and say it can't come by rail because of the small lots.

Mr. COHN. The rail does not go into the origin points. It has to go by truck from the origin points to the railhead somewhere.

Mr. KUYKENDALL. It is going to have to do that anyway.

Mr. COHN. No.

Mr. KUYKENDALL. Doesn't the freight forwarder take the shipment from the origin point to the railhead?

Mr. COHN. Yes. But it is possible also for a trucker to run it across country if he wants to on a direct route.

Mr. FRIEDEL. In other words you have less-than-carload lots.

Mr. COHN. That is correct. We have less-than-carload lots. Truckers will also on less-than-carload lots wait until they can consolidate, until they get a full load. This will take 2, 3, 4, 5 days, whereas, with freight forwarders, they can do it overnight.

Mr. KUYKENDALL. You are about the fifth or sixth similar witness that we have had, and, without exception, each of you has said that you are very happy with the rail forwarder service. Each of you has said you are operating profitably or you would not have enough money to pay your way up here and you have reasonable freight forwarders operating at a profit.

Mr. COHN. Yes.

Mr. KUYKENDALL. You want to be allowed to use freight forwarders, yet you turn around and say that 90 percent of your stuff uses rail now.

What I am saying is this: There are just so many eggs in this basket, just so much profit to be had in the overall picture, moving an object from one point to another. It is either going to be made by a freight forwarder, a truck line, or a railroad, one or the other or a combination of all three, we hope.

Now, somebody in this basket has offered you one of the eggs to come up here: is that right?

Mr. COHN. Answer me this, because now you are getting me confused. If a trucker can contract with a railroad on a rate, why can't a freight forwarder contract with the railroad for the same type of setup?

Mr. KUYKENDALL. We are discussing here now the matter of law as it is now written. A freight forwarder may contract with the railroad if he can show that his cost of operating under section 408—are you familiar with it?

Mr. COHN. No.

Mr. KUYKENDALL. What I am getting at here is, I would like to know if you have been promised by the freight forwarders that you will get so much of a rate cut if they get a cut.

Mr. COHN. Negative. I would think it would be possible that if they got a rate cut, it could be passed on to us but no one has ever promised Koret of California or myself that we will get any kind of rate cut due to the fact that the freight forwarder will get a lesser rate.

Mr. KUYKENDALL. You have reason to believe you might get one?

Mr. COHN. I have reason to believe we might get part of it or at least it will stave off a future raise in the rates at some future time.

Mr. KUYKENDALL. Thank you, Mr. Cohn.

Mr. FRIEDEL. Thank you, Mr. Cohn.

Mr. Robert Minardi, president, Garden City Transportation Co.

STATEMENT OF ROBERT MINARDI, PRESIDENT, GARDEN CITY TRANSPORTATION CO., LTD., SAN JOSE, CALIF.

Mr. MINARDI. Thank you very much, Mr. Chairman, for allowing me to give my brief statement a little earlier.

My name is Robert A. Minardi and I am the president of Garden City Transportation Co., Ltd., 1720 Bayshore Highway, San Jose, Calif.

Garden City Transportation Co., Ltd. is a class 1 motor common carrier of general commodities operating under authority issued by the Interstate Commerce Commission, and Public Utilities Commission of California. Our scope of operation is entirely within the State of California, and covers an area generally described as the central coast area of California.

I have been associated with our company, excepting a 3-year tenure in the Armed Forces, since 1938.

As a motor common carrier we transport substantial tonnage for various freight forwarders under contracts as authorized in section 409 (a) of part IV of the Interstate Commerce Act.

I felt that my experience in negotiating these contracts with the freight forwarders, as well as the company's experience in handling and distributing their freight, warranted my appearing before you today to relate to you personally my feeling regarding H. R. 10831.

My experience in negotiating these contracts with freight forwarders for over 20 years leads me to believe that if this same privilege was allowed the railroads, all parties concerned, including the general public, would receive benefits not now available.

I know that in negotiating these contracts we must consider many factors that are peculiar to freight forwarder traffic only, and are not applicable to the general shipping public. In most instances, these factors allow us to handle freight forwarder shipments at lower rates than those named in our common carrier tariffs. These lower rates then enable the forwarder certain savings which reflect greatly in their rate structure for the shippers of our Nation.

It would appear to me that the railroads, if allowed to sign contracts with the freight forwarders would be able to consider similar factors inherent only in their movement of forwarder traffic, thus enabling them to offer certain savings to the forwarders, and at the same time not jeopardize their position by making these same rates available through tariff publication to shippers of similar traffic, but factors different from those found in moving freight forwarder traffic.

The freight forwarders then would have not only the savings presently available from their truck carriers, but also savings from their present costs of the rail services they utilize, to pass on to their customers, who span practically the entire shipping public in the United States.

A portion of that shipping public has the problem of service on small shipments that is prevalent today. Many articles have appeared in various publications recently, outlining the difficulties that shippers of small shipments are encountering in obtaining satisfactory or reasonable service for their transportation needs. The railroads are no longer active in this field, and the only service via railroad that is available to these shippers is the freight forwarder. They in conjunction with their motor carriers on each end for door-to-door pickup and delivery, and railroads for the line haul, are most active in the transporting of small shipments. Thus their rate structure and service is vitally important to the shipper of single or small lots, and the railroads line haul is an important factor in the rates assessed by the freight forwarders.

Regarding the contracts themselves, I have found, through the long period of negotiating these contracts, that the freight forwarders have been just and reasonable with my company. At times, differences have arisen, but the fact that I have transported their traffic for over 20 years, proves that we have always overcome the trials and tribulations present in most any negotiation, and benefits and accrued to both sides. I have always had the best of relationships with all the freight forwarders we service.

In closing let me state that I am not qualified to tell you the degree of savings that would accrue to the freight forwarders by contracting with the railroads, nor how soon these savings would benefit the public, but I am sure the ultimate result of the passage of this bill

would be beneficial to all concerned with transportation costs and service in our country. Thank you.

Mr. FRIEDEL. Thank you, Mr. Minardi. I have no questions. Thank you for a very fine statement. Mr. Kuykendall.

Mr. KUYKENDALL. Do you belong to a shippers association?

Mr. MINARDI. No, sir.

Mr. KUYKENDALL. Would you have any objections to the shippers association being given the same privilege that you are asking the freight forwarders be granted under this particular legislation? I believe there was an amendment proposed by one witness this morning in this light.

Mr. MINARDI. I have had very little to do with shippers associations. Realizing that they are not common carriers and do not, as I understand it, hold themselves out to the entire public and are actually not a part of the act at the present time, I wonder whether it would actually be feasible for this same rule to apply to them.

Mr. KUYKENDALL. You seem to be quite interested in the overall welfare of the public.

Mr. MINARDI. Yes, sir.

Mr. KUYKENDALL. From the appearance of some of the members of the shippers association represented by just one witness yesterday, I think there was a lot more public involved there than several freight forwarders combined might be.

Mr. MINARDI. Let me answer your question this way, sir. If a shipper association had the same inherent benefits or volume or makeup of freight that a freight forwarder would furnish to the railroads, I certainly, as a small trucker, would have no objection; no, sir.

Mr. KUYKENDALL. Let me ask you this now.

In dealing with freight forwarders, and goodness knows, they serve a proper purpose in the transportation system of our country, do you get any different rate from—where are your headquarters?

Mr. MINARDI. San Jose, Calif.

Mr. KUYKENDALL. How far is San Jose from Los Angeles?

Mr. MINARDI. Just about 400 miles.

Mr. KUYKENDALL. Do you get any different consideration, bargain-wise, from San Jose to Los Angeles than you do from San Jose to Denver from a freight forwarder?

Mr. MINARDI. I serve neither one of those points.

Mr. KUYKENDALL. You don't ship outside the State?

Mr. MINARDI. No, sir. I operate strictly within the central coast section of California.

Mr. KUYKENDALL. How far is it from your place to San Francisco?

Mr. MINARDI. Fifty miles.

Mr. KUYKENDALL. How far to Sacramento?

Mr. MINARDI. Ninety-five.

Mr. KUYKENDALL. What percent of the State of California is within 450 miles of you?

Mr. MINARDI. Fifty percent.

Mr. KUYKENDALL. You get the benefit of the truck arrangements of negotiated contracts for freight forwarders to most of California then. In other words, a freight forwarder may negotiate a special rate with a truckline for less than 450 miles?

Mr. MINARDI. That is correct.

Mr. KUYKENDALL. The freight forwarder might negotiate with a motor carrier for less than 450 miles?

Mr. MINARDI. Yes.

Mr. KUYKENDALL. That covers most of your area.

Mr. MINARDI. It covers all my area.

Mr. KUYKENDALL. My recollection is that California is not an old-time railroad State, it is a great truck State; is that right?

Mr. MINARDI. Yes, sir.

Mr. KUYKENDALL. If you were shipping from Los Angeles to San Francisco, you would probably go more by truck than to some other part of the country?

Mr. MINARDI. I would say that is right. The reason that I am here today is that I do extensive business with freight forwarder traffic which enables me to have a solid operation to work around in my own local company operation.

Frankly, this is about the only way left for me to participate in transcontinental traffic. We had in the past transcontinental truckers that did turn over much of their transcontinental traffic to us.

Mr. KUYKENDALL. I thought you said you did not do any business outside the State of California.

Mr. MINARDI. I don't; but the freight forwarder brings the freight over to California and turns it over to me for ultimate delivery, or I pick it up for them, take it to one of their terminals.

Mr. KUYKENDALL. You want a combined rate?

Mr. MINARDI. No, sir. We act as an agent for the freight forwarder in pickup and delivery service.

Mr. KUYKENDALL. You are an agent for a freight forwarder?

Mr. MINARDI. Yes, sir, but only for the pickup and delivery service of their shipments.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Our next witness is Mr. John Lincoln, general manager, Los Angeles Wholesale Institute and the California Shippers Associates. Mr. Lincoln is accompanied by counsel, Mr. Stanley Tobin.

STATEMENT OF JOHN C. LINCOLN, GENERAL MANAGER, LOS ANGELES WHOLESALE INSTITUTE, AND CALIFORNIA SHIPPERS ASSOCIATES; ACCOMPANIED BY STANLEY E. TOBIN, COUNSEL

Mr. TOBIN. Mr. Chairman, Mr. Lincoln will give a statement on behalf of the Los Angeles Wholesale Institute, California Shippers Associates, Piggy-Back Shippers Association, and Manufacturers Shipper Association. I want to make one statement before Mr. Lincoln gives our statement and also answer any questions that the committee may have.

Sir, our position is that we are against H.R. 10831. We would not be against it, however, with the addition of the amendment in regard to nonprofit shippers that the American Institute has introduced or asked to be introduced. We would not favor nor oppose the bill under those circumstances, but we would oppose it without that amendment.

Mr. Lincoln.

Mr. LINCOLN. My name is John C. Lincoln, Glendale, Calif. I am the general manager of the Los Angeles Wholesale Institute and Cali-

ifornia Shippers Associates, which are two nonprofit associations which do a great deal of their work together.

Los Angeles Wholesale Institute, California Shippers Associates, Piggy-Back Shippers Association and Manufacturers Shippers Associates are each separately California based, nonprofit shippers associations, each of which is composed of between 80 and 115 company members, both large and small, incorporated both within the State of California and other States of the Union and doing business both in California and throughout the Nation. These associations have as their principal activity the shipment of consolidated and l.t.l. freight of their hundreds of members and annually ship many millions of dollars of commodities throughout the United States.

The Los Angeles Wholesale Institute has been operating for over 30 years and the other associations have been operating for many years.

Each of these associations oppose the adoption of H.R. 10831, and particularly its adoption as that bill is presently written. Each believes, based upon its experience in the transportation field, that there is no justification for the proposed legislation, that it would be detrimental to the free flow of commerce, and that it would be contrary to the national transportation policy as repeatedly enunciated by Congress, the courts and the Interstate Commerce Commission. The adoption of the proposed legislation in its present form would spell the death knell to the very existence of these associations and certainly to their continued usefulness.

Congress, through the adoption of 49 U.S.C. 1002(c) has shown that it desires to promote the continuation of nonprofit shippers associations. The proposed legislation is anathema to that intent. The courts have long recognized the importance of nonprofit shippers associations to interstate commerce and have recognized that any discrimination against nonprofit shippers associations in favor of freight forwarders cannot be justified in that each of these type shippers perform nearly identical functions. As a recent three-judge District court stated in a case involving some of these very associations, Baltimore Shippers & Receivers Association, Inc., etc. (*C. J. Worth Drayage Company, Los Angeles Wholesale Institute v. Public Utilities Commission of the State of California, et al.*, 268 F. Supp. 836 (1967)) :

Freight forwarders and nonprofit shippers' associations perform nearly identical functions, except for the fact that the freight forwarders hold themselves out to do business with the public, rather than providing services only for members of an association, and they operate at a profit rather than as a nonprofit service to members. Each handles the consolidation, shipment and distribution of goods, attempting to take advantage of bulk rates and the maximum efficiencies in assembly, distribution and routing techniques. . . .

Were it not for this distinction recognized in 49 U.S.C. 1002(c) (1), nonprofit shippers' associations would be treated as freight forwarders.

The Supreme Court of the United States on January 15, 1968, affirmed this decision which precluded discriminatory action against nonprofit shippers associations. The present legislation would likewise discriminate against these associations and their memberships.

The courts have recognized that :

The Freight Forwarder Act . . . (section 49 U.S.C.A. 1002(c)) clearly evinces a strong congressional policy that the regulation envisioned by the Freight

Forwarder Act not encroach upon or restrict the right of shippers to join together to enjoy for themselves the savings of volume transportation rates. (*Freight Consolidators Cooperative, Inc. v. United States*, 230 F. Supp. 692, 695 (1964).)

See also *Pacific Coast Wholesalers Association v. United States*, 81 F. Supp. 991 (S.D. Calif. 1949) and *Atlantic Shippers Association, Inc.*, 322 I.C.C. 273 (1964).

The proposed legislation, it is submitted, is against the public interest in that it gives to one classification of shippers undue advantage over another class similarly situated. This legislation would permit and promote a distinct, though unwarranted, advantage to a body of shippers engaged in a like activity and especially as against numerous bona fide nonprofit shippers associations throughout the country. Such discrimination has no justification, is totally arbitrary, and, indeed, capricious. The freight forwarders, to our knowledge, have shown no economic evidence justifying a change from the present method of rate determination, much less justification for the adoption of a discriminatory policy.

Ratemaking procedures historically require, indeed demand, full public participation and scrutiny. Rates are made by and through the established common carrier ratemaking bodies and the public is afforded full knowledge of the subject matter to be discussed and full opportunity to appear, present evidence and arguments. This practice will, without justification whatever, disappear if the instant litigation in its present form is approved.

What is the true reason that the freight forwarder is seeking the proposed legislation? In our opinion, it has but one aim: to effect rail charges or to gain additional services not now available to it as a public buyer of rail transportation service. It follows then that existing rail charges applied to freight forwarders are unreasonably high, or the services accorded freight forwarders by railroads are unreasonably restrictive or deficient. Possibly so. But if so, these charges or services are equally unreasonable or restrictive or deficient as to any other buyer of the same services, including shipper associations or consolidators or any shipper whatever. If a remedy is due, it is due the freight, not the buyer of the service, and if given it should be given the freight, not the buyer.

The freight forwarder proponents of this bill portray themselves as carriers. Indeed, they stand before the public in all the trappings of a carrier with all a carrier's responsibilities and prerogatives. They are so defined by the Congress for appropriate and abundant reasons. However, as a practical matter we urge that a freight forwarder is no more a carrier than any other carload shipper as to railroads. A carrier is one who commits substantial capital and resources to the physical carriage of goods for hire. A forwarder—or association or other consolidator—does nothing more, after all, than arrange things before and after such carriage. Special privilege for freight forwarders, then, is illogical. A discriminatory privilege is indefensible.

The discrimination will manifest itself against thousands of businesses who operate through nonprofit shippers associations in an attempt to minimize their costs and maximize the use of railroad facilities. If freight forwarders are accorded the unbridled prerogative accorded them under the present language of H.R. 10831, they will be able and be sure to exercise the right of picking and choosing favorable

and advantageous rates on certain commodities or traffic so as to leave the nonprofit shippers associations in an untenable operational position. Freight forwarders will then be in a position to undermine, certainly temporarily and possibly permanently, rate structures that presently exist which, due to the absence of the profit motive on the part of bona fide nonprofit shippers associations, enable these associations, to save tremendous amounts in shipping costs for their members. Special secret deals between freight forwarders and railroads can, and unquestionably will, undercut this advantage, destroy the existence of nonprofit shippers associations and then enable these forwarders to subsequently make adjustments so as to insure a high rate of compensation to them. So long as a "reasonable rate" is merely a rate within a broad zone which has both a floor and a ceiling, there is no legal means available to the public to insure that all freight forwarders' rates do not come to rest at the ceiling after temporarily being on the floor. On the other hand, association rates perforce must remain always on the floor, absent the profit factor.

In the final analysis, however, if any advantage is accorded the freight forwarder, there is no cogent reason whatever, under the national transportation policy, for not according that same advantage to nonprofit shippers associations. To discriminate at this time—and any legislation to favor one group over another would be undue discrimination—would be a major and unheralded departure from long-standing congressional policy. It would, in effect, be a congressional dictate that Congress does not favor, indeed opposes, the continual existence of nonprofit shippers associations. This broad statement is made not based upon a theory but based upon the day-to-day operations and problems of these and other nonprofit shippers associations who constantly must deal on the same terms and under the same conditions of freight forwarders—save only the absence of the profit motive in regard to the former.

Thank you, Mr. Chairman.

Mr. FRIEDEL. Thank you, Mr. Lincoln.

In other words, you oppose the bill if the amendment proposed by the American Institute is not accepted. If that amendment is incorporated in the bill, it will be all right with you?

Mr. LINCOLN. That amendment makes the bill more palatable. I think we are opposed to any opportunity for freight forwarders or anyone else to begin to engage in secret contract negotiations for services that are identical to others who are not involved in these negotiations.

The amendment certainly makes the bill more palatable and, as I stated here, without profit motive. If Shippers Associates are likewise entitled to contract with railroads for special rates and services at least that part of the public who are members of those associations are bound to accrue 100 percent of the benefits of such contracts.

Mr. FRIEDEL. Thank you. Are there any questions?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. Mr. Lincoln, you have made a very good case. I am afraid you severely weaken the case by saying, "but if you include me in on it, go ahead and do it."

Mr. TOBIN. Our board of directors paid our expense to come out here on the basis, which is a natural one, that their interests particularly be protected. They have expressed to us individually that they do not like the present bill. We are being sent here to express the particular ache and pain where it hurts the most.

Mr. KUYKENDALL. Thank you for your candor. That is a very straightforward point you make.

May I explore a couple of points here. One of the things that I fear here in this overall picture of more shuffling, you might say, and this is what I am afraid it always amounts to, just more shuffling, the pendulum appears to swing from one end to the other, may not theoretically a railroad pick a freight forwarder or a group of freight forwarders in a certain area for piggyback service and so cut their cost to the freight forwarder as to create very unfair competition for a regular truckline? Theoretically, could this not happen under this bill?

Mr. LINCOLN. For a regular truckline?

Mr. KUYKENDALL. In other words, the freight forwarder, for instance, obviously cannot take a full truckload or more. I haven't been able to get a clear answer what a truckload is. Let us talk about 20,000 pounds.

Mr. LINCOLN. I would have to include myself out on that because a truckload to me is a full truck of freight. It might weigh 8,000 or 45,000 pounds.

Mr. KUYKENDALL. Most of the motor freight lines love to have a half truckload and most freight forwarders certainly would love to have a half truckload. So a motor freight line puts together two half truckloads and he has to haul it from one point to another on a published regulated rate; is that correct?

Mr. LINCOLN. That is correct.

Mr. KUYKENDALL. A freight forwarder does not have to haul from one point to another on a published regulated rate. Published but not regulated.

Mr. LINCOLN. Which rate are you referring to?

Mr. KUYKENDALL. I am talking about what a freight forwarder—let me make something clear. They have to publish but they are not regulated. In other words, one freight forwarder can charge me a different amount of money to haul from one part to another; is that not correct?

Mr. LINCOLN. No, sir.

Mr. KUYKENDALL. Can he charge you less than a regulated truckline for the same haul?

Mr. LINCOLN. He has to charge whatever his published rate is.

Mr. KUYKENDALL. The trucker has to go to the ICC to get his rate?

Mr. LINCOLN. No, sir; the trucker makes his rate and it is subject to the Commission's approval and review.

Mr. KUYKENDALL. Can it not be a lesser rate for the same haul, the same amount of goods?

Mr. LINCOLN. The freight forwarder could publish a lesser rate than the truckline if he can defend such a rate and it is a reasonable rate.

Mr. KUYKENDALL. If the railroad wants to cut his price down, down, down, can he give you a lower rate if he wants to?

Mr. LINCOLN. Yes, sir; theoretically, he can give any shipper as low a rate as he can over within the compensatory structure. The lower his basic purchase charge goes, theoretically, the lower his rate to the shipper.

Mr. KUYKENDALL. The last car on a long line of railcars is almost impossible to figure. So, he can give a freight forwarder, or anyone else he wants to, he can give a piggyback operator if he wants to an almost unbelievably low rate if he so chooses and probably get by; is this not true?

Mr. LINCOLN. To an extent, yes.

Mr. KUYKENDALL. So, are we not, if we pass this type of legislation, setting up a vehicle to create unfair competition?

Mr. LINCOLN. Yes, I agree with that.

Mr. KUYKENDALL. This is what bothers me about this package and really the only thing that does. What is good for the goose is good for the gander. I agree with you.

Mr. LINCOLN. There is only so much in the basket by way of profit for the movement of the goods. Now, our business is handbags, shoes, pots and pans, foodstuffs and the other goods that make up our world of commerce.

I am not in the freight business. I happen to work for a sort of do-it-yourself freight forwarder. My motive is to reduce this cost to the absolute minimum, not to try to make a profit out of the freight operation. As I said, he makes his profit selling shoes. If lower charges can be derived, can be gotten in any way from the railroad for a movement of the carload of mixed freight, then I believe our people are entitled to have that lower charge reflected in the price of the shoes laid down in the marketplace where they are going to sell them.

It should not be reflected in an enhanced profit structure for one group such as the freight forwarder group.

Mr. FRIEDEL. Thank you.

Mr. LINCOLN. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. Charles H. Sturgeon, general traffic manager, the B. F. Goodrich Co., Akron, Ohio.

(No response.)

Mr. FRIEDEL. Mr. R. L. Drake, traffic manager, Kayser-Roth Hosiery Co., Inc., Burlington, N.C.

STATEMENT OF R. L. DRAKE, TRAFFIC MANAGER, KAYSER-ROTH HOSIERY CO., INC., BURLINGTON, N.C.

Mr. DRAKE. Mr. Chairman, we would like to submit our prepared testimony for the record and make a few remarks.

We have shown in our prepared testimony various points of interest for our company. I would like to point out that we are not a member of any association. We are speaking strictly for ourselves as a manufacturer. We are concerned primarily with one point that I would like to make and this has been brought up in the so-called selectivity of the motor carriers.

The motor carriers are becoming more selective in the type of freight that they want to accept from shippers. They are becoming more selective especially in the transcontinental freight which we are particu-

larly interested in. They are becoming selective geographically which affects us. We sell in all marked areas. We are one of three principal hosiery manufacturers in the country.

We are selling in small towns as well as the Los Angeles area, San Francisco area. We are interested in the small towns in Montana and Idaho, where we do not have motor carrier service at the present time from North Carolina.

Our commodity is hosiery, which is light bulk freight. We are also plagued with something else, the so-called small shipments. The freight forwarders to us seem to be an answer of one way to continue to market this particular commodity that we are manufacturing.

I would like to make a comment, too, on the contracting. Of course, in any contracting, there has to be a mutual meeting of the minds. Many motor carriers now do not and have never contracted with the freight forwarders. We would not presume that all railroads would contract with the freight forwarders. So, we don't particularly see any dange in allowing the freight forwarders to contract with the railroads because there still has to be a meeting of the minds.

In summary, we also have something else that I don't think has been mentioned and that is certain Interstate Commerce Commission control. If things get out of hand, there are controls to restrict alleged unfair competition.

Therefore, we can only see, as a result, a better competition, a healthier competition, if this bill is allowed to become effective and to us as a shipper certain benefits will accrue, namely our ability to market our goods in many of these smaller areas, smaller towns that we do not have an outlet in now without higher priced transportation.

Thank you, sir.

(Mr. Drake's prepared statement follows:)

STATEMENT OF R. L. DRAKE, TRAFFIC MANAGER, KAYSER-ROTH HOSIERY CO., INC.,
BURLINGTON, N.C.

We are a leading hosiery manufacturing company with 12 plants located primarily in the Southern States. We ship to all 50 states and many foreign countries. We are very interested in H.R. 10831 and wholeheartedly support this bill.

We believe that if the freight forwarders were afforded the opportunity to make contracts with the railroads, that the cost of operation to this industry would be improved and become a primary factor in holding their costs in line to the extent that subsequent rate increases to shippers could be deferred.

Historically, hosiery is a very competitive business and we are concerned with the cost of transportation, as we have already noted, but of more importance, we see advantages in this bill of allowing more healthy competition. It has been our observation that whenever a full coordination exists between various modes of transportation, the shipper receives the advantages in better service.

In the hosiery business, we are vitally concerned with the so-called small shipments. The freight forwarders presently have no restrictions and we would anticipate none with the passage of this bill in the handling of small shipments. Both the motor carriers and the railroads are becoming more selective in the handling of small shipments to the extent that the problem now concerns us in making shipments to certain sections of the country. Therefore, we want to encourage the freight forwarders in handling many of our small shipments.

Our personal experience with the freight forwarders, with whom we are doing business, has been most satisfactory. In all phases of our business, we ship on an average of between 150,000 and 170,000 pounds per month via freight forwarders. We feel that the freight forwarder's rate structure is attractive to us and regardless of the outcome of this House bill, it would not effect our continued use of the freight forwarders.

If enacted, we feel that this House bill would be of benefit to us and furthermore, that passage is in the public interest and in line with the National Trans-

portation Policy. In conclusion, we most respectfully hope that this bill can receive a favorable consideration before this committee.

Mr. FRIEDEL. Thank you, Mr. Drake. Are there any questions?

There are no questions. Thank you again.

Our next witness is Mr. Milton Strickland, Jr., office manager, Kex plant, Callaway Mills Co., La Grange, Ga.

Mr. Strickland, you may proceed.

STATEMENT OF MILTON STRICKLAND, JR., OFFICE MANAGER, KEX PLANT, CALLAWAY MILLS CO., LA GRANGE, GA.

Mr. STRICKLAND. Mr. Chairman, my appearance before you today is to seek your favorable support and consideration of House bill H.R. 10831, which, if passed, will enable the freight forwarders to make contracts with the railroads.

I am employed by a manufacturer of industrial wiping cloths. These cloths are shipped from La Grange, Ga., to industrial laundries and linen suppliers located in major cities of the United States, Canada, Hawaii, and Puerto Rico. It has been our policy to use freight forwarders for our shipments to the west coast. During the past several years we have received excellent service on these shipments.

I am most interested in the passage of this bill in order to maintain this service and enable the freight forwarders to hold the line on increasing costs and rates. This bill will authorize the freight forwarders to enjoy the same privileges motor carriers have been enjoying for some time. Passage of this bill will insure us a continued good service for our small shipments. Most of the major railroads have discontinued accepting small l.c.l. shipments. Our customers receiving small shipments must have transportation service available to them as well as our customers who are in a position to purchase in large lots.

We feel passage of this bill will allow the freight forwarders to maintain their service on small shipments and enhance coordination of freight forwarders' service with their underlying transportation.

Our experience with the freight forwarders has been satisfactory. Their rates are in line, and we plan to continue to use them. I feel this bill's passage will be in the interest of the shipping public and our national transportation policy.

I very deeply appreciate the time allotted me by this committee, and trust House bill H.R. 10831 will be acted upon favorably by all concerned.

Thank you.

Mr. FRIEDEL. Thank you, Mr. Strickland. Are there any questions? Thank you very much.

Mr. Kazuo Takei, traffic manager in charge of consumer products, Leslie Foods, Inc., Newark, Calif.

STATEMENT OF KAZUO TAKEI, TRAFFIC MANAGER IN CHARGE OF CONSUMER PRODUCTS, LESLIE FOODS, INC., NEWARK, CALIF.

Mr. TAKEI. Mr. Chairman and members of the committee, my name is Kazuo Takei, and I am the traffic manager in charge of consumer products for Leslie Foods, Inc.

Leslie Foods, Inc. is a wholly-owned subsidiary of Leslie Salt Co. producing and distributing almost 500 food products. Our 160-acre farm near Dixon, Calif., may well be the largest commercial herb farm in the United States. Products are manufactured in eight plants.

The major products marketed on a national basis are some 150 Spice Islands product such as spices, herbs, vinegars, and teas. Our customers include small grocery stores, department stores, chain grocers, jobbers, distributors, specialty stores, and military commissaries overseas as well as those in the continental United States.

As part of our long-range growth plans, we maintain our own distribution center in Berkeley, Ill., and also distribute products from a public warehouse located in North Bergen, N.J. The bulk of the finished goods are supplied by our manufacturing plants in the San Francisco Bay area.

The aggregate volume of finished goods shipped during 1967 to the two distribution centers by freight forwarders exceeded 3 million pounds. We are very pleased with the service provided by the freight forwarders. Also, the rates they established for the movement of our products are a very important factor in our ability to maintain the two distribution centers.

We support H.R. 10831 because we consider it constructive legislation that ultimately will benefit the general public. It appears that the contractual arrangement will bring the two principals to work together more closely to effect results that will be mutually advantageous.

Thank you.

Mr. FRIEDEL. Are there any questions? Thank you very much.

Mr. TAKEI. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Vincent J. Scarpinito, general traffic manager, M. Lowenstein & Sons, New York.

STATEMENT OF VINCENT J. SCARPINITO, GENERAL TRAFFIC MANAGER, M. LOWENSTEIN & SONS, INC., NEW YORK, N.Y.

Mr. SCARPINITO. Mr. Chairman, I want to thank you for the privilege of addressing the members of committee. I am going to ready my short text here.

My name is Vincent J. Scarpinito, general traffic manager of M. Lowenstein & Sons, Inc., whose principal offices are located at 1430 Broadway, New York City. I have had said position for the last 19 years.

M. Lowenstein & Sons is a corporation incorporated under the laws of the State of New York.

M. Lowenstein & Sons is known as a vertical textile operation, who owns and operates 14 plants in North Carolina, South Carolina, Georgia, and Alabama. It employs nearly 18,000 people. In the State of South Carolina it owns and operates two of the largest textile printing plants in the country, one at Rock Hill and the other at Lyman, S.C.

M. Lowenstein & Sons is a national organization with sales offices in the principal cities of the United States. It caters to the cutting trade, department store trade, and chainstore trade. It owns and sells worldwide the famous Wamsutta and Pacific sheets and pillowcases in addition to its regular textile trade.

This company uses all modes of transportation on a nationwide scale and in conjunction with foreign commerce.

We support H.R. 10831 because we feel it will enable the forwarders to offer a better and more extensive service to shippers. Our shipments are mostly in the 100 to 1,000 pound category. Most railroads have restrictions on l.c.l traffic. The forwarder welcomes the small shipment. We feel that forwarders and railroads should enter into contract agreements. It will stimulate ratemaking and extend the services that forwarders perform in conjunction with the railroads. This should be extended to the forwarders who we are sure will enhance the transportation industry.

Thank you, Mr. Chairman.

Mr. FRIEDEL. I want to thank you, Mr. Scarpinito. Are there any questions, Mr. Devine?

Mr. DEVINE. Mr. Scarpinito, what is meant by vertical textile?

Mr. SCARPINITO. I thought I would get a question on that. A vertical textile operation is an operation where the company actually goes out and buys in the field the cotton or contracts to buy it from brokers. They begin the operation right from the cotton which then goes into a cotton warehouse where the cotton is graded. It is then sent to its various spinning and weaving mills.

It is then shipped from the spinning and weaving mills to the finishing plants. The company at the same time is merchandizing the various commodities that it sells.

Mr. DEVINE. Is there such a thing as a horizontal textile operation?

Mr. SCARPINITO. I think we would like to get into that business.

Mr. DEVINE. I had never heard of that term before.

Mr. FRIEDEL. Mr. Kuykendall, do you have any questions?

Mr. KUYKENDALL. No, Mr. Chairman.

Mr. FRIEDEL. Thank you very much.

Our next witness will be Mr. J. R. Fitzwater, manager, traffic and transportation, Varian Associates, Palo Alto, Calif.

STATEMENT OF JACK R. FITZWATER, MANAGER, TRAFFIC AND TRANSPORTATION, VARIAN ASSOCIATES, PALO ALTO, CALIF.

Mr. FITZWATER. Thank you, Mr. Chairman, for the time allotted our company in support of H.R. 10831.

My name is Jack R. Fitzwater. I am the manager, traffic and transportation, for Varian Associates, Palo Alto, Calif. Varian Associates manufactures various electronic instruments, marketed throughout the United States.

I am authorized to testify to the matters stated herein, and these statements are made in connection with and in support of the bill introduced to assist the freight forwarders in obtaining equality, identified as H.R. 10831.

As manager of traffic and transportation, a position I have held for 7 years, my department has complete responsibility in the matter of routing all inbound shipments purchased f.o.b. shipping point. My department also has responsibility with all divisions in the recommendation of routing of manufactured products. We have manufacturing facilities located in Portland, Oreg., Walnut Creek, San Carlos, Palo Alto, Monrovia, and Newport Beach Calif.; Salt Lake City, Utah;

La Fox, Ill.; Beverly, Mass.; Union, N.J.; and Lexington, Ky. Our domestic transportation charges absorbed by us is in excess of \$500,000 per year.

Our company is in favor of H.R. 10831 for the following reasons:

1. We believe it will improve freight forwarders' services, enable freight forwarders to operate a better and more extensive service to the shipping public.

2. We believe this bill sets no new precedents since freight forwarders have already been operating under contract with motor carriers. This type of operation has been successful. Extension of principle to forwarders will simply expand operation to improve freight forwarders' services.

3. We feel that small-lot shippers will benefit since forwarders handle basically small lots, which they consolidate. Small shipments are a problem for all carriers. Forwarders help to solve this problem. Railroads have substantially abandoned less-than-carload service and the only way an l.c.l. shipper may obtain rail service is through a freight forwarder.

4. Motor carriers and railroads make contracts under what is known as plan 1, piggybacking. Additionally, they operate under joint rates, and a recent Supreme Court decision gives motor carriers the right to ship trailers by rail at tariff rates, the same as forwarders pay. This places forwarders at a severe competitive disadvantage with their principal competitors, the long-haul truckmen. The bill makes for competitive equality. It will also preserve healthy competition. We need all forms of transport, competing under equal rules.

Heretofore, the freight forwarder and any shipper who could qualify under the tariffs could use piggyback service by rail, but the tariff provisions made it impossible for the truckers to enjoy the same benefits. This, I feel was not equitable since one mode of transportation was underprivileged to the advantage of another. To combat this situation, the truckers began to enter into contract arrangements with the railroads. This arrangement was denied the forwarders. In the meantime, the truckers maintained through the U.S. Supreme Court that they were entitled to the provisions of the piggyback tariffs and the Supreme Court upheld that principle with the result truckers are now free to use both methods; piggyback and contract or joint rates.

We sincerely believe that if the forwarders are not granted equal opportunity with motor carriers, the results will continue to be discriminatory and handicap their ability to serve the shipping public.

Thank you.

Mr. FRIEDEL. I want to thank you, Mr. Fitzwater. I have no questions. Mr. Devine.

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Kuykendall.

Mr. KUYKENDALL. No questions.

Mr. FRIEDEL. Thank you very much.

Mr. FITZWATER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness will be Mr. H. L. Graham, supervisor of shipments, the Hobart Manufacturing Co., Troy, Ohio.

**STATEMENT OF H. L. GRAHAM, SUPERVISOR OF SHIPMENTS, THE
HOBART MANUFACTURING CO., TROY, OHIO**

Mr. GRAHAM. Mr. Chairman, members of the committee, I wish to read my statement into the record.

My name is H. L. Graham, supervisor of shipments for the Hobart Manufacturing Co. with corporate headquarters at 711 Pennsylvania Avenue, Troy, Ohio, and manufacturing plants located in Dayton, Greenville, Medina, and Troy, Ohio; Chicago, Ill.; Louisville and Mount Sterling, Ky.; Minneapolis, Minn.; and Clearfield, Utah. In addition, products are manufactured or assembled and shipped in our name from Kew Garden and Manhasset, N.Y., and St. Johnsbury, Vt.

We are manufacturers of food store and kitchen equipment including scales, meat choppers, meat slicers, meat saws, food cutters, potato peelers, food waste disposers, tenderizers, wrappers, dishwashers and glass washers as well as Kitchenaid dishwashers, mixers, and coffee mills for home use.

We are appearing in support of H.R. 10831 which will permit railroads and freight forwarders to make agreed or contract rates.

Our transportation costs for our Troy, Dayton, and Greenville, Ohio; Louisville and Mount Sterling, Ky.; and Clearfield, Utah, plants for 1967 were in excess of \$2,500,000. Of this amount approximately \$286,000 was paid to freight forwarders. This represents only a portion of the traffic we control at these locations because a number of our products are shipped on a collect basis. Freight costs are not included for our Medina, Chicago, or Minneapolis plants. These are subsidiary companies and costs were not available for 1967 at this date.

We are primarily an l.t.l. or l.c.l. shipper with exception of our household dishwashers which normally move as volume shipments and consequently we are vitally interested in seeing the freight forwarder industry remain healthy and competitive.

We urge passage of this bill because the motor carriers already have this authority under the Interstate Commerce Act. The freight forwarder industry will be placed at a competitive disadvantage and in serious jeopardy if this bill is not adopted. We do not believe this should be allowed to happen. There should be competition for l.t.l. freight and it will cease to exist if the future of the freight forwarders is imperiled. Competition results in lower rates and better service.

My company needs the freight forwarders because of the excellent service they provide.

We consolidate shipments and receive the benefit of their dock rates. We also benefit by their package rates.

Once again we urge your support of this bill. As a large l.t.l. shipper we feel it is vital the freight forwarder industry remain competitive with the motor carrier industry because of rates and the service it provides.

Thank you.

Mr. FRIEDEL. Mr. Graham, what do you mean by l.t.l. shippers?

Mr. GRAHAM. Well, we build kitchen and food store equipment and we ship it to practically anyplace where there is a grocery or restaurant where food is prepared.

Much of this is one, maybe, well, two or three different kinds of units but it still is less-than-truckload shipment.

Mr. FRIEDEL. Mr. Devine, are there any questions?

Mr. DEVINE. I just want to welcome a constituent from Ohio and say hello to you.

Mr. GRAHAM. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. Robert G. Lewis, president of White's Delivery Service, Philadelphia, Pa.

**STATEMENT OF ROBERT G. LEWIS, PRESIDENT, WHITE'S
DELIVERY SERVICE, PHILADELPHIA, PA.**

Mr. LEWIS. Mr. Chairman and members of the committee, I just want to read my statement into the record.

My name is Robert G. Lewis and I am president of White's Delivery Service. We operate 15 commercial vehicles in the city of Philadelphia. My business consists of freight pickup at commercial establishments and transferred for further delivery to all parts of the United States via motor line or freight forwarder.

Since the majority of my operation consists of small-lot shipments, in essence, I am a small-lot shipper, and the freight forwarder is geared to handle this type of freight.

The freight forwarder, under the present law, does not have the same privileges as the motor carrier, and I strongly support passage of H.R. 10831 to remove this inequity and for competitive equality.

Passage of this bill would equalize opportunity, which in my opinion, would contribute to better coordination and service in our overall transportation system.

Mr. FRIEDEL. Thank you for a very pertinent and brief statement.

Our next and last witness today will be Mr. Charles W. Owen, president, City Transfer, Inc., Santa Fe Springs, Calif.

**STATEMENT OF CHARLES W. OWEN, PRESIDENT, CITY TRANSFER,
INC., SANTA FE SPRINGS, CALIF.**

Mr. OWEN. Mr. Chairman, my name is Charles W. Owen. I am president and owner of City Transfer, Inc., of Santa Fe Springs, Calif. My company was started by myself in 1947, and after 20 years of 15 hours a day, two nervous breakdowns, reinvesting every earned dollar except a reasonable salary, I find my very existence being challenged by those whom I have helped grow and prosper; namely, the long-line-system motor carrier.

I have very strong feelings about my rights as a certificated local and short-haul common carrier, to continue serving the shipping public that gave witness to the "need and necessity" for my ICC certification as a common carrier.

My company has seven terminals in the four counties comprising the Los Angeles, Calif. basin area, giving 24-hours-a-day, 7-days-a-week service in all this area and twice a day in some of the area.

The shippers need intermodal pickup and delivery carriers that can handle all their traffic by air, air forwarder, rail forwarder, transcontinental truck, and by water. Our company pioneered these services along with several others like us in this area, and now the organizations

which we have built are being systematically destroyed by the large system highway carriers. One of the large carriers movement into the rail forwarding business deprived me of over \$15,000 per month of local delivery and pickup that I had serviced for over 8 years.

The mergers, acquisitions, and extensions of authority have allowed them into relentlessly cull the profitable traffic for their own systems and leave the "obligation traffic" to the local carrier.

I sincerely believe that the amendments proposed to section 409 in H.R. 10831 will allow the rail forwarders a competitive parity with the highway long-line carrier that is needed to prevent another siphoning of profitable traffic hurting the rail forwarders and in turn the short-line carriers who serve them in their distribution and pickup. They, like us, have to haul the traffic the highway carrier manages to get rid of.

In our service to the rail forwarders—which amounts to the handling of approximately 10 million pounds and 20,000 shipments per month, we enjoy an interline harmony that allows us profitable operations.

The local- and short-haul carriers have to stay close to home and watch their fences and cannot afford the luxury of full-time assistants to protect their personal interest in the national tariff bureaus, and State and National associations, et cetera. By democratic processes written into ICC law we expect to get a fair shake from these tariff bureaus, and State and National associations, and there are enough of us in attendance at the bureau and on the executive boards of the associations to see what is happening to us.

Our arm of the ATA—the local- and short-haul carriers conference—is aware of our plight and its more alert members are awakening the rest of their membership to what is happening to them, such as the letter of O’Nan’s, which is submitted herewith. In the essence of time, I will dispense with reading this letter.

I sincerely hope that this committee is able to interpret my appeal to them as one intended to arouse their support for the local- and short-haul carriers’ interests and not just my own interests.

Two of my best friends had to sell their interests in their trucking companies this past year to avoid bankruptcy from problems similar to those I have described, and several others in similar circumstances are trying to sell out.

As I see it, the rail forwarders need the same freedom, rights, and privileges that long-line highway carriers now enjoy. Congressman Samuel Friedel’s bill, H.R. 10831, to amend section 409 of the ICC Act, should accomplish this.

I should like to submit a letter which I wrote to Mr. Ken Ketcham of the local- and short-haul carriers conference, which elaborates on the previous comments.

Thank you for according me the privilege of making my thoughts known.

(The letters referred to follow:)

O’NAN TRANSPORTATION Co.,
Carrollton, Ky., December 27, 1967.

FELLOW SHORT HAUL CARRIER: I want to remind you that serious changes are taking place in transportation that demand your attention. Patterns of traffic flow are changing and so are the methods of moving this traffic. If your business is like mine—a combination of door-to-door service and pickup and delivery of

interlined freight—it is being affected by competitive policies and advancing technology such as we've never seen before.

Like myself, you have probably wondered how the future will find your business; and whether your company will keep its identity as an independent motor carrier. Let me tell you that forces are at work which should well cause you to wonder and unless we get to work to preserve what we've worked hard to create and build, there won't be enough of us left to care about the future transportation problems!

I'm talking about the growth of the long-line, system carrier and its relentless movement into areas which once was yours and mine. Today the trend toward mergers, acquisitions and off-route extensions to pick off the profitable freight is driving us to the wall—and we must wake up to these threats now!

If you wonder why I speak of this with such dedication, let me tell you about a bill nearly passed in Congress in 1962 which was designed to rip out the intra-state carriers' I.C.C. registration of his state certificate—the so-called “second proviso” episode. Our long-line friends supported an I.C.C. bill to remove this provision from the Interstate Commerce Act. No one in Washington seemed to realize or care that this would literally wipe out companies such as mine which realizes a large percentage of its total revenue from interlined interstate freight. I was more shocked to realize that when we appealed to existing trucking organizations in Washington to help us oppose the legislation, we got a blank stare and no support! Since only a handful of us realized that real threat to this bill we discovered we didn't have the resources or time to alert many second-proviso carriers. And had we not acted quickly through the Local and Short Haul Conference of ATA and demanded additional hearings through our *personal friends* in the Congress, the I.C.C.—the registered intra-state carrier would have the rug pulled from under him! And you, like myself, may be one who still enjoys this business due to this effort, which may have happened unknown to you!

I've gone into this much detail because, as it turns out, this was only one of a series of moves by our big competitors to push the small, regional motor carrier farther and farther into the wall. One of their current schemes is the “multiple pickup discount rate,” which has been proposed in eastern and southern tariff bureaus; in fact, one is pending now in the south. This gimmick gives special rate discounts to shippers who agree to tender specified minimum pickups to the carriers. Since the short haul carrier cannot offer these cut rates, because he doesn't have the over-the-road profits to subsidize him, our big brothers who adopt this scheme would get the cream of the freight and leave the high-cost small and infrequent pickups to us! And this would further depress our share of the revenue split on *interlined* freight. Many of us aren't satisfied with the split we're getting today!

Finally you must be alerted to two additional developments which are today a serious threat to your business. One is the Through Route/Joint Rate legislation pending right now in the Congress and the other is the imminent, tremendous growth in air freight; and truck transportation of which is being monopolized by the airlines and the forwarders under your very nose!

While you will learn in greater detail about these threats in subsequent mailings, you must wake up to their importance and what neglect on your part will do to your business future. I do wish to impress upon you now that you can get the *facts* on these two vitally important developments from the Local & Short Haul, Carriers National Conference of ATA and that you should waste no time doing so!

So, if you're still with me, my pitch is simply this: short haul carriers are learning that everything is just rosy between the big system carriers and the short haul carrier when we are equally threatened, but the organization and association *they* support simply won't come to *our* aid when a conflict of interest arises—such as those spelled out above. That is why we have been building our own organization—the Local & Short Haul Carriers National Conference of ATA. It is made up of short haul carriers like you and me and it is dedicated to act in OUR BEST INTERESTS before the policy-making agencies of the American Trucking Associations, the Tariff Bureaus and the Government agencies. Thus, when the goals of all trucking segments are alike, the Local & Short Haul Conference takes the *same* position as any other ATA Conference, and ATA itself, but when our interests—yours and mine—are at stake, this Conference speaks out *ONLY* for us!

We are a growing and dynamic organization. If you haven't heard of the work we are doing daily for the short haul carriers, you will from now on. And you

will find that we speak your language; that we express YOUR views in the formation of national trucking policy; and that we speak BEFORE that policy goes to the Congress and the regulatory agencies for action. We urge you to support these efforts in your behalf and we urge you to read the enclosed brochure, which more fully outlines our efforts!

Sincerely,

ROBERT O'NAN,
Vice President at Large.

CITY TRANSFER, INC.,
Santa Fe Springs, Calif., January 12, 1967.

LOCAL AND SHORT HAUL CARRIERS NATIONAL CONFERENCE OF THE AMERICAN
TRUCKING ASSOCIATIONS, INC.,
Washington, D.C.

(Attn.: Mr. Kenneth R. Ketcham, Executive Director).

DEAR SIR: It has been brought to my attention that a bill has been introduced by Congressman Samuel Friedel (D., Md.) H.R. 10831, to amend Section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads. Hearings are scheduled for January 23, 24th.

That section now allows forwarders to make such contracts with motor common carriers with the proviso that these contracts are authorized up to 450 miles. Beyond that the forwarders traffic must move at published rates.

Heretofor, the freight forwarder and any shipper who could qualify under the tariffs could use piggyback service by rail but the tariff provisions made it impossible for the truckers to enjoy the same benefits. This, I feel was not equitable since one mode of transportation was underprivileged to the advantage of another. To combat this situation the truckers began to enter into contract arrangements with the railroads. This arrangement was denied the forwarders. In the meantime the truckers maintained through the U.S. Supreme Court that they were entitled to the provisos of the piggyback tariffs and the Supreme Court upheld that principle with the result truckers are now free to use both methods; piggyback and contract for joint rates.

The forwarder does not have the same freedom and is requesting only that he be afforded the same rights and privileges that the long-haul truckers enjoy. I concur in that request.

As a short haul trucker I have been dismayed at the transcontinental truckers ability to secure preferential legislative treatment at the short haul truckers expense. We have all had the experience of watching accounts that we have developed being "taken over" by the long haul truckers pick up and delivery equipment and simultaneously being offered shag pick up and deliveries by the same carriers. It has taken years of effort and expense to secure equitable rate divisions from the long haul truckers and even these hard won increases lag far behind increased labor and other production expenses.

We, as do many short haul carriers conduct business with many forwarders and enjoy an excellent relationship—they do not attempt to compete with us but consider us partners and make certain that we are tendered *all* of the freight in a given area. Their chief interest is long-haul freight and they do not pretend to be specialists in extended area pick up and delivery operations.

The forwarders do business with us, do help to keep us operating and do not compete in areas of profitability by back soliciting, as do the transcontinental truckers. If we as short haul carriers were dependent upon a transcontinental trucker to keep us in business we would expire in a few short gasps.

Inasmuch as the freight forwarder is asking only parity, only the right to compete on equal advantages, he should be given that right without further delay. While it may not be germane, I recall that Transcontinental truckers were also afforded the right to purchase and operate a freight forwarder while the freight forwarder was told it was illegal for a freight forwarder to purchase and operate a truckline. I fail to see the reasoning and the justice of that decision. Surely in order to maintain proper levels of competition which should ensure the American public rates and service beyond compare, legislative and other duly appointed authority should be ever alert to the possibility of inadvertently according one segment of the transportation industry an umbrella that is not made available to everyone in transportation or one that is absolutely preferential.

I am enclosing a copy of the opinion of the Western Railroad Traffic Association that should be weighed carefully. If the comments are correct, we should make a real effort to have this bill supported.

While time is short—the short haul carriers should be apprised of the provisions of the H.R. 10831, and should make their desires known by sending affirmative telegrams, letters or any means possible.

Very truly yours,

CHARLES W. OWEN,
President.

Mr. FRIEDEL. In other words, you are in favor of H.R. 10831?

Mr. OWEN. Yes, sir; I would like to see it approved.

Mr. FRIEDEL. You are in favor of it.

Mr. OWEN. Yes, sir.

Mr. FRIEDEL. Mr. Devine, are there any questions?

Mr. DEVINE. No questions.

Mr. FRIEDEL. Mr. Kuykendall, do you have any questions?

Mr. KUYKENDALL. I have no questions.

Mr. FRIEDEL. Thank you very much. This concludes the witnesses for today. The meeting stands adjourned until 10 a.m. tomorrow.

(Whereupon, at 3:10 p.m. the committee was adjourned, to reconvene at 10 a.m., Thursday, January 25, 1968.)

FREIGHT FORWARDER—TOFC CONTRACTS

THURSDAY, JANUARY 25, 1968

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON TRANSPORTATION AND AERONAUTICS,
COMMITTEE ON INTERSTATE AND FOREIGN COMMERCE,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to notice, in room 2123, Rayburn House Office Building, Hon. Samuel N. Friedel (chairman of the subcommittee) presiding.

Mr. FRIEDEL. The hearing will now come to order. This is a continuation of hearings on H.R. 10831 to amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads.

Our first witness is Mr. Charles L. Smith, chairman of the General Freight Traffic Committee, Traffic Executives Association-Eastern Railroads.

STATEMENT OF CHARLES L. SMITH, CHAIRMAN, GENERAL FREIGHT TRAFFIC COMMITTEE, TRAFFIC EXECUTIVE ASSOCIATION-EASTERN RAILROADS

Mr. SMITH. Thank you, Mr. Chairman. Before I read my statement I would like to point out a correction. If you will turn to page 6, the third paragraph, at the end of that paragraph where it reads "competitive position than the motor carrier."

In lieu of the words motor carrier will you substitute "freight forwarder"?

Also in the very last paragraph on page 7, the second line, where it now reads "to extend its own profit potential," substitute for the word "its" the words "freight forwarders."

Mr. FRIEDEL. You may proceed.

Mr. SMITH. My name is Charles L. Smith. I am the chairman of the General Freight Traffic Committee of the Traffic Executive Association-Eastern Railroads, with offices at 1 Park Avenue, New York, N.Y.

I appear before this subcommittee at the direction and on behalf of the Traffic Executive Association-Eastern Railroads, to express that organization's opposition to H.R. 10831, which, in brief, would amend section 409 of part IV of the Interstate Commerce Act to authorize freight forwarders to enter into contracts with common carriers by railroad for transportation at other than the published rates then and there on file with the Interstate Commerce Commission.

The Traffic Executive Association-Eastern Railroads is an organization made up of the principal railroads operating in the territory east of the Mississippi River and north of the Ohio River. The association, hereinafter referred to as the "TEA" is generally charged with the responsibility of reviewing all rates, fares, classifications, and charges established by or which may in any way affect its member carriers. Its members are authorized to enter into joint consideration and determination of such matters pursuant to permission of the Interstate Commerce Commission under section 5(a) of the Interstate Commerce Act.

The TEA opposes the proposed measure as an abrupt, abnormal, and wholly unnecessary departure from the longstanding relationship between freight forwarders and common carriers by railroads wherein the freight forwarder occupies the position of an individual shipper, although it is certificated to handle and arrange for the transportation of the goods of others. Under these circumstances, the charges assessed by any railroad for the transportation of freight forwarder traffic are those appearing in the published tariff. Such charges are accordingly available as a matter of information, to competing railroads as well as the shipping public generally.

Under the proposal enunciated here, however, it is the opinion of the eastern railroads that the former relationship will deteriorate into a system of give-and-take bargaining for particular portions of traffic. Uncertainty with respect to the charges being offered privately by individual competing railroads, even though such contract may be open to subsequent public inspection, can only lead to reduction in railroad revenues.

This committee surely is well aware that freight forwarder traffic has always constituted an important and valuable segment of railroad revenues. It is impossible, therefore, to understate the importance of such revenues to the railroads for the future, particularly in view of the rapid development over the last 10 years or more of railroad trailer on flatcar service, and the variety of rates and arrangements which have been made available to the shipping public, including the freight forwarders. Without question, freight forwarder traffic constitutes a major segment of the total trailer on flatcar traffic handled by the eastern railroads today.

In late 1958 and 1959, for example, the eastern railroads pioneered what has come to be known as the plan 3 rate basis of TOFC service. Under this service, which was primarily designed to meet private over-the-road competition—motor carriers, I might add—substantially lower rates were published, and eventually approved by the Interstate Commerce Commission, under which private shippers could tender their own trailers for movement in piggyback service and could also perform their own local drayage service to and from the railheads at origin and destination.

The results were beneficial to the railroads in that these plan 3 TOFC rates attracted a substantial portion of traffic formerly moving over the highway in the shippers' own equipment, and the railroads themselves were able to reduce their own costs considerably, particularly in eliminating expensive switching services to individual consignees at congested terminals.

In their capacity as members of the shipping public generally, however, the freight forwarders were able to and in fact did make substantial use of these rates, and they continue to represent an extensive, if not the major portion of that traffic today on the eastern railroads. Thus, while they presently enjoy every advantage accorded other private shippers, they now seek a means for negotiating lower rates than those available to the former, to the obvious benefit of the freight forwarding industry and a corresponding disadvantage to the railroads.

The idea that freight forwarders should occupy a more advantageous position vis-a-vis the railroads than the shipping public generally is wholly inconsistent with their past history. The freight forwarding industry did not come under regulation by the Interstate Commerce Commission until 1942. As far back as 1910, however, in *Interstate Commerce Commission v. Delaware, Lackawanna, and Western Railroad Co.*, 220 U.S. 235, the forwarders, then generally referred to as "forwarding agents," fought bitterly against certain restrictions which railroads then sought to employ to prevent forwarding agents from the practice of consolidating less-carload shipments from individual consignees into carload shipments.

At that time less-carload traffic was a valuable segment of railroad revenues and the consolidation of such shipments into carload lots for tender to the railroads deprived the latter of substantial amounts of revenue.

In the case above cited, the forwarders complained of these restrictions to the Commission, and the Supreme Court in sustaining the Commission's decision held that a "forwarding agent" was a "person" as that term is employed in those provisions of the Interstate Commerce Act which prohibit discrimination, preference, and prejudice, and that to permit a carrier to exclude a forwarding agent would clearly produce these very results.

Thus, while the freight forwarders, as a result of the decision cited above, have been entitled for the past 58 years to all of the benefits accorded individual shippers, they now seek the advantage of negotiating for rates, described as "contract" or otherwise, which will undoubtedly be lower than those available either to the individual members of the shipping public or to traffic tendered by nonprofit shipper associations, which are, in turn, made up of individual members of the shipping public.

It should be also noted that in 1959 one eastern railroad proposed to establish reduced rates on rugs and carpeting. The reduced rates were published in tariff form, but were available only where the shipper agreed to move at least 80 percent of its available traffic between these points over a period of 1 year via the particular carrier (*Contract Rates on Rugs and Carpeting from Amsterdam, N.Y., to Chicago*, 313 ICC 247 (1961)).

The Commission disapproved the proposed tariff schedules on the ground that different charges for the same haul between the same points may be justified only where the lower charge reflects a lower cost of performing the service on one shipment than on another, where the total transportation services rendered two shipments are different, or where in other respects the circumstances directly affect-

ing the transportation of the respective shipments differ materially. The Commission further stated that:

The inevitable effect of a substantially exclusive patronage contract such as is involved here, considering especially the contractual conditions described herein, is to destroy competition for the duration of the contract.

The Commission's decision was subsequently upheld in *New York Central R.R. Co. v. U.S.*, 194 F. Supp. 947 (1961).

Under the proposal made here, the Congress is requested to specifically declare in effect that the act shall not be construed so as to prevent contracts for transportation between freight forwarders and common carriers by railroad. It would also be made the duty of the parties thereto to contract on reasonable and equitable terms, conditions, and so forth which will be consistent with the national transportation policy.

Obviously these provisions would eliminate the legal basis upon which the railroad contract rates previously referred to were struck down, but these same provisions would not eliminate the result which both the Commission and the Court felt was undesirable and would emanate from the railroad contract rate proposal.

At least the railroad's contract rate proposal was published in tariff form. No such requirement is contained in the instant proposal.

The proponents of this measure will undoubtedly point to the plan 1 and plan 5 TOFC arrangements now maintained between the railroads and the motor carriers. Those arrangements, however, have been upheld by the Commission as joint rates and services provided voluntarily by the participating rail and motor common carriers and thus wholly lawful as valid through route and joint rate arrangements authorized under section 216(c) of part II of the act (*Ex parte No. 230, Substituted Service—Charges and Practices of for Hire Carriers and Freight Forwarders (Piggyback Service)*, 322 ICC 301 (1964), p. 349).

Notwithstanding the voluntary provisions of section 216(c) of part II of the act which permit joint rates between railroads and motor carriers, proponents of the measure will undoubtedly charge that it is this permissive action of the act which places motor carriers in a better competitive position than the freight forwarders with respect to rail transportation.

The simple answer is that the rail carrier, the motor carriers, and the water carrier provide all of the facilities required and all of the service required for intercity transportation whereas the freight forwarder has been given the unique right to solicit and consolidate freight for transportation without the corresponding requirement that it provide locomotives, tractors, barges, or roadbed.

In lieu thereof, it has been given the right to utilize common carrier facilities by rail, highway, and water just as any other member of the shipping public and it is further given the right to utilize these facilities at a profit to itself.

It is apparent that the sole purpose of the proposed measure is to extend the freight forwarders' own profit potential. No benefits whatsoever are offered to the general shipping public.

I would just like to add a few comments to that statement. During the hearing there have been suggestions that this proposal be amended to also include the nonprofit shipper associations. Now if you divide

the shipping public into, we will say, three segments, the regulated freight forwarders, the nonprofit shipper associations, the only remaining segment that you have would be the individual shipper.

Now if the freight forwarders and the nonprofit shipper associations are given this authority to negotiate contract rates, the only one left will be the individual shipper.

The entire concept of regulations, published tariffs, the section 5(a) procedures insofar as rate adjustments and charge adjustments being made and known to the general public, will be out the window.

Mr. FRIEDEL. Mr. Smith, getting back to the remarks regarding the individual shippers, does the individual shipper now use freight forwarders for less-than-carload lots?

Mr. SMITH. Will you repeat that, please? I did not hear you.

Mr. FRIEDEL. The individual shipper, can he use the freight forwarders now for less-than-carload lots?

Mr. SMITH. Yes.

Mr. FRIEDEL. Isn't it harder for them to deal with the railroads, the individual shipper, to get their little consignment to other parts of the United States?

Mr. SMITH. Yes, because to a very great extent the railroads themselves are out of the less-carload business.

Mr. FRIEDEL. The individual shipper could go to the freight forwarder or motor carrier; they would not be hurt?

Mr. SMITH. The point I was trying to make is this: That an individual shipper can consolidate a number of his small lot shipments and make his own carload rate and movement which move under the published rates. This individual shipper would be using the very same rates that the freight forwarder pays today or the shipper association pays.

Mr. FRIEDEL. What is the difference between what the motor carriers do and what the freight forwarders are asking for?

Mr. SMITH. What is the difference between the motor carriers and—

Mr. FRIEDEL. And freight forwarders right to deal with the railroads, to contract with the railroads.

Mr. SMITH. As I understand it, under part II of the act there is specific provision for joint rate arrangements between motor carriers and railroads.

There is nothing of that type there in part III. As I understand the proposal it is not even being suggested.

Mr. FRIEDEL. As I understand the freight forwarders are asking for the same thing that the motor carriers have.

Mr. SMITH. I understood they are asking for the authority to enter into contract arrangements with the railroads.

Mr. FRIEDEL. When did the eastern railroads decide—I was under the impression that the railroads were not going to take any stand whatsoever on this bill and that they were keeping their hands off and leaving it up to the Congress.

Your statement today is different from what I have heard. When was this action taken?

Mr. SMITH. This position was taken at a meeting with the Traffic Executive Association a week ago yesterday. That consists of the vice presidents of the eastern railroads.

MR. FRIEDEL. Can you mention some of the eastern railroads included?

MR. SMITH. Yes; I can. B. & O., New York Central, Pennsylvania, N. & W., C. & O., Erie-Lackawanna, Lehigh Valley, New Haven, Boston & Maine—there are about 30 of them really.

MR. FRIEDEL. You have mentioned enough. Mr. Kuykendall?

MR. KUYKENDALL. Mr. Smith, are you now an official spokesman for these people?

MR. SMITH. I have been directed by them to present this statement to you.

MR. KUYKENDALL. You are the official spokesman for these people?

MR. SMITH. That is right.

MR. KUYKENDALL. I am a little surprised.

MR. FRIEDEL. As I said earlier the railroads stated were not going to take a stand.

MR. SMITH. We kind of thought, since it was our money involved, that possibly we had a reason to be here.

MR. KUYKENDALL. What is the difference—and please remember that I am not an attorney, I am a businessman, and I don't know much about sections; these numbers don't mean a thing to me as far as section this and that—what is the difference between a joint rate and contract rate?

MR. SMITH. A joint rate involves—I will give you some examples—you can have a single-line rate published by the Pennsylvania Railroad from New York to Chicago, one rate, and the Pennsylvania will take that car of freight, whatever it is, all the way to Chicago.

MR. KUYKENDALL. May I ask this also? Will you try the best you can—I know you are not on this side of the desk—but whether you try to give me this description from the point of view of your being the customer. I used to be your customer. Your traffic manager and I sat down across the desk from each other.

MR. SMITH. The railroads publish a rate on commodity X from New York to Chicago. That rate will apply by the railroad as a single carrier handling it all the way from New York to Chicago.

The Lehigh Valley operates out of New York but they only operate as far as Buffalo. For the Lehigh Valley to handle any of that traffic to Chicago they must work in conjunction with another railroad; we will say the C. & O. Therefore, that rate will apply by Lehigh Valley, Buffalo as a junction, and the C. & O. That would be a joint rate between those two railroads.

MR. KUYKENDALL. Would the customer, the shipper, my plant, know or really care much about whether or not this was a combined rate or would he be charged one rate by the original carrier?

MR. SMITH. He would be charged one rate by the original carrier. Actually, all the shipper is interested in is protecting the lowest rate he can get. He can get that by the joint-line route or the single-line route.

MR. KUYKENDALL. Let us take again the trucker and use you in the interim.

MR. SMITH. All right. The example I gave you of the Lehigh Valley and C. & O. would be a type of intramodal service; there are two railroads involved.

What you are asking now, I believe, is a type of intermodal service. One more thing on the example of the Lehigh Valley and C. & O.

Now one bill of lading is issued by the Lehigh Valley. That guarantees the movement of the car to Chicago via the joint-line route. The C.&O. and Lehigh Valley have arrangements to divide the revenue that they earn on that shipment on a basis that would pay both parties to handle the traffic. Now if you come to an intermodal type of joint arrangement such as a motor carrier and a railroad, the motor carrier will issue a bill of lading to the shipper and he will handle—we will say he handles the trailer to Buffalo just as a theoretical example.

He turns it over to a railroad which then handles it on a flatcar to Chicago. As far as the shipper is concerned he pays that motor carrier, the origin, to handle that traffic to Chicago.

Mr. KUYKENDALL. I know you can't be specific, so be general. Does the shipper generally know or care whether or not piggyback is used in the interim? Is there any difference in the way you talk to me as a manufacturer as to whether you will use piggyback? You are a trucker now.

Mr. SMITH. I am a trucker now?

Mr. KUYKENDALL. You are a trucker now.

Mr. SMITH. No; I don't think it will make any difference to the shipper. As I understand the truck tariffs they have a provision if the shipper does not want it to move part of the way by rail service he can say so.

Mr. KUYKENDALL. What you are saying is, generally speaking, the use of the railroad by a truckline on a piggyback would probably not create awareness in the original shipper and certainly no difference in the rate to the original shipper?

Mr. SMITH. That is right.

Mr. KUYKENDALL. Now where does the contract business come in?

Mr. SMITH. I think the contract in my estimation is more of a misnomer. I would like to go back to this example of the Lehigh Valley and C. & O.

When they divided up the revenue they call that divisions, division of the revenue. The same thing actually applies in the plan 1 piggyback movement.

There is a division of the earnings of the freight charges on that trailer between the railroad and the trucker just the same as in the other example there was a division of revenue between the two railroads.

Mr. FRIEDEL. Now the trucker can enter into an agreement that way, is that right?

Mr. SMITH. Yes, sir; just the same as the railroads.

Mr. FRIEDEL. But the freight forwarders are not permitted to enter in that agreement?

Mr. SMITH. No, sir; they are not because they are not part of the common carrier movement.

Mr. FRIEDEL. Under the present law?

Mr. SMITH. Yes.

Mr. KUYKENDALL. You said there was a division of earnings. Obviously, in any contract there is addition of earnings. Is this really in a sense a matter of sitting down and negotiating from a point or is it a theoretical percentage division of earnings?

Do you sit down and negotiate a rate from a point that has been arrived at through years of negotiations?

Mr. SMITH. In both cases whether it is between the railroads or between a trucker and a railroad they are talking about a certain movement. The trucker might say I want so much for my share of the transportation that I perform and the railroad says, well, I want so much for my share. They reach agreement as to something that will be equitable to both parties and that becomes an agreement between those two parties.

Mr. KUYKENDALL. I realize this. What I am getting at here is by using this division of earnings you have to a degree elevated this transaction to a little bit of one of these theoretical things. I wanted to see if they really did happen on that plane or if the traffic people did get together and negotiate a deal. There is nothing wrong with a deal.

Mr. SMITH. In railroad parlance they call it division sheets. Whenever a car moves between New York and Chicago by two carriers they refer to the division sheet.

Mr. KUYKENDALL. Then it is on a plane of division of total revenue.

Mr. SMITH. Yes.

Mr. KUYKENDALL. I think it is important here to find out whether two guys meet across the desk and decide to take it or leave it or whether it is a scientific division of revenue on a sensible basis.

Mr. SMITH. If either party does not think it is equitable they will not join in the arrangement.

Mr. KUYKENDALL. I think it is important to understand this. Why do you feel—and put it on the basis of justice and not quoting the past law—that you should give the right to haul a trailer which has been prepacked by somebody else, between two points—you roll two of them up the ramp on the car and you take them off the ramp at another point—why should you be able to treat one person differently, mainly a trucker, than you treat either a nonprofit freight forwarder, a nonprofit association, or a freight forwarder?

Mr. SMITH. On the one hand the motor carrier and the railroad are dealing with one piece of revenue. In contrast to that the freight forwarder goes around and picks up maybe 10, 15, 20 small shipments from individual shippers.

Mr. KUYKENDALL. The truckline does this, too.

Mr. SMITH. Not the type I was speaking of.

Mr. KUYKENDALL. Our trucklines in Memphis do it. If I want them to pick up a hundred pounds of books at my house they pick it up.

Mr. SMITH. Yes; I agree with that.

Mr. KUYKENDALL. So they do gather small shipments.

Mr. SMITH. In the case of the motor carrier you will participate in the revenue and charges that he assesses to the shipper. Insofar as the freight forwarders are concerned the railroads do not participate in the revenue the freight forwarders collect from their clients.

Mr. KUYKENDALL. Would you have objection to putting them on that basis of a division of shares?

Mr. SMITH. I am not authorized at this time by my members to make a statement. If something like that is brought up I will be glad to bring it back to them and let them decide it and discuss their position.

Mr. KUYKENDALL. What you are saying is that the freight forwarders are not asking for equality, they are asking for the pendulum to swing a little bit the other way?

Mr. SMITH. It is the judgment of the eastern railroads; that is true.

Mr. KUYKENDALL. You might look at eastern inequality in other light?

Mr. SMITH. Any other proposed legislation we will give just as careful study as we have this one.

Mr. KUYKENDALL. Thank you.

Mr. FRIEDEL. Mr. Smith, on page 6 of your statement, the last paragraph:

The simple answer is that the rail carrier, the motor carrier, and the water carrier provide all of the facilities required and all of the services required for intercity transportation whereas the freight forwarder has been given the unique right to solicit and to consolidate freight for transportation.

Isn't that true of all the others? Don't they all solicit?

Mr. SMITH. Yes, they all solicit consolidated freight.

Mr. KUYKENDALL. Don't they consolidate freight for transportation?

Mr. SMITH. Yes, sir.

Mr. FRIEDEL. Why is it unique?

Mr. SMITH. It is unique because the freight forwarder, while they have the same right to solicit and consolidate freight, they do not provide any of the underlying intercity transportation, be it a truck going down the road, a boat going down the river, or a railroad car running along a track.

Mr. FRIEDEL. Don't they have to make a contract with the motor carrier?

Mr. SMITH. They buy transportation but they do not furnish transportation, themselves, as a transportation agency. Without one of these other modes of transportation a freight forwarder could not get his shipment from New York to Chicago.

Mr. FRIEDEL. Does not the public benefit by the lower rates that they can provide if they can get a cheaper rate from the railroad?

Mr. SMITH. Along that point I just brought a few rates to show what has happened. In my statement I mentioned that there has been substantial reductions in rates for freight forwarder traffic. It applies not only to the freight forwarders but it applies to shipping associations and to the individual shippers who might want to use them.

Mr. FRIEDEL. And the motor carriers, too?

Mr. SMITH. No, these rates don't apply to motor carriers.

Mr. FRIEDEL. Don't they enter into contracts with the railroads?

Mr. SMITH. That is for the motor carrier rate. Back in 1959 between New York and Chicago here the railroads offered a rate of \$2.02, minimum 30,000 pounds per shipment, for all commodity rate. That was back in 1959. Today under plan 3, piggyback, they can handle 73,500 pounds in two trailers at a cost of 66 cents a hundredweight. So, the cost to the freight forwarders has dropped from \$2.02 in 1959 to 66 cents today.

Mr. FRIEDEL. Has it also dropped for the motor carriers, too?

Mr. SMITH. The motor carriers up until the decision in *Ex parte* 230 were not allowed to use plan 3 rates.

Mr. KUYKENDALL. Would you generally say that the piggyback motor freight would pay 66 cents?

Mr. SMITH. Will you repeat that, please?

Mr. KUYKENDALL. Would you say that, generally speaking, I know of exceptions, that the motor freight company would pay the same 66 cents today?

Mr. SMITH. They would today as a result of the decision in *Ex parte* 230.

Mr. KUYKENDALL. Would you say they are paying about the same as the freight forwarder today for that particular haul?

Mr. SMITH. I don't know all the arrangements under part 3.

Mr. KUYKENDALL. Would you say generally they pay the 66 cents?

Mr. FRIEDEL. Or less?

Mr. SMITH. I can't make a truthful and general statement along these lines.

Mr. FRIEDEL. Could you furnish that for the record, please?

Mr. SMITH. Pardon?

Mr. FRIEDEL. Will you check and furnish that for the record?

Mr. SMITH. I will go back and see what I can develop. Plan 1 arrangements are, as I say, divisional arrangements between motor carriers and railroads. The arrangements, just the same as railroads' divisions, are not on file with the Commission. All we were talking about under plan 1, the only cost, the one single cost to the shipping public is whatever the truck rate or whatever the trucks published rates. I don't think the truckers publish commodity rates of 66 cents a hundredweight in New York and Chicago.

(The information requested follows:)

TRAFFIC EXECUTIVE ASSOCIATION—EASTERN RAILROADS,
GENERAL FREIGHT TRAFFIC COMMITTEE,
New York, N.Y., January 29, 1968.

Mr. W. E. WILLIAMSON,
Clerk, Committee on Interstate and Foreign Commerce, House of Representatives,
Congress of the United States, Room 2125, Rayburn House Office Building, Washington, D.C.

DEAR MR. WILLIAMSON: During our testimony on H.R. 10831, presented January 25, 1968, Chairman Friedel requested examples of the rail carriers share of revenue under joint rate movements under Plan 1 TOFC. A review of the files and records in this office does not provide the sought information. In fact, section 5a (4) of part I of the Interstate Commerce Commission Act specifically prohibits the Interstate Commerce Commission from authorizing this Association to specifically handle joint rate arrangements between carriers of more than one class. Under the circumstances I regret that this association is not in a position to furnish the requested material.

Very truly yours,

C. L. SMITH, *Chairman.*

Mr. FRIEDEL. All right. Thank you. Our next witness will be Mr. N. F. Cunningham, traffic manager, Sunbeam Corp.

STATEMENT OF NEIL F. CUNNINGHAM, TRAFFIC MANAGER, SUNBEAM CORP.

Mr. CUNNINGHAM. My name is Neil F. Cunningham and I am the traffic manager of the Sunbeam Corp., 5400 West Roosevelt Road, Chicago, Ill.

I will summarize my statement previously submitted.

Mr. FRIEDEL. Your full statement will be included in the record.

Are you in favor of H.R. 10831 or opposed to it?

Mr. CUNNINGHAM. We are in support of that legislation, sir.

Mr. FRIEDEL. You may proceed, Mr. Cunningham.

Mr. CUNNINGHAM. The reason we are in support of that proposal is because Sunbeam Corp. is very concerned about the future of the freight forwarder. We feel that this mode of transportation should be afforded the same equality as the other regular modes of transportation, regulated modes of transportation. The forwarder competes, their only competitor is the motor carrier and they are not currently enjoying equality as compared to the rate advantages available to the motor carrier.

It seems to us that all regulated carriers, the motor carriers and the freight forwarders, should be equal in their advantage. There seems to be some effort here to categorize the freight forwarders, should be equal in their advantage.

There seems to be some effort here to categorize the freight forwarder with a shipper or shipper association.

Neither a shipper nor a shipper association is regulated under the Interstate Commerce Act and it would seem to me that you must not include a freight forwarder in that category. Rather he should be included in the category of a regulated carrier under the Interstate Commerce Act, part IV.

Currently the forwarder is not able to enter into agreed rates with the railroad under section 409 of the Interstate Commerce Act. This advantage is available to the motor carriers and an obvious inequality in our opinion is resulting which will in our opinion result in the total destruction of the freight forwarder.

We do a significant business with the freight forwarding industry. We are extremely satisfied with their services and their attitude toward us as a shipper. It is in this thinking as in the matter of equality and the salvation of the freight forwarder as a regulated mode of transportation that Sunbeam Corp. feels they should be having equality with other regulated modes of transportation.

(Mr. Cunningham's prepared statement follows:)

STATEMENT OF NEIL F. CUNNINGHAM, TRAFFIC MANAGER, SUNBEAM CORP.

Gentlemen, my name is Neil F. Cunningham and I am the traffic manager of the Sunbeam Corporation, 5400 West Roosevelt Road, Chicago, Illinois.

My company's position in this matter is in support of the freight forwarding industry because we feel that all regulated carriers should be allowed to compete on an equal basis. At present, section 409 of the Interstate Commerce Act does not allow the freight forwarder the opportunity to draw contracts with the rail carriers. The motor carriers may now enter into rate agreements with the railroads and the resultant inequality will eventually spell the demise of the freight forwarding industry.

Sunbeam Corporation manufactures a wide variety of portable electric appliances and related articles. Our distribution requirements range from small minimum weight and less-than-truckload shipments to volume truckload and carload consignments.

The freight forwarder plays an important role in this overall distribution pattern which includes all modes of transportation. These different modes must all be in a strong competitive position if they are expected to continue to serve our needs and provide the nation with a complete intermodal transportation system. Equality of opportunity for the various modes is essential to foster such competition.

The proposed legislation will amend section 409 of the Interstate Commerce Act to give the freight forwarder the right to contract for rate agreements

with the railroads. We consider this amendment to be completely consistent with our desire for both healthy inter-modal competition and general transportation equalities. We therefore urge that this section 409 amendment proposed by the Freight Forwarders Institute be approved.

Thank you very much, gentlemen, for allowing me to testify before your committee.

Mr. FRIEDEL. I want to thank you for your short statement which is definitely to the point, Mr. Kuykendall?

Mr. KUYKENDALL. Yours is certainly a well-known and respected business in the country. How many manufacturing facilities do you have?

Mr. CUNNINGHAM. In the United States—

Mr. KUYKENDALL. Give me an idea of how they are spread out.

Mr. CUNNINGHAM. We have eight plants in the southern part of the country and one main manufacturing plant in Chicago, Ill.

Mr. KUYKENDALL. Do you have a distribution center on the west coast?

Mr. CUNNINGHAM. No. All of our shipments are shipped to wholesalers, sir. We do not have a regional warehouse on the west coast or any other location.

Mr. KUYKENDALL. I am not trying to put you on the spot here, I am just curious, but can you tell us about what percent of your wholesale price is transportation?

Mr. SMITH. I would say it is under 5 percent.

Mr. KUYKENDALL. You have made a differentiation between what you thought was fair for the shipper association and the freight forwarder.

Mr. CUNNINGHAM. Yes.

Mr. KUYKENDALL. This surprised me a bit because so many of your cousins in industry have taken the opposite view. Now let me question you here. It is my understanding that the shipper associations own no interstate or intercity rolling stock. Certainly they do some hauling within cities. It is my understanding freight forwarders, even though some of them own over a million dollars worth of rolling stock it is not interstate or intercity generally.

What then is the difference between their status—I am not talking about the difference between these two people—the status of shipping associations so far as their status within our economy.

Mr. CUNNINGHAM. It is my understanding that a shippers association is not able to directly arrange or affect either a local pickup or a local delivery at destination. Rather, it is my understanding and I do not allege to be an expert on shippers associations, it is my understanding that there their activities are wrapped around so to speak and that the shippers themselves must arrange for delivery.

I may be incorrect on that point in that I have not had too many dealings with shippers associations. The reason being, if I may volunteer this, is because it is our opinion that our type of commodity and our type of delivery requirements and pickup requirement and the value of our commodity and the high claim risk of our commodity does not yield themselves to the activity of the shippers association.

I am not critical of a shippers association, and I am just indicating the reason that Sunbeam does not use shipper associations. We feel that our type of commodity and the quality of our commodity serves a regulated form of transportation.

Mr. KUYKENDALL. Thank you.

Mr. CUNNINGHAM. Thank you.

Mr. FRIEDEL. Our next witness will be Mr. J. L. Quinn, traffic manager, Canteen Corp., the Merchandise Mart, Chicago, Ill.

STATEMENT OF JOSEPH L. QUINN, TRAFFIC MANAGER, CANTEEN CORP., MERCHANDISE MART, CHICAGO, ILL.

Mr. QUINN. Mr. Chairman, my name is Joseph Quinn, traffic manager of Canteen Corp., 1430 Merchandise Mart, Chicago, Ill. I appear in support of the freight forwarder industry.

I have prepared a statement which I would like to enter as testimony but rather than reading it I would prefer to paraphrase it and emphasize certain portions in the interest of conserving time.

The situation that we have under consideration during this hearing on H.R. 10831 is a grave and serious matter for the shippers of this country. I refer to the inability of the freight forwarders to enter into contracts with the railroads similar to those now in effect between the railroads and the motor carriers.

Because of the railroad's plan 1 rate to the motor carriers being considerable lower than plans 3 and 4 which the freight forwarders must utilize, we cannot expect that the freight forwarders operating under this handicap can continue to operate over the long run with higher operating costs without a curtailment of service or increased rates.

In either case, we, the shipping public, will suffer. Throughout the past years there has been a steady curtailment of service between certain areas of this country because of the steadily increasing operating costs to the freight forwarders.

This trend must stop. In fact, we must do all that is possible to reverse this trend. Why is this important? Because we need the competition in the small shipments field. After the freight forwarder has left the scene, whom have we to turn to?

If we feel that the motor carriers are not providing the service that we require or that their rate increases are going unchecked we have no other mode of transportation specializing in the handling of small shipments to turn to.

When I speak of small shipments I refer to those shipments over the size and weight limitations of parcel post, United Parcel Service, bus, or REA.

We at Canteen Corp. utilize the services of freight forwarders and motor carriers almost exclusively for the handling of our small shipments. We're not members of any shipper association nor do we have the tonnage to combine our small shipments to send as a consolidated truckload or carload. I would venture to say that there are hundreds of thousands of firms in this country that are in the same situation.

Unfortunately these smaller firms are not as well represented here as are the larger shippers and shipper associations that are opposing this bill.

I think that if you were to determine from those shippers and associations which are opposing this bill what percentage of their small shipments move by the freight forwarder or motor carrier industry under I.c.l. ratings, you would find it substantially less than the per-

centage that the small shippers move under l.c.l. ratings via freight forwarders or motor carriers.

These large shippers and associations, have alternative methods of shipping their small shipments. We do not. I again emphasize the need for competition in the small shipments field. To not allow this bill to pass will result in the demise of the freight forwarder industry and this would indeed be a sad day for the shippers of this country.

Digressing for the moment, I would like to make one point.

We at Canteen consider the freight forwarders common carriers. You will find many statements being given throughout this hearing about whether they are or are not common carriers. If the railroads do not and cannot by law consider the freight forwarders as common carriers, then this legislation is needed more so.

This is why we have a Congress to make sure that if laws need to be changed that they are so done and I believe this is why this hearing is being held. With the passage of this bill the railroad industry will be able to consider the freight forwarders as common carriers and thereby allow the freight forwarders to enter into agreements under plan 1.

Mr. Smith, representing the eastern territorial railroads, has stated that he was not sure whether there was a difference between the payments made to the railroads for shipment made by the freight forwarders and by the motor carriers. There is a substantial difference between plan 1 and plans 3 and 4, very substantial.

Without this bill being passed I am quite sure and I sincerely feel that the forwarders cannot continue to be a strong competitor to the trucking industry.

I again emphasize that we as a shipper consider the freight forwarder as a common carrier.

(Mr. Quinn's prepared statement follows:)

STATEMENT OF JOSEPH L. QUINN, TRAFFIC MANAGER, CANTEEN CORP., CHICAGO, ILL.

Gentlemen, my name is Joseph Quinn and I am the traffic manager of Canteen Corp., 1430 Merchandise Mart, Chicago, Ill.

My company's position in this matter is in support of the freight forwarding industry.

As a substantial user of the freight forwarder industry, we are very concerned with the disparity between the operating costs of the motor carriers and the freight forwarders. This difference, as you know, is the result of the freight forwarder being prohibited from entering into contractual arrangements with the railroads, similar to those now in effect between the motor carriers and the railroads.

The continuation of this situation will eventually result in decreased earnings for the freight forwarders, bringing about a deterioration in service or increased rates. In either case, the shipping public will suffer.

We at Canteen Corp. need the freight forwarding industry, because of the competition that they provide the motor carrier industry. More specifically, the forwarders provide our company with superior service and lower rates between certain areas of the country. It has already been demonstrated that the motor carrier industry is becoming more selective each day in the freight they will handle. Without any competition whatsoever, one can readily expect more independent action on the part of the motor carriers, which will result in immediate detrimental treatment to certain individual industries and to the general shipping public over the long run.

Your support in helping to enact this legislation will enable shippers throughout of the United States to have a legitimate choice between the motor carrier industry and the freight forwarder industry which is essential to the continuation of an "adequate, economical, and efficient transportation system."

Thank you very much, gentlemen, for allowing me to testify before your committee.

Mr. FRIEDEL. I want to thank you. Mr. Kuykendall wants to ask one question.

Mr. KUYKENDALL. I don't want to ask one question. I want to make an observation. The small shipper has been quite well represented at these hearings.

Mr. QUINN. Thank you. I am glad to hear it.

Mr. FRIEDEL. Thank you.

Mr. QUINN. You are welcome.

Mr. FRIEDEL. Our next witness is Mr. Caughey B. Culpepper, chairman, National Conference Non-Profit Shipping Associations, Atlanta, Ga.

STATEMENT OF CAUGHEY B. CULPEPPER, CHAIRMAN, NATIONAL CONFERENCE OF NONPROFIT SHIPPING ASSOCIATIONS, INC.

Mr. CULPEPPER. Yes, Mr. Chairman.

Mr. FRIEDEL. Mr. Culpepper, your full statement will be included in the record unless you wish to read it.

Mr. CULPEPPER. Thank you very much, Mr. Chairman, I will read it, if I may.

My name is Caughey B. Culpepper. I have been actively engaged in traffic and transportation work almost continuously since 1921. I have been connected with the Atlanta Freight Bureau, a civic, nonprofit and highly ethical and professional traffic and transportation organization since 1935, and have been its general manager since 1951.

I served as president of the National Conference of Non-Profit Shipping Associations from its organization in 1953 until early in 1967, at which time I was elected chairman of its board of directors.

Since 1950 the Atlanta Freight Bureau has supervised for its members a freight consolidating service out of New York and Chicago into Atlanta, Ga.; and as general manager of the bureau, I have had direct oversight of this operation which is conducted under the exemption provided in section 402(c) of the Interstate Commerce Act, as are the operations of all bona fide nonprofit shipping associations, approximately 20 of which comprise the National Conference of Non-Profit Shipping Associations, Inc.

I appear here today on behalf of those nonprofit shipping associations comprising the national conference and speak specifically for, and under direct authority from, the Atlanta Freight Bureau, the Memphis Freight Bureau, and Gulf Shippers Associations of Tampa, Fla.

Our opposition to H.R. 10831 is based upon the well-founded fear that to grant to the regulated freight forwarders subject to part IV of the act the right to enter into negotiated and reduced charges agreements with the railroads would automatically be contrary to one of the cardinal aims and purposes of the act to regulate interstate commerce; that is, the elimination of the promulgation of preferential and/or prejudicial rates and charges.

To grant to the regulated freight forwarders the right to enter into or operate under contracts with common carriers by railroad—especially without the imposition of the 450-mile length-of-haul

limitation—would certainly prefer these forwarders over individual shippers and groups or associations of shippers performing for themselves and their members the same essential service as that offered by the freight forwarders, without the imposition of any additional expense or cost of service to the railroads themselves.

What would the freight forwarders do with any savings that might be effected by the contemplated contracts? The forwarders would only do one or two things with these savings. They could use them to improve their own financial status or they could pass them along to their customers.

In the first instance, the onus of preferential treatment is apparent. It would mean that these companies which have no real transportation characteristics, in spite of their designation as common carriers, would enjoy the reduced rates and greater profits than individual shippers of the same commodities or the bona fide groups or associations of such shippers.

In the second eventuality, and presuming that the freight forwarders would pass along to their customers such savings as might be effected, these savings could be used in a competitive manner against organized nonprofit shipping associations to narrow the spread between the charges based upon actual costs to such an extent that these associations would no longer find it advantageous to operate.

This would be the case involving freight shipments to destinations where there might be active nonprofit shipping associations, while the present charges could or would be maintained at other points where there were no such association.

Your witness and his principals recognize the apparent logic of the contention of the regulated freight forwarders that inasmuch as both they and the motor common carriers are creatures of, and parties to, part IV of the Interstate Commerce Act, they should be allowed then the same privileges regarding contractual rates and charges with the railroads as those granted to the motor common carriers.

However, this position is not as fully substantiated by the facts as it might seem, because the Congress at the time the freight forwarders were made common carriers under part IV recognized that there was a difference; and your body then took particular pains to see that the legislation designating freight forwarders as common carriers should be so worded as to still permit the free and unhampered consolidation of small shipments of freight by individual shippers and groups or associations of shippers, as is evidenced by the inclusion of section 402 (c) of the Interstate Commerce Act in the law which was eventually passed.

Thus, to now enact into law H.R. 10831 would by indirection permit the regulated freight forwarders to have a surreptitious advantage over individual shippers and groups or associations of shippers, which the Congress at the time the freight forwarders were made common carriers distinctly sought to prevent.

Consequently, the National Conference of Non-Profit Shipping Associations, Inc., speaking for its approximately 20 members, the Atlanta Freight Bureau, representing approximately 550 shippers and receivers of freight in 14 different States, the Memphis Freight Bureau with approximately 400 shipping and receiving members and the Gulf Freight Association with 450 members respectfully urge that this subcommittee recommend that H.R. 10831 do not pass.

If you will permit me I would like to do something that may not be necessary; but I was interested in the question the Congressman asked with reference to joint rates and the mechanism that went into the promulgation of them. My bureau down in Atlanta recently had an inquiry from a manufacturing concern in Brunswick, Ga., with reference to a commodity that they wanted to ship into Iowa. We contacted the then Atlantic Coastline Railroad.

They said they would be glad to undertake to get the connecting lines to participate in a commodity rate on that particular commodity. They did not know whether they could or not. But they are working at it now. Now that will be a joint rate. That will be by negotiation, by agreement between the railroads.

They will publish the rate in the tariff and then the Interstate Commerce Commission will consider it. Maybe some other railroad will object to it, protest it, and it may or may not go into effect. Now that is a joint rate. Now if the law were amended properly the railroads could publish such rates in connection with various motor carriers.

They could propose a rate and publish a rate from Atlanta, Ga., to some point in Michigan with the Illinois Central, L. & N., all of them participating up to a certain point and the truckline taking the shipment from there and carrying it to the Michigan point, if they had the right under the law to do it.

Now that would be a joint rate. Now if you tried to publish a joint rate with a freight forwarder, the freight forwarder would have to turn around and hire the transportation from somebody else to participate in the rate because he does not have any mode of hauling freight.

He has to buy his transportation. If you published a rate by railroad to a certain point with the freight forwarder to carry the shipment beyond, the freight forwarder would then have to buy the transportation from that point from another railroad or from another truck company.

Do I make myself clear? I was interested in your point about that, you see. I do appreciate very much the opportunity to appear before you. I have nothing in the world against freight forwarders, absolutely nothing in the world. I think that they should be permitted to operate at a profit but to give them the characteristics of a common carrier which has all of the facilities for moving freight, itself, is inconsistent.

You can't do it because they would have to turn around and buy the transportation from somebody else.

Mr. FRIEDEL. Mr. Culpepper, I would like to ask one question. You are opposed to the legislation. Now yesterday there was a proposed amendment to include the nonprofit shipping associations. Would you be in favor if the shipper associations were included?

Mr. CULPEPPER. Mr. Chairman, I would not be in favor of the bill. I would not be as diametrically opposed to it because it would eliminate one of the points that I have raised here and that is the question of preference.

Mr. FRIEDEL. If the shipper associations were included, you would not be opposed to the bill, is that it?

Mr. CULPEPPER. I would probably not be so willing to tear my shirt, if you will excuse the expression. I don't mean to be disre-

spectful. Here is the thing about it. The railroads would turn around, and, with millions of pounds of freight between two points, might enter into a contract with that freight forwarder.

In the case of a nonprofit shipping association that had one-tenth of that moving, the railroads would not enter into a contract with them. There would be nothing in the law that would make them, you see.

Mr. FRIEDEL. You would be opposed to the amendment even if you were included.

Mr. CULPEPPER. I would say we are opposed to the bill as it is written and let it go at that, Mr. Chairman.

Mr. FRIEDEL. Thank you very much.

Mr. CULPEPPER. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. Claude G. Smith for the West Point Pepperell, Inc., Carpet & Rug Division, of Dalton, Ga.

STATEMENT OF CLAUDE G. SMITH, TRAFFIC MANAGER, WEST POINT PEPPERELL, INC., CARPET & RUG DIVISION, DALTON, GA.

Mr. SMITH. My name is Claude G. Smith.

Mr. FRIEDEL. Do you have a statement?

Mr. SMITH. I have a statement which I would like to read if I may be allowed.

Mr. FRIEDEL. Is it short?

Mr. SMITH. Yes, sir.

West Point Pepperell, Inc., Rug & Carpet Division, is a manufacturer of tufted rugs and carpets and distributes its merchandise to all points in the United States and many points in Canada.

Our product is shipped under a description of "Carpets or Rugs, Soft Surface (Pile) Fabric, Power Machine Tufted or Power Machine Woven." The majority of shipments of this merchandise originates in the Southeast and is covered by column commodity rates.

The industry during the past 3 years, as reported by the Bureau of Census, has reached and exceeded the billion-dollar level. Eighty percent of our shipments are less than carload or less than truckload and average approximately 300 pounds per shipment.

Therefore, it is vital to our industry that we be able to secure adequate and satisfactory l.c.l. and l.t.l. service to properly distribute our merchandise.

For the last 5 or 6 years, the railroads have severely curtailed or eliminated altogether their l.c.l. service. From the Southeast we have no rail l.c.l. service to the east and north in official and central territories. Even in the southern territory elimination is beginning.

The Southern Railroad has eliminated all l.c.l. service under 6,000 pounds.

The motor carriers have curtailed their l.t.l. service by refusing to establish through routes and joint rates. We have attempted to overcome these restrictions by appealing to the ICC for certification of additional carriers, particularly for one-line long-haul carriers.

I question though whether such tactics are the answer to our problem. It solves the problem where such certification is granted. How long it will last is anybody's guess.

I think it quite apparent that our industry is handicapped by our lack of satisfactory l.c.l. or l.t.l. service. It is for this reason that we

are interested in the adoption of H.R. 10831. We believe that the freight forwarder could take over the l.c.l. and l.t.l. shipments and do it satisfactorily provided they could control their costs through legalization of a contractual relationship between them and the rail carriers under part I of the ICC Act.

At present West Point Pepperell, Carpet and Rug Division, uses the service of freight forwarders, particularly to the west coast. We have found their service to be consistently good. We would like to see their services extended to areas not now available to us, because they cannot control their costs into the territories that we have no service into, particularly the Middle West.

Prior to the placing of motor carriers under regulation under part II of the act and before freight forwarders were regulated under part IV, forwarders had the right of contract with the motor carriers for consolidation and distribution of forwarder freight from key points.

But even after the motor carriers were placed under part II, this right of the forwarder still held. As the forwarder has always been considered a shipper in their relationship to the rail carriers under part I, we think that when the forwarder was regulated under part IV their relationship of shipper between them and the rail carriers should have been dropped and that they should have been considered as a regulated forwarder with rights to enter into contracts with the rail carriers.

Should this committee see it fit to approve H.R. 10831, and should the Congress in its wisdom adopt this resolution, we believe it would be good for the shipping public and would be in accordance with the national transportation policy.

Such a relationship between the forwarder and the rails as set forth in H.R. 10831 would allow the forwarder, in my opinion, to offer an l.c.l. service that would be satisfactory to the shipping public, servicewise and ratewise.

For this reason, we urge this committee to recommend adoption of H.R. 10831.

Now I want to add one other thing. The use of the nonregulated shipper associations I do not believe is the answer to our problem. We want the service to points where there is no ability of anyone to consolidate volume loads. We must ship 300 pounds, 400 pounds to Podunk points and we can't get such service by the motor carrier and we can't get such service by the rail carrier.

The only one as a last resort we turn to is the regulated freight forwarder. I believe if the regulated freight forwarder had this right of contract they could come in and offer us service to points that they are not now serving because the spread between the carload and l.t.l. rates is not sufficient to allow them to operate.

Mr. FRIEDEL. Thank you, Mr. Smith, for your very fine statement. Mr. Kuykendall?

Mr. KUYKENDALL. I have no questions.

Mr. FRIEDEL. There are no questions. Thank you very much.

Mr. SMITH. Thank you, Mr. Chairman.

Mr. FRIEDEL. Our next witness is Mr. G. R. Holliday, office manager, Hillside plant, Callaway Mills Co., La Grange, Ga. You may proceed, sir.

STATEMENT OF GILBERT R. HOLLIDAY, OFFICE MANAGER, HILLSIDE PLANT, CALLAWAY MILLS CO., LA GRANGE, GA.

Mr. HOLLIDAY. Thank you, Mr. Chairman.

Mr. FRIEDEL. Your full statement will be included in the record, Mr. Holliday.

Mr. HOLLIDAY. By way of emphasis, I will make my additional comment very precise. I think this is a way of being emphatic. No. 1, it is a fact that the rails have withdrawn from the l.c.l. service, generally by declaration and otherwise by performance. Motor carriers are not now performing as well as they once did. I suspect the reduction of competition may have some effect on all this service. In regard to freight forwarders we in our company have come to think of freight forwarders as common carriers.

I believe one of the other witnesses made this same statement. I certainly want to underline that. Some comments have been made with regard to distributing profit. The cost of freight is borne by consumers. The consumer is going to really control the division of any profits.

(Mr. Holliday's prepared statement follows:)

STATEMENT OF GILBERT R. HOLLIDAY, OFFICE MANAGER, HILLSIDE PLANT, CALLAWAY MILLS CO., LA GRANGE, GA.

My appearance here today is to support House bill H.R. 10831 which I recommend for passage, as it is in the best interest of my company and its customers. During 1967 we shipped approximately 45 million pounds of floor coverings, soft surface pile, power machine woven or tufted, most of which was shipped in less-than-truckload lots, to all parts of the United States. A large portion of these goods moved in freight forwarder service. I am interested in the passage of this bill to maintain services of the freight forwarders. Most of the major railroads have discontinued accepting small l.c.l. shipments. Freight forwarders consistently handle all types of traffic, while other modes have a tendency to restrict bulky and cost-problem commodities. I am most anxious to see such an overall service protected. Every day, it seems, a letter crosses my desk relating plans of various motor carriers and motor carrier conferences to increase the rates for moving our commodity.

There have already been several increases during the past two years.

It is my opinion that passage of this bill would aid in keeping rates lower by the retention of the competitive principles so important in any industry. There are now many areas which cannot be reached by railroad in less than carload lots, and those that can be reached generally perform very poorly.

We feel passage of this bill will allow the freight forwarders to sustain their service on small shipments, and enhance coordination of freight forwarder service with their underlying transportation. The freight forwarders have attempted to keep their rates in line and perform a service on a consistent basis, and we plan to continue to use them. I feel passage of this bill will be in the interest of the shipping public and national transportation policy.

I sincerely appreciate the time allowed me by the committee for this testimony. Thank you.

Mr. FRIEDEL. In other words, you are in favor of this legislation?

Mr. HOLLIDAY. Yes, sir, I am definitely in favor of this legislation. Passage of this bill in my opinion would aid the shipper and consumer by permitting the freight forwarders to contract directly with railroads, thus obtaining better rates which would be passed on to the ultimate consumer. Mr. Smith, the first witness who appeared in opposition to this bill, somewhat surprised me by making the statement that they worried about—he said in his opinion this would be additional business for freight forwarders.

If the bill were passed the freight forwarder would be able to obtain business that they are not now getting and would move by rail rather than by highways. I was surprised they were in opposition.

Mr. FRIEDEL. Thank you, Mr. Holliday. I have no questions.

Mr. KUYKENDALL. Let me ask a couple of questions here. I would imagine, Mr. Smith, speaking for the railroads, not long ago the volume and profits many times were not the same thing. One of the fears that has been mentioned here is opening up Pandora's box of indiscriminate price cutting.

That is what a lot of people are afraid of. I know the railroads are afraid of it. What would you think of a published regulated piggyback rate? In other words, instead of giving you an opportunity to bargain just give the railroads an opportunity to publish a piggyback rate?

Mr. HOLLIDAY. I understand that those rates are published now.

Mr. KUYKENDALL. They do not apply to everybody. Right now the freight forwarder is operating within the difference between carload and l.c.l., is that right?

Mr. HOLLIDAY. That is right.

Mr. KUYKENDALL. What you want is some more margin, right?

Mr. HOLLIDAY. I am not interested in margin, myself.

Mr. KUYKENDALL. You are speaking for a bill that gives them more margin?

Mr. HOLLIDAY. Yes, sir.

Mr. KUYKENDALL. Instead of opening up this Pandora's box to indiscriminate price cutting this is the answer, why not give them the piggyback published rate and then let them have more margin?

Mr. HOLLIDAY. I am not sure I understand your point. My point is that I want better service and service that I am not now getting. One way I am getting service is the fact of competition. The freight forwarders are trying to get more business and they get it by giving better service.

Mr. KUYKENDALL. My point is this: After all, if one man backs a trailer up to a rail car and hauls it between point A and point B and so much weight involved what would be wrong with just having a rate for that service for Joe Blow and John Smith the same?

Mr. HOLLIDAY. I can see nothing wrong about that.

Mr. FRIEDEL. Thank you.

Our next witness is Mr. Steve Sakoutis, traffic manager, Embassy Industries, Inc., Farmingdale, N.Y.

Did I pronounce your name correctly?

**STATEMENT OF STEVE SAKOUTIS, GENERAL TRAFFIC MANAGER,
EMBASSY INDUSTRIES, INC., FARMINGDALE, N.Y.**

Mr. SAKOUTIS. Yes, you did, sir.

Embassy Industries, Inc., and its wholly owned subsidiaries, who are all divisions of P. & F. Industries, Inc., and are herewith represented by its general traffic manager, Steve Sakoutis, is a publicly owned corporation, incorporated in 1950 under the laws of the State of New York. Its principal place of business is 300 Smith Street, Farmingdale, N.Y. Embassy Industries, Inc., is engaged in the manufacture of industrial and home heating equipment, chemicals, and industrial ma-

chinery. It relies upon the services of all modes of transportation, to which it tenders shipments from single package shipments to carload quantities, throughout these continental United States, Alaska, and Hawaii, and in foreign commerce.

* * * to promote safe, adequate, economical and efficient service and foster sound economic conditions in transportation and among the several carriers; to encourage the establishment and maintenance of reasonable charges for transportation services, without unjust discriminations, undue preferences, or advantages, or unfair or destructive competitive practices * * *

The above excerpt, taken from no less a declaration than the national transportation policy, clearly states the essence of our support.

The language in section 409(a), as amended, is in complete consonance with this declaration, and brings forth many inherent advantages to shipper and carrier alike. The most obvious of these advantages gained by the passage of this bill, are offered here for your consideration.

SERVICE

Provided with the authority to enter into contractual agreements, with common carriers by railroad subject to part I of the Interstate Commerce Act, a freight forwarder can provide a more efficient, more extensive, and perhaps more economical service to shippers.

Since the freight forwarder, under the present section 409(a), may enter into contractual agreements with common carriers by motor vehicle subject to part II of this act, and can provide a successful and efficient service because of the contractual agreement, then it should naturally follow that the freight forwarder be able to extend a similar arrangement with common carriers by railroad, subject to part I of this act, all to the benefit of the shipping public.

BENEFITS FOR THE SMALL SHIPPER

One of the most often echoed complaints of the transportation industry has been the small shipment. Railroads, to all intents and purposes, have abandoned l.c.l. service. Motor carriers complain about their high costs in handling these small shipments. The freight forwarder by the very character of this operation, has contributed heavily in helping to solve this problem.

With the passage of H.R. 10831, this very vital service could be extended over a greater area, all to the benefit of the shipping public.

COORDINATED SERVICE AND INTERMODAL COOPERATION

Since its inception, the Department of Transportation has been encouraging a coordinated system in transportation, and for more cooperation among the various modes.

Passage of H.R. 10831 would be a forward step toward achieving that goal.

The freight forwarder is largely dependent upon the railroad in furnishing his transportation services. Since these two modes complement each other so well, passage of the bill would give them greater flexibility to blend their operations more efficiently.

This increased efficiency should be reflected in the economics of the service, particularly in the area of the small shipments where costs are spiraling.

In a coordinated transportation system, carriers and shippers alike must be the beneficiaries, or the system cannot survive.

INTERMODAL COMPETITION

Section 490(a) of the Interstate Commerce Act appears to be in conflict with the language of the national transportation policy, particularly with that language which deals with the promotion of economical and efficient service, and, with that language which deals with undue preferences or advantages.

It was not the intent of the act to create a paradox, yet, a paradox does exist.

The freight forwarder is at a distinct disadvantage because of this paradox, in that he cannot enter into contracts with railroads as can the motor carriers subject to part II of the act.

Passage of the bill would correct this discriminating exclusion and again, all to the good of the shipping public.

CONCLUSION

It was not the purpose of this statement to effect a dramatic change in the Interstate Commerce Act. But if it has aroused enough curiosity amongst the members of this august committee, to induce them to take a closer look at the national transportation policy in relation to section 409(a), then its purpose was meaningful, for then logic should dictate that passage of H.R. 10831 is essential, and just.

Mr. FRIEDEL. Thank you very much for your statement.

Are there any questions?

Mr. Kuykendall?

Mr. KUYKENDALL. No questions.

Mr. SAKOUTIS. Thank you.

Mr. FRIEDEL. Our next witness is Mr. Ben Gutman, Jr., president, Ben Gutman Truck Service, Inc., St. Louis, Mo.

STATEMENT OF BEN GUTMAN, JR., PRESIDENT, BEN GUTMAN TRUCK SERVICE, INC., ST. LOUIS, MO.

Mr. GUTMAN. Thank you, Mr. Chairman.

Mr. FRIEDEL. Is your statement long or short?

Mr. GUTMAN. Mr. Chairman, my statement is very brief. I will read it. I think I can read it faster than I can summarize it.

Mr. FRIEDEL. You may proceed.

Mr. GUTMAN. I am Ben Gutman, Jr., president of the Ben Gutman Truck Service, Inc., with principal offices at 1221 Locust Street, St. Louis, Mo.

Our company has been a corporation since 1929 and has always had its principal operations in St. Louis, Mo. Our company serves the St. Louis-East St. Louis metropolitan area within the commercial zone as prescribed by the Interstate Commerce Commission.

We have served the forwarding industry since its inception. In 1967 our company received from the forwarding industry in St. Louis for services performed in pick up and delivery and piggyback approximately \$800,000 in revenue.

My interest in appearing before your committee is obviously the fact that I definitely feel that I am a part of the forwarding industry and as such, I desire to see the forwarding industry maintain a competitive position with other modes of transportation.

I refer specifically to the fact that forwarders are limited to the open tariff plans which places the freight forwarder at a competitive disadvantage in relation to their principal competitors, the common carrier trucks.

Throughout my 30 years of experience in the local cartage business serving the forwarder it has been obvious to me that the forwarding industry has been a progressive and worthwhile part of our transportation system. The forwarding industry should be given the privileges offered to their competitors in order that they are able to maintain their services for the shipping public.

As a cartage company performing services for the forwarding industry, I am dependent upon a volume of business in order to operate economically. If the forwarder is not competitive and consequently is forced to give up a percentage of the volume of traffic handled by our company as far as pick up and delivery and piggyback services are concerned.

Bear in mind that I will still be serving the metropolitan area as mentioned above, but with a smaller volume of traffic resulting in a higher cost per hundred pounds to handle this traffic.

I am certain that this increased cartage cost would prevail under these circumstances in every city regardless of whether the forwarding companies own and operate their own cartage companies, or whether they employ outside cartage companies such as ours to perform these services.

I do not believe that under the competitive conditions that exist today that you can ignore the factor of cartage costs in the overall operations of the forwarding company industry.

It is my opinion that if section 409(a) of the Interstate Commerce Commission Act is amended by the passage of H.R. 10831 the forwarding industry will be permitted to operate in a competitive position for the benefit of the shipping public.

Mr. FRIEDEL. Thank you, Mr. Gutman, I have no questions.

Mr. KUYKENDALL. No questions.

Mr. FRIEDEL. Thank you.

The next witness is Mr. Sam Hayes, Hayes Express, Lodi, N.J.

(No response.)

Mr. FRIEDEL. Our next witness will be Mr. J. Robert Evans, traffic manager, National Lock Co., Rockford, Ill.

STATEMENT OF J. ROBERT EVANS, TRAFFIC MANAGER, NATIONAL LOCK CO., ROCKFORD, ILL.

Mr. EVANS. My name is J. Robert Evans, traffic manager of National Lock Co. of Rockford, Ill. I am here in support of H.R. 10831. I don't think it is necessary to read my statement but I would like to summarize briefly my viewpoints.

Our company is a shipper of small shipments. We are vitally concerned with the spiraling transportation costs, the deterioration of services, and we feel that we need the freight forwarder competition

because motor carriers are becoming more selective, particularly so far as small shipments are concerned.

I don't think that the freight forwarders, who, in my opinion, should be classified as common carriers, are asking for any preferential treatment. I would like to see the forwarder industry be able to fairly meet other modes of transportation competition which would be in the interest of the shipping public.

Thank you very much.

(Mr. Evans' prepared statement follows:)

STATEMENT OF J. ROBERT EVANS, TRAFFIC MANAGER, NATIONAL LOCK CO.

Gentlemen, my name is J. Robert Evans and I am the traffic manager of National Lock Co., 1902 7th Street, Rockford, Ill.

My company's position in this matter is in support of the freight forwarding industry because:

We are primarily a shipper of small shipments, who is quite concerned with spiraling freight costs and deterioration of service in handling of small shipments.

The trend in transportation has been to build bigger trucks and freight cars to meet the volume needs of the large shippers. Rates and accessorial services have been provided to give the large producers more for their money while still guaranteeing adequate profits for the carrier. But all too frequently the small shipper is lost in the shuffle and is finding it increasingly difficult to distribute his products.

The motor carriers, under the Interstate Commerce Act, are authorized to negotiate freight rates with the railroads. The freight forwarders, in our opinion, should be given equal treatment.

We use the services of both freight forwarders and motor carriers and feel that good healthy competition is in the interest of the shipping public. However, we believe the motor carriers have a definite advantage over the freight forwarders and, if not corrected, could result in less competition, poorer service, rising freight costs, etc.

We feel that passage of this bill would result in the freight forwarders being able to serve additional points as well as continuing services now offered. Furthermore, passage of this bill would be to the advantage of the local carriers, who are so vitally needed in the distribution of our products and are having such a difficult time operating.

Thank you very much, gentlemen, for allowing me to testify before your committee.

Mr. FRIEDEL. Thank you very much, Mr. Evans.

Our next witness is Mr. T. A. Drakes, traffic manager, Holman's Department Store, Pacific Grove, Calif.

You may proceed, Mr. Drakes.

STATEMENT OF THOMAS A. DRAKES, TRAFFIC MANAGER, HOLMAN'S DEPARTMENT STORE, PACIFIC GROVE, CALIF.

Mr. DRAKES. Gentlemen, regarding H.R. 10831, I filed a statement in support of the freight forwarding industry. Unless the committee has any questions in order to avoid redundancy I will let my statement stand for the record.

(Mr. Drakes' prepared statement follows:)

STATEMENT OF THOMAS A. DRAKES, TRAFFIC MANAGER, HOLMAN'S DEPARTMENT STORE, PACIFIC GROVE, CALIF.

My name is Thomas A. Drakes and I am traffic manager for Holman's Department Store, which is situated in Pacific Grove, Calif., on the Monterey Peninsula, in central California. Holman's Department Store has been established in Pacific Grove since 1891 and has ever since been a general department store operation.

I have been employed as traffic manager for Holman's since 1952 and my experience before that time was chiefly with carriers.

Holman's uses freight forwarder service particularly with shipments received from eastern, southern and mid-western resources. These shipments comprise all types of commodities which a department store sells and in quantities which range from a few pounds to partial carload shipments. However, a substantial portion of our shipments are those relegated by carriers to a "small shipment" category. It has been our experience that freight forwarders with underlying rail carriage perform the most dependable transit service time all year around at a cost which is competitive with other media.

We are members of a shippers pool car association whose cars originate in a few terminal cities, such as New York, Chicago, Philadelphia, and Charlotte. However, because of the combination of assembly arbitrary rates from offline points, even with the depressed line-haul rate available in such pool cars plus a beyond San Francisco arbitrary rate, the combination of costs makes the pool car service more expensive than the published through rates of freight forwarders.

In general, I feel that it is essential that freight forwarders enjoy the same opportunity to negotiate contractual rates with rail carriers that their competitors in the motor truck industry have had for several months. There is a fairly well-established equity in the rate levels of freight forwarders and motor trucking companies and I believe that in the spirit of the national transportation policy, as has often been expressed by the Congress, a strong competitive relationship should exist for the betterment of all shippers and of the carriers themselves.

It seems that H.R. 10831 is well dedicated to this purpose.

Mr. FRIEDEL. Thank you very much. There are no questions. Your full statement is in the record.

Our next witness is Mr. J. R. Chamberlain, president of Aztec Transportation Co., San Diego, Calif.

**STATEMENT OF JOHN R. CHAMBERLAIN, PRESIDENT, AZTEC
TRANSPORTATION CO., INC., SAN DIEGO, CALIF.**

Mr. CHAMBERLAIN. I want to express my appreciation to this committee for allowing this time to testify in favor of H.R. 10831.

My name is John R. Chamberlain and I am president of Aztec Transportation Co., Inc., and vice president of Aztec Forwarding Co. Aztec Transportation Co., is a member of the California Trucking Association, and a member of the San Diego Chamber of Commerce, in which organizations I have an active part. My company is also an active member of the National Defense Transportation Association.

Eighteen years ago I personally started Aztec Transportation Co., with one truck and have expanded it to a fleet of 65 trucks doing a gross revenue of approximately \$735,000 in 1967. Part of the growth and the stability of our business has been due to our relationship with the forwarders, as they do not compete with us in pickup or in distribution of freight from the railheads.

I am here to speak in favor of the passage of H.R. 10831, which I feel will remove an injustice to freight forwarders under the act as it now stands. The present law gives the long-haul motor carrier an advantage over the freight forwarders that is neither just nor reasonable. This affects not only the freight forwarders but also the short-haul carriers such as my company. We depend to a large extent upon the revenue derived from the freight forwarders in the areas we serve, and we desire to maintain the good service that the customer wants and is justified in expecting.

I can see no reason why this bill should not be passed as it asks for nothing other than parity with the long-haul motor carriers. Anything

less than this would be unjust, not only to the freight forwarders but the short-haul carrier, and the general public as well.

There appears to be nothing written in H.R. 10831 which would give the freight forwarders an advantage. It expresses merely an equal opportunity to compete on even terms with others in the transportation industry.

I believe passage of this bill would materially aid the ICC's often expressed interest in maintaining a more coordinated national transportation system. It would be a means of reducing, to a degree, the small shipment problem, and would be in the interest of greater equality of treatment of the various classes of carriers.

I wish to thank this committee for allowing me to appear before it, and to express an opinion relative to the bill known as H.R. 10831.

Mr. FRIEDEL. Thank you, Mr. Chamberlain. Are there any questions of this witness?

Our next witness is Mr. Robert F. Brambley, traffic manager, Kwikset, a division of Emhart Corp., Anaheim, Calif.

**STATEMENT OF ROBERT F. BRAMBLEY, TRAFFIC MANAGER,
KWIKSET DIVISION OF EMHART CORP., ANAHEIM, CALIF.**

Mr. BRAMBLEY. Thank you, Mr. Chairman, I have a short statement.

Mr. FRIEDEL. If you will summarize your full statement, it will be in the record.

Mr. BRAMBLEY. I represent Kwikset Division of Emhart Corp., manufacturer of residential hardware, a strong competitor of National Lock Co. I must agree with them that I am here in favor of H.R. 10831.

As I stated in my prepared statement, the present freight forwarder service in their operation subject to part IV of the Interstate Commerce Act is done in three portions. Basically the pickup and transport of a shipment to a point of consolidation, a line-haul movement from the point of consolidation to a point of distribution.

The first and third portions of the movement are handled under contract arrangements with local carriers whereas the second and largest part of the movement is not under contract.

There are those who oppose H.R. 10831 who feel that rate cutting would run wild if the bill were adopted. It is my opinion that safeguards are built into all rate negotiations be they contract or not, and they must be submitted to the Interstate Commerce Commission where they can be denied, suspended, or investigated.

The changes in the methods and modes of transport during the past few years, and I believe this is a very important change which is being proposed, has not been detrimental to either the shipper or the carrier.

Examples of this are the present oceangoing trailer-carrying ships, the present jumbo freighters now in operation today with lifting capacities of 90,000 to 100,000 pounds as well as additional large, over-size equipment. This has been all to the advantage of the shipping public. I urge that the committee recommend the adoption of this bill to keep us in a check-and-balance system between the freight forwarders and the motor carriers.

At the present time, Kwikset is a large and small shipper. I will state some facts. On a recent survey I made, out of 310 shipments we made during a 5-day period, each of these shipments weighing less than 10,000 pounds, 228 of the 310 were less than 500 pounds.

There are proposals presently before the Transcontinental Motor Carrier Rate Bureau in Denver, Colo., which will be heard beginning next Monday, which will add a 50-cent charge then per hundredweight on all shipments moving in transcontinental service via the motor carriers.

In January of 1966 the motor carriers entered into competitive operation with the freight forwarders serving points in the States of Maine, New Hampshire, and Vermont. There is a proposal now before the motor carriers to withdraw all through rates in those three States.

The motor carriers in many cases have become, and this is a matter in which we are becoming very selective in their handling and I feel that the check and balance between the freight forwarders and the motor carriers is good for the sound economic transportation picture in the United States.

Therefore, Mr. Chairman, I urge the adoption of the bill, H.R. 10831.

(Mr. Brambley's prepared statement follows:)

STATEMENT OF ROBERT F. BRAMBLEY, TRAFFIC MANAGER, KWIKSET DIVISION, EMHART CORP., ANAHEIM, CALIF.

My name is Robert F. Brambley and I am the traffic manager of Kwikset-Division of Emhart Corp., with the office and production facility located at 516 East Santa Ana St., Anaheim, Calif. I am appearing in support of H.R. 10831 which will permit, if adopted, the wording of section 409(a) Part IV of the Interstate Commerce Act so as to allow freight forwarders governed by part IV of the Interstate Commerce Act to negotiate and enter into contracts with common carriers by railroad who are subject to part I of the Interstate Commerce Act.

Kwikset is a division of the Emhart Corporation and said Emhart Corp., is a Connecticut Corp. Kwikset's sole operation is located at Anaheim, Calif., with all production and shipping done from that point. Our principal product is residential hardware with our distribution being to the Fifty States, District of Columbia and seventeen foreign countries.

In the daily operation of our business we utilize the services of various modes of transportation—water, railroad, motor carrier, freight forwarder, air freight and express to transport raw materials and finished goods.

Under the present operation the freight forwarders subject to part IV of the Interstate Commerce Act perform their services in three portions. First, they must pick-up and transport a shipment from the point of origin to a consolidating point. Second, the shipment is transported from the point of consolidation to a destination point. Third and lastly, the shipment is then transported to the ultimate consumer. The first and third portion of the movement is handled under contract arrangements with the second and largest part of the movement not under contract.

The adoption of H.R. 10831 will bring the entire transport via freight forwarder under contract arrangements and would remove the present discriminatory faction in that motor carriers, subject to part II of the Interstate Commerce Act can enter into contract agreements with railroad carriers who are subject to part I of the Interstate Commerce Act. The motor carriers have had this privilege for over two decades.

There are those opposed to H.R. 10831 who feel that rate cutting would run rampant if the bill is adopted into law. Safeguards are built into all rate negotiations, be they contract or not, in that they must be submitted to the Interstate Commerce Commission and can be denied or suspended and investigated. This includes contractual agreements.

Of all the points brought out by those opposed to H.R. 10831, in my opinion, there is another worth considering and that is the possible reduction of revenue

to railroads by contract arrangements with this said reduction being passed on to the shipping public in higher general freight rates.

After careful consideration this argument wouldn't stand up as any student of transportation economics knows. This bill would place rail freight forwarders on an equal status which would tend to generate more railroad traffic which in turn would better utilize the huge railroad facility available which in turn would reduce the per unit cost for the rail lines.

Changes in methods of transport during the past few years has not been detrimental to either the shipper or the carrier. The advent of trailer carrying ocean-going vessels for example has brought *down* the per unit costs, not increased them. The air freighter in operation today has also brought *down* the shipping costs as has the utilization of jumbo or oversize railroad equipment.

If the foregoing is true, then we can expect that if contractual arrangements are permitted between the freight forwarders and the railroad carriers it will be reflected in lower shipping and handling costs which would be passed on to the consumer.

As I have already pointed out, the freight forwarder contracts for two segments of the transportation utilized by him, we then support H.R. 10831 to enable him to perform the complete transportation under contract agreement. Contract agreements between the railroad carriers and the freight forwarders will also open up new areas where it is not now presently economical for freight forwarders to operate.

I respectfully urge that this committee recommend adoption of this bill, H.R. 10831, thereby bringing about equality between two of our substantial forms of transportation, freight forwarders and motor carriers in permitting them both the provisions of contractual agreements with railroad carriers.

Mr. FRIEDEL. Thank you. Are there any questions?

Mr. KUYKENDALL. Yes, I think we should correct the record on one point, Mr. Brambley. I don't know whether you were here for all the testimony this morning but the arrangement made between a railroad and a truckline for piggyback service is not regulated and is not published.

The rates that would be allowed to be negotiated under this legislation would not be published. I just wanted to clarify the record.

Mr. FRIEDEL. Thank you. Our next witness is Mr. J. L. Anderson, president of Anderson Cartage, Stockton, Calif.

STATEMENT OF JACK L. ANDERSON, PRESIDENT, ANDERSON CARTAGE, STOCKTON, CALIF.

Mr. ANDERSON. Thank you, Mr. Chairman.

Mr. FRIEDEL. Do you have a prepared statement?

Mr. ANDERSON. I have a prepared statement which I would like to present for the record.

Mr. FRIEDEL. Are you in favor or opposed to this bill?

Mr. ANDERSON. I strongly urge passage of this bill, H.R. 10831.

(Mr. Anderson's prepared statement follows:)

STATEMENT OF JACK L. ANDERSON, PRESIDENT, ANDERSON CARTAGE, STOCKTON, CALIF.

My name is Jack L. Anderson, I am the president, member of the board of directors and control 100 percent of the stock of Anderson Cartage, a California corporation, with principal offices located at 430 North Aurora Street, Stockton, Calif.

Anderson Cartage owns and operates a public warehouse in Stockton, Calif., under authority of the Public Utilities Commission of the State of California.

The principal business of the corporation is transportation of property for hire as a common carrier under authority of certificates of Public Convenience and Necessity duly issued by the Interstate Commerce Commission and the

Public Utilities Commission of the State of California authorizing operations in interstate and foreign commerce as well as intrastate commerce.

The company maintains terminals at Stockton and Sacramento, Calif., and operates 65 pieces of equipment. Gross annual revenue from trucking operations amounts to \$500,000, of which 55 percent is derived from freight forwarder operations.

We unload and distribute for the freight forwarders, freight consolidated by them in the east for distribution to points in California.

We have been operating as distributors of forwarder freight since 1941. The freight forwarder business has contributed substantially to the success of our operations. Without the forwarder business the entire service of the company to the California public would be curtailed.

I am familiar with the content of H.R. 10831, to amend section 409 of the Interstate Commerce Act to authorize contracts between freight forwarders and railroads, and strongly urge its passage for the present and future success of the freight forwarder industry.

Throughout the years the rails have gradually abandoned l.c.l. traffic which has worked to the disadvantage of the small shipper.

Conditions have changed and are in a state of change. Railroads remain competitive in the l.c.l. field largely through the medium of freight forwarders.

The Supreme Court has held that truckers are free to use piggyback and contract or joint rates with the railroads whereas the freight forwarders are held strictly to tariff provisions.

While I do not advocate preferential treatment to freight forwarders I do advocate equal opportunity between freight forwarders and motor carriers in their authority to negotiate with railroads.

Mr. FRIEDEL. Our next witness is Mr. Harry J. Scherer, vice president, Peninsula Delivery Service, San Francisco, Calif.

(No response.)

Mr. FRIEDEL. At this rate we might be able to finish this morning. Our next witness is Mr. Van Noy Davis, general traffic manager, Revell, Inc., Venice, Calif.

STATEMENT OF VAN NOY DAVIS, GENERAL TRAFFIC MANAGER, REVELL, INC., VENICE, CALIF.

Mr. DAVIS. Thank you, Mr. Chairman. I am Van Noy Davis. I have a brief statement I would like to enter into the record.

Mr. FRIEDEL. It may be included in the record.

Mr. DAVIS. Mr. Chairman, do you desire I read the statement?

Mr. FRIEDEL. You may read it.

Mr. DAVIS. My name is Van Noy Davis. I am general traffic manager of Revell, Inc., and have held this position for the last 23 years.

The home office is Venice, Calif., with offices and/or plants in New York, London, and Bunde, West Germany.

My other affiliations briefly, are:

- (1) Delta Nu Alpha, Chapter 116, Los Angeles, Calif.
- (2) Shippers Advisory Subcommittee and Freight Committee for the Los Angeles Chamber of Commerce.
- (3) Member of West Coast Traffic Committee for Toy Manufacturers of America.
- (4) Past president and chairman of the board of traffic managers conference of California.
- (5) Past president of Bay Cities Traffic & Transportation Club.
- (6) Member of the Los Angeles Transportation Club.
- (7) Member of Pacific Coast Shippers Advisory Board.

Revell's gross movement of finished goods during 1967 amounted to something in the neighborhood of 101½ million pounds.

Some 60 percent of this traffic moves through the services of the numerous forwarding agencies, and for this reason I am deeply concerned about the continued health and longevity of the forwarding industry.

Our operation needs the flexibility peculiar to the forwarders service since our volume moves in commonly considered small lots and package rated lots.

It is my belief the forwarder industry will suffer immeasurable damage in the absence of benefits provided by H.R. 10831.

Further, denial of contractual privileges between forwarders and the railroads could move the forwarder out of the competitive field as we have known it—the forwarders being bound by the prevailing open tariff plans, while highway common carriers appear to have distinct advantages under contractual arrangements such as plan 1 affords.

The railroads having discouraged and/or entirely eliminated the handling of less-than-carload-lot shipments over the past few years, have created an increasing need for forwarder services to meet less-than-carload-lot service requirements resulting from such abandonment.

The railroads and the rail freight forwarders have, historically, complemented each the other's effort, the rail freight forwarder being treated as something like a stepchild denied status of carrier and paying shippers rates.

I strongly urge the cementing of these coordinated operations in such a manner as to provide the inherent flexibility and economies resulting from joint rates and other equalizing opportunities.

I believe H.R. 10831 is a step in the right direction and urge its passage.

Mr. Chairman, one conclusion, being located as we are on the west coast and using forwarder services to the high degree that we do, a great deal more than half of our transportation, we have shipments that range anywhere from 25 to 15,000 pounds, and for us with jobber outlets, to attempt some of the suggested remedies of loading cars into these points for distribution the timing lag very often would prohibit the activity.

Secondly, if you have too small lots, then you have a distribution problem at destination. We have found this to be true.

Also, the type of customer that we have, if it is directly to a jobber, we are not his only vendor; his warehouse space is limited. If we could take advantage of a carload rate to this jobber on a minimum of 30,000 pounds it would be well and good, but he is not equipped to handle that. He would probably have to do this with 20 or 30 other vendors.

Most of our customers want a steady flow, they want the carrier to be a conveyor directly from our finished goods plant to their door, and they want shipments moving in every week—small shipments. If one comes in they want to know that another one is moving behind. This makes it necessary that we have some sort of consolidation service into every nook and cranny of the United States.

Thank you.

Mr. FRIEDEL. Our next witness is W. G. Walkup, Jr., executive vice president, Walkup's Merchants Express, San Francisco, Calif.

STATEMENT OF WARD G. WALKUP, JR., EXECUTIVE VICE PRESIDENT, WALKUP'S MERCHANTS EXPRESS, SAN FRANCISCO, CALIF.

Mr. WALKUP. Thank you, Mr. Chairman.

Mr. FRIEDEL. Your entire statement will be included in the record, Mr. Walkup.

(Mr. Walkup's prepared statement follows:)

STATEMENT OF WARD G. WALKUP, JR., EXECUTIVE VICE PRESIDENT, WALKUP'S MERCHANTS EXPRESS, SAN FRANCISCO, CALIF.

Thank you for permitting me to testify today before your committee on H.R. 10831. I am in favor of this House bill and do hope it is passed by the House of Representatives.

I would like to introduce myself to you. I am Ward G. Walkup, Jr., executive vice president and general manager of Walkup's Merchants Express, with headquarters in San Francisco, Calif. Walkup's Merchants Express, as a common carrier of intrastate and interstate commerce, serves essentially the entire State of California and is one of the State's largest motor carriers. We have over 1,000 pieces of equipment and handle freight from the Mexican border to the Oregon border, with terminals in the major cities of the State. Walkup's Merchants Express was founded by my father in 1906, and I have been associated with the company since 1946.

I do not feel that under sound regulation one mode of transportation should have an advantage over another. We handle a large amount of freight for freight forwarders within the State of California. Such revenues are an essential part of our total revenue and we feel that the freight forwarders are entitled to equal rights with the transcontinental trucking industry. Under the present Interstate Commerce Act, freight forwarders do not have the right to make contracts with rail carriers, but the trucking industry does. My company is governed by the California Public Utilities Commission and the Interstate Commerce Commission, and all trucking companies compete uniformly under the State's minimum rate tariffs and required published tariffs and regulations. It is difficult to understand how in the transcontinental freight field, companies offering similar services are not governed equally, with one mode being given a decided advantage over another when they are in exactly the same type of business.

As our company does a large volume of freight forwarder business, I have been given to understand by the forwarders that if they have the right to make contracts with railroads, the same as the trucking industry, they can expand their services, and this, of course, would benefit motor carriers such as my company in California. More importantly, however, such coordinated freight forwarder and rail services working under uniform contract arrangements would also greatly benefit all businesses in the State of California who receive freight from the Eastern part of the United States. The freight forwarders are governed by tariffs and, in my opinion, are only asking for equal rights with the trucking industry. They are not asking for preferential rights.

As my company is one of the oldest and largest motor carriers in California, we have always believed that the freight companies doing similar business should have the right to be competitive and discriminatory practice should not be permitted. It is for this reason that I ask for permission to appear before you gentlemen with the hope that my testimony will assist you in reaching a decision on H.R. 10831.

Thank you for granting me the time to be a witness, and I do hope you will act favorably on this vital legislation.

Mr. WALKUP. I appear here in support of this bill because I feel that it is necessary corrective legislation to protect essential revenues of my company. It is obvious a point of disparity between the freight forwarder industry which is rail-oriented and cannot compete with the motor carrier industry to the same advantage under rail transportation.

Mr. FRIEDEL. Thank you very much.

Mr. Ernest L. McMaster, traffic manager, John Middleton, Inc., King of Prussia, Pa.

STATEMENT OF ERNEST L. McMASTER, TRAFFIC MANAGER, JOHN MIDDLETON, INC., KING OF PRUSSIA, PA.

Mr. McMASTER. Mr. Chairman, I have a statement which I would like to submit for the record. Are there any questions?

Mr. FRIEDEL. Are you in favor of the bill?

Mr. McMASTER. Yes. I am.

Mr. FRIEDEL. I have no questions. Your statement will be included in the record.

(Mr. McMaster's prepared statement follows:)

STATEMENT OF ERNEST L. McMASTER, TRAFFIC MANAGER, JOHN MIDDLETON, INC., KING OF PRUSSIA, PA.

John Middleton, Inc. is a manufacturer of pipe smoking tobacco which is shipped to all parts of the United States in only l.t.l. or l.c.l. lots.

My name is Ernest McMaster and I am the traffic manager of John Middleton, Inc., located in King of Prussia, Pa., a community located approximately 20 miles from Philadelphia.

Since we are located about 20 miles from Philadelphia, almost all of our shipments are required to be transferred to Philadelphia for further transportation. Finding adequate transportation for our l.c.l. shipments is increasingly becoming a problem for us, and we rely heavily on freight forwarders to move these l.c.l. shipments for us to our customers throughout the United States, and under favorable circumstances.

We urge passage of H.R. 10831 which would equalize competition and encourage the continued handling of our l.c.l. shipments.

Mr. FRIEDEL. The next witness is Mr. W. V. McLaughlin, general traffic manager, Burham Corp., Irvington, N.Y.

(No response.)

Mr. FRIEDEL. Mr. Frank Bender, president of Bender Warehouse Co., Reno, Nev.

Mr. Bender, you may have your full statement included in the record and briefly outline what it contains.

STATEMENT OF FRANK N. BENDER, PRESIDENT, BENDER WAREHOUSE CO., RENO, NEV.

Mr. BENDER. I would like to do that. I would like to make a couple of observations. I will not read the statement if it will be included.

(Mr. Bender's prepared statement follows:)

STATEMENT OF FRANK N. BENDER, PRESIDENT, BENDER WAREHOUSE CO., RENO, NEV.

To introduce myself, I am president of the Bender Warehouse Co., Nevada's largest public warehouse. I appear in behalf of this legislation and give it my full support.

We've been in business since 1945 and our customers number sixty-four national firms that use Reno as their central Western distribution point. Our 12 local cartage trucks last year handled 4,203,309 pounds of freight forwarder deliveries. In addition to hauling freight forwarder tonnage, we also received 2,041,726 pounds from them for off-line carriers and in behalf of our warehouse customers 4,906,633 pounds of goods direct into our warehouses. The bulk of

these goods arrived in small lot quantities. The success of our business is therefore directly dependent upon the ability of the freight forwarders to provide our customers with service competitive with other modes of transportation.

Last year our payroll topped \$400,000 which for the Reno area is a major payroll in other than tourist oriented business. I know the community well a I am a past president of the Greater Reno Chamber of Commerce, represent our county on the State Board of Economic Development, and am co-chairman of the chamber's Business and Industrial Development Committee. The Reno-Sparks area has over 125 national firms distributing to the west and with few exceptions, they received goods into their warehouses from the east and Midwest via freight forwarders. Therefore, not only are my customers dependent upon the forwarders, but all businesses in the Reno-Sparks area as well.

There is no question that the freight forwarders are at a disadvantage in competing with the trucklines because of the trucker's ability to use the rail rates, or make joint rates or to make contracts with the railroads. Why should the truckers have this advantage? It certainly isn't in the Nation's interest to have one form of transportation have such an advantage over a competing form of transportation. So passage of this bill does not establish anything new, but it would equalize the competitive base from which they start, thus providing the public with better service. Because if the freight forwarders are granted the same privileges in contracting with the railroads as the truckers do now, then the result can only mean improved forwarder service.

I mentioned the bulk of the freight we receive from the forwarders is in small lot shipments. It is obvious the railroads have given up this business and from my experience as a shipper and receiver of freight, the truckers do not go out of their way to promote less than truckload business. I don't blame them because it's natural that's where their highest costs of doing business are found. Thus it is imperative to the Nation's economy that the forwarders that specialize in small lot shipments be given at least an equal chance to integrate their operations with the railroads.

It made sense when the Supreme Court granted the long haul truckers the privilege of making contracts for piggyback service, and it makes good sense to grant the freight forwarders the same privileges by passage of H.R. 10831.

Mr. BENDER. I would like to ask that in your deliberations of this legislation you look very closely at who the opposition is and who is in support of this bill. I think it is pertinent because the shippers, the people, the public who are using and are dependent on this type of freight are the ones who are supporting this.

They are the people who need this legislation. The opposition, of course, is the competition that wants to close the door so to speak and keep them out. It also seems to me that the shippers associations are cutting their nose off to spite their face because basically they are formed to try to get the lowest freight rate for their members.

They should be able to use any kind of transportation, whether they do their own pickup and delivery themselves or not. They should in some instances—and certainly out in the West—be able to use the freight forwarder even though there is an association.

If they can get a lower rate because of passage of this legislation it would then be in their interest to do so. So, it seems to ride the coattails here.

They are not regulated. But I agree certainly with Mr. Kuykendall that then it seems ridiculous that a railroad is charging two competing forms of transportation a different rate for hauling the same type of freight the same distance, with the same pickup and destination points.

The shippers associations are not regulated and the freight forwarders are. The freight forwarders are in competition with the trucklines. Therefore in charging the rates, I agree with you 100 percent, you are absolutely right, the railroads are going to charge rates where

they make money but they should charge the same rate to the same people.

Thank you very much.

Mr. ADAMS. Mr. Chairman, I have a question of this witness.

Mr. FRIEDEL. Mr. Adams.

Mr. ADAMS. If you are a shipper and you have to ship by the published rates, which everyone else does, and your competitors are using a freight forwarder which because of his particular circumstances has a special contract and therefore ships the same distance at a lower rate and can charge less, don't you think this would be injurious to you?

Mr. BENDER. Well, in the first place the freight forwarder—

Mr. ADAMS. The shipment under your theory has to go to the freight forwarder because the shipper as I understand it has to use the published rate now?

Mr. BENDER. The freight forwarder is open to anybody to use his services. He will pick up for you, me, or anyone else. His rates are published. However, a freight forwarder can make commodity rates or point-to-point rates from one section of the country to another, depending on the volume of freight.

Mr. ADAMS. Under the situation you outline, you as a shipper, cannot compete with a freight forwarder if he has a special contract with the railroad for the carrying of these goods and ship it by yourself; you have to go to him?

Mr. BENDER. No.

Mr. ADAMS. Of course you do. You have to ship under published rates if you are a shipper and if he is lower you have no choice.

Mr. BENDER. How else is a shipper going to get his goods to the market unless he has his own transportation? He has only three choices. He can have his own trucks or he can load his own rail cars to full capacity. This is the best way to get the lowest rate from one point to another as a shipper. The second way is that he can join an association with other shippers and he can get a lower rate because of the volume and consolidation among the chosen few who are members.

Many shipper associations have their doors closed. They will only accept certain members. So they have an advantage over the person or the manufacturer who is not a member of the association.

Mr. ADAMS. What you are saying to me then is that there is no more direct shipper-to-carrier relationship unless it be with motor carriers and that you have to either go to a freight forwarder or to a shipper's association?

Is that what you are saying?

Mr. BENDER. It is hard to say where the shipper is, that a shipper can go to a freight forwarder, he can go to a truckline, but he can no longer, especially in l.t.l. shipments, small shipments. This is what we are after primarily.

Mr. ADAMS. The second point I wanted to ask you about is that you have indicated you think the relationship allowed between the railroads and truckers is unfair.

I understand you are probably referring to plan 1. Don't you think there is a back pressure on the railroads in that case. Under plan 1 a contract can only be used between the two points, the trucker already serves. The trucker must charge the same amount that he has in his

published tariff. So what the railroad is doing when they make a contract with the trucker is to substitute the rail service for the trucker service.

Now isn't there a back pressure on the railroads when they are in effect giving their competitor, which is the trucker that hauls over the same area, a contract? Isn't this a back pressure to keep them from going too low on the contract otherwise they simply cut off their own freight?

Mr. BENDER. Are you talking about the railroads now that are cutting off their own freight?

Mr. ADAMS. Yes.

Mr. BENDER. No. The railroads have prospered with this piggyback. This is a new form of transportation which has only been in service for a few years. They have done very well by it. The railroad in making a rate for a trucker is not going to make a rate below his cost. He is in business to make a profit like anybody else. I think it is only fair that the truckline who is picking up freight, whether it be l.t.l. or full truckload and putting that on the rail, the railroad does not care what is then in that truck, all they are carrying about—

Mr. ADAMS. Let us describe a plan of operation. For example, let us take the West. You are going to go from Chicago to Portland and there is a truck rate between Chicago and Portland. There is also a railroad rate between Chicago and Portland.

If you piggyback an operation, a truck, out of Chicago to Portland, the railroad is going to be insane if they cut that contract rate to the point where the trucker can cut his rate below the rail rate that is being published.

They would be out of their mind. They would simply then cut off their own freight. Now there is a back pressure because the trucking industry is a competitive mode of transportation. I have some doubts whether extremely low-cost contracts can exist. Any time you get into the field of making deals, as you pointed out in your earlier statement, then the shipper, in effect, is out of business, he can't compete by using the published rates.

What I am saying to you is that there is a back pressure on the truckers. Is there a back pressure on the freight forwarder in the same way to keep that contract rate from simply going down which puts everybody else out of business?

Mr. BENDER. No; because the railroads have taken themselves out of the small lot businesses. You have heard testimony from other members here. Most will agree that the railroads simply don't want l.t.l. business or l.c.l. business any more.

They have taken themselves out of this business. But they have put themselves into piggyback business. They will haul flatcars from point A to point B. It does not matter to the public if he is shipping by truck or by freight forwarder if it is a published rate. The freight forwarder rates 9 times out of 10 will equal or be the same as the truck rate from point A to point B. But the truck can get that service from the rail for, say, a hundred dollars and the freight forwarders are going to pay \$150.

It does not seem fair that the freight forwarders should pay more money. The shipping public, the people who are here supporting this bill, are the ones who need to be able to maintain a competitive

mode of transportation between the trucklines and the freight forwarders because this is the lifeblood of our country.

In the West I can tell you by my business we used to, years ago, have almost 90 percent of our business in rail and out by rail on a storage and transit basis. Today, 90 percent of our business is in by rail or truck or full freight forwarder piggyback and out in l.t.l. mode of transportation.

The small-lot shipment shipper, the store on the street cannot buy a full railcar anymore. They have to work from hand to mouth. This is the way that the public has purchased which has forced businessmen into this pattern.

So it is imperative that the one mode of transportation that is doing its best to protect the same small lot shipper be given the same advantage as its major competitor, the truck lines.

Mr. KUYKENDALL. I am going to have to leave in a couple of minutes to go to a meeting downtown. I would like to get the record straight on something.

I think it is in line with what Mr. Adams has said. I know during the time that I have been on these hearings with Mr. Adams both of us have stressed the desire of real equality. Then it disturbs me that the idea of a made up truckload of l.t.l. quantities as small as 50 pounds by a freight forwarder would be any different than that of an association or a truck line for that matter.

I agree with Mr. Adams. So, what I want to get very clear, when I was talking about disparity, we should not correct one inequity by creating a great possibility of another. That is indiscriminate price cutting. When you get into indiscriminate price cutting it is going to happen and some of the freight forwarders are huge operations and they have the power to achieve indiscriminate price cutting from the railroad if the railroad so desires.

As much as I dislike the idea of total regulations I don't think I would ever support opening up this Pandora's box further without the idea that we are going to have piggyback established rates from one point to another for the same amount of merchandise if it is in a trailer. This is a point I want to make at this point in the hearings so far as my views are concerned.

I don't want to be misunderstood and I am afraid you have misunderstood. I don't want to create an inequity by getting rid of one. I am sorry I have to be excused.

Mr. FRIEDEL. I have no questions. Thank you very much.

Mr. BENDER. Thank you.

Mr. FRIEDEL. Mr. Francis A. Berardino, president, Frank's Parcel Service, Inc., Yonkers, N.Y.

(No response.)

Mr. FRIEDEL. Mr. A. W. Cloer, assistant traffic manager, Reeves Bros., Cornelius, N.C.

STATEMENT OF A. W. CLOER, ASSISTANT TRAFFIC MANAGER, REEVES BROS., INC., CORNELIUS, N.C.

Mr. CLOER. Mr. Chairman, I ask that my statement be included in the record. I would like to make a comment. I am in favor of the bill.

Our primary product you may say is a light and bulky article to

the west coast. Most of the motor carriers are opposed to hauling this light and bulky merchandise. They do this by route restriction, excessive rates. The only alternative we have is the freight forwarders. That is the point I would like to make for the record.

(Mr. Cloer's prepared statement follows:)

STATEMENT OF A. W. CLOER, ASSISTANT TRAFFIC MANAGER, REEVES BROTHERS, INC., CORNELIUS, N.C.

My name is A. W. Cloer and I am employed as assistant traffic manager of Reeves Brothers, Inc., P.O. Box 188, Cornelius, N.C. I am appearing today in support of H.R. 10831, which proposes to change the wording of section 409, part IV of the Interstate Commerce Act, as amended. This proposed change would authorize contracts between freight forwarders and railroads, subject to part I of the Act. This change in wording would give all freight forwarders more flexibility in arriving at contracts between the freight forwarders and railroads or motor carriers.

Reeves Brothers, Inc., is primarily a manufacturer of textile products. However, in addition to textiles, Reeves manufactures household items such as pillows, back rests, and cellular or expanded foam plastic articles. In a number of cases, these plastic articles are light and bulky, having a density of 1.2-7.25 lbs. per cubic foot. Since a large number of motor common carriers are opposed to hauling these light and bulky commodities, our only way of moving some of these shipments is by freight forwarders or on our fleet of private trucks. Our various plants use freight forwarders to a great number of west coast points. These shipments consist of plastic articles, household items, and various textile products and will weigh from 100 pounds to as high as 15,000 pounds per shipment.

Reeves Brothers, Inc. has plants located in the States of New Jersey, Maryland, Virginia, North Carolina, South Carolina, Mississippi, Georgia, Florida, and California. We use all modes of transportation in securing our raw materials and shipping our finished products. We feel that any change in the Interstate Commerce Act, which will assist the regulated common carriers, is a step in the right direction.

In closing let me again state that Reeves Brothers, Inc. is in favor of this change in wording which we feel will be of great assistance to the freight forwarders and expand the opportunity for improved freight forwarder service. We feel that no precedent will be set since forwarders already have the right to contract with motor common carriers. We also feel that changes of this nature will be in furtherance of the present national transportation policy.

I would like to thank this committee for granting me time to appear and invite any questions that any of you might have.

Mr. FRIEDEL. In other words, you are in favor of this bill?

Mr. CLOER. I am in favor of this bill.

Mr. FRIEDEL. Are there any questions, Mr. Adams?

Mr. ADAMS. I have no questions, thank you.

Mr. FRIEDEL. Thank you very much.

Mr. Rolf Kahn, vice president, Associated Products, Inc., New York.
(No response.)

Mr. FRIEDEL. Mr. H. R. Steffen, traffic manager, Coats & Clark, Inc., Atlanta, Ga.

STATEMENT OF HOWARD R. STEFFEN, TRAFFIC MANAGER,
COATS & CLARK, INC., ATLANTA, GA.

Mr. STEFFEN. Mr. Chairman, I would like to read my statement please.

Coats & Clark, Inc., and its divisions are manufacturers principally of cotton yarns and threads; wool and synthetic yarns, zippers, wood spools and novelties; cotton tapes and narrow fabrics; die cast zinc products; nylon textile machine parts, and stainless steel dye springs.

The majority of its products are distributed by Coats & Clark's Sales Corp. in small shipment lots to retailers, chainstores, jobbers, supermarkets, and garment manufacturers. Coats & Clark and its predecessor companies have been in business for over 150 years.

Our company is vitally interested in H.R. 10831 which as to do with revision of section 409 of part IV of the act. We are strongly of the belief that freight forwarders should have equal status with other carriers in entering into contracts with basic carriers. We are aware that freight forwarders may enter into contracts to a certain degree with motor common carriers and that motor common carriers and railroads may enter into contracts as evidenced by the so-called plan 1 for piggy-back operations.

We firmly believe that it would be beneficial and in conformance with the national transportation policy to enable freight forwarders to achieve equal status with other common carriers. It is felt that if this bill is passed, the public will benefit by better service and that costs of service might be held stable, or reduced to a small degree, by allowing coordination with other types of service carriers.

The American consumer is the one who eventually bears the burden of rising prices in which transportation expenses are a substantial factor. Government itself is a huge purchaser of transportation. Therefore, Government costs could be benefited in part by approval of the bill.

Freight forwarders have the inclination and tendency to handle all commodities and do not restrict themselves as other carriers have done or are doing. It is known that less-than-carload service by rail has dwindled to the smallest degree. Many motor common carriers are penalizing small shipments and are refusing in many instances to handle connecting-line traffic. The Interstate Commerce Commission has set up a special committee to study this problem as you are no doubt aware.

We are and have been substantial users of freight forwarders, among other types of carriers. Presently, we are shipping about 500,000 pounds per year in freight forwarder service. We have generally found their services dependable, useful, and adequate. This is particularly so in long-haul small-shipment service where we have to deal with only one carrier, origin to destination, and do not have to pay combination of rates or minimum charges as assessed by other carriers. In fact, the ICC is considering asking Congress for additional powers to eventually enable shippers to request and obtain such through service by other common carriers.

We therefore reiterate our desire that this bill be approved and passed. We thank the committee for this opportunity to appear before it.

I would like to emphasize the remarks made by the gentleman from Revell. The people we sell to are generally small businesses, demand a steady flow of merchandise. We cannot use the consolidation service because these people are located all over the United States, in every small hamlet you can think of, chainstores, dry goods stores, supermarkets, and what have you.

They demand a steady flow and we cannot wait for the consolidation. Counter to the position of the gentleman from the TEA (Traffic

Executive Association), I feel that the rails would benefit by an additional volume of movement.

Mr. FRIEDEL. Thank you. Are there any questions, Mr. Adams?

Mr. ADAMS. I have no questions.

Mr. FRIEDEL. Thank you very much.

Mr. ADAMS. Thank you.

Mr. FRIEDEL. Mr. Alvin M. Feinman, distribution director, Oxford Industries, Atlanta, Ga.

**STATEMENT OF ALVIN M. FEINMAN, DISTRIBUTION DIRECTOR,
OXFORD INDUSTRIES, INC., ATLANTA, GA.**

Mr. FEINMAN. Thank you, Mr. Chairman.

I would like to enter my statement for the record and highlight certain points.

Mr. FRIEDEL. Mr. Feinman, your full statement will be included in the record.

Mr. FEINMAN. My name is Alvin Feinman. I am employed by Oxford Industries as distribution direction on the corporate staff level. Oxford is a manufacturing concern operating 34 manufacturing facilities the majority of which are in small, out-of-the-way locations.

Primarily in the southeast section of the United States. Oxford's net annual sales for the fiscal year 1967 was in excess of \$116 million.

I was trying to indicate in the first paragraph that Oxford is a big shipper of small shipments.

The experience that Oxford has had in transportation needs is that the freight forwarder has provided constant and consistent service of the nature that Oxford requires. We are very much interested in the passage of this bill because we feel that only through equality of arranging and competing for cost and service with motor carriers can freight forwarders continue to provide the service at the same cost.

Further the transportation costs are spiraling alarmingly and the passage of this bill would tend to hold the line on these rates.

(Mr. Feinman's prepared statement follows:)

**STATEMENT OF ALVIN M. FEINMAN, DISTRIBUTION DIRECTOR,
OXFORD INDUSTRIES, INC., ATLANTA, GA.**

Oxford Industries, Inc., of Atlanta, Ga., is a manufacturer of both men's and women's clothing, operating thirty-four manufacturing facilities located primarily in the southeastern section of the United States. Oxford's net annual sales for the fiscal year 1967 was in excess of \$116,000,000.

We are very much interested in the House bill H.R. 10831 as freight forwarders and motor carriers need competing equality in cost and services. For the force to achieve this, it is imperative that the rail lines and the forwarders be capable of making contracts such as is presently authorized in the Act for the motor carriers.

Further, the ability to make such contracts with the rail lines would enhance better coordination of service for the public good. Freight forwarders consistently handle and service all types of traffic and do not have the tendency to restrict because of geographical problems, bulky nature of traffic, etc. This is not the case with the rail lines and motor carriers.

We have personally utilized services of freight forwarders for many years and found them consistently dependable. The passage of this bill can only further such service for our organization and the public at large.

Further, transportation costs are spiraling alarmingly and the passage of this bill will tend to hold the line on rates. In view of the monetary hedge, these contracts can develop with the railroads.

Mr. FRIEDEL. I want to thank you. I have no questions. Are there any questions, Mr. Adams?

Mr. ADAMS. No questions.

Mr. FRIEDEL. Gentlemen, we have nine more witnesses. If they want to include their statements for the record now we can do it without coming back this afternoon.

Mr. J. A. Johnson, president of the Harpeth Freight Lines, Inc., Franklin, Tenn. Is he here? Would you like to have your statement included in the record?

STATEMENT OF J. A. JOHNSON, PRESIDENT, HARPETH FREIGHT LINES, INC., FRANKLIN, TENN.

Mr. JOHNSON. Yes, and I have one little supplement to add to it.

Mr. FRIEDEL. Go ahead.

Mr. JOHNSON. I am J. A. Johnson, president of Harpeth Freight Lines, a small common carrier at Franklin, Tenn. Being a small carrier we cannot be selective but we are much hurt by loss of traffic to private carriers. Our shippers complain constantly over the excess delays to their traffic and are continually diverting traffic to private carriers.

Our connecting carriers at Nashville are selective. Most have two line limits and this causes congestion and additional expense and delay to the small carrier. The freight forwarders in many instances offer the only relief for such congestion.

For this reason I naturally am in support of anything that will help the small carrier; that is all, sir.

(Mr. Johnson's prepared statement follows:)

STATEMENT OF J. A. JOHNSON, PRESIDENT, HARPETH FREIGHT LINES, INC., FRANKLIN, TENN.

I am very much in favor of seeing H.R. 10831 passed and enacted as it will be in strict conformity with the national transportation policy, and allow the best service between the various forms of transportation.

We do a considerable volume of business with the forwarders and our experience with them has been that they have a consistent tendency to provide satisfactory service covering all kinds of traffic without restrictions, which is beneficial to the shipping public, from whom we derive a living.

In many instances in the past we have encountered restrictions on both service and commodities from other forms of transportation.

Therefore, I would like to see the forwarders in the best possible position to handle our traffic by keeping their costs at a minimum, which I believe this bill will provide, and for this reason want them to stay as healthy as possible.

Mr. FRIEDEL. Thank you. Are there any questions, Mr. Adams?

Mr. ADAMS. No questions.

Mr. FRIEDEL. Thank you very much.

Mr. H. T. Devine, Magla Products, Inc., Newark, N.J.

STATEMENT OF HARRY T. DEVINE, MAGLA PRODUCTS, INC., NEWARK, N.J.

Mr. DEVINE. Mr. Chairman, I have a prepared statement, previously submitted, that I would request be included in the record in its entirety.

Mr. FRIEDEL. It may be included in the record.

Mr. DEVINE. One brief statement I would like to make is the fact that we, too, are faced with the light and bulky article situation much along the same lines as outlined by Mr. Cloer of Reeves Bros.

We have found that in particular the trucklines find this traffic to be undesirable in many instances and are driving the rate upward at an ever-increasing rate. We feel that our only alternative is the freight forwarder services which we have always found to be adequate and to our satisfaction.

We therefore would like to support H.R. 10831.

(Mr. Devine's prepared statement follows:)

STATEMENT OF HARRY T. DEVINE, TRAFFIC MANAGER, MAGLA PRODUCTS, INC.,
NEWARK, N.J.

My name is Harry T. Devine and I am traffic manager for Magla Products, Inc., of Newark, N.J. and their subsidiary companies—Barbara Products, Inc., Textile Mills Co., and Trio Mills Manufacturing Corp.

Magla Products has manufacturing facilities in Huntersville, N.C., Cornelius, N.C., Warsaw, Ind., and warehousing facilities in Los Angeles, Calif.

During the period from January 1 through December 31, 1967, we shipped 5,442,859 pounds of freight out of our Huntersville and Cornelius plants. Of this total outbound tonnage, 1,091,433 pounds moved via freight forwarder.

We are manufacturers of ironing board pad and cover sets, ironing board covers, pot holders, and various other finished textile items. We also produce a line of household sponges. More than ninety percent of our shipments are in the one hundred to one thousand pound weight bracket.

Since the freight forwarders handle primarily small lots which they consolidate, we feel that we would be offered a more flexible service under the proposed amendment to section 409 of the act.

I would like to point out that the freight forwarders actively solicit this type of traffic, while the rail carriers have virtually eliminated the less carload service. The only rail service available to shippers of l.c.l. lots such as ourselves, is that provided through the freight forwarders.

The trucking industry has for some time been authorized to negotiate contracts, and further make use of what is known as plan 1, piggyback service. This plan allows the motor carrier to move his containers via railroad service with the traffic moving under the regular motor carrier tariffs. The motor carriers are also allowed to utilize plan 5, piggyback service in which they establish joint through rates with the railroads. It is apparent that the motor carriers may participate in all of the piggyback plans, whether constructed on the basis of joint rates, or rates published in open tariffs; while the freight forwarders are limited to the open tariff plans.

Since the freight forwarders prime competition is the long haul trucker, I feel that the above situation is putting the freight forwarders at a competitive disadvantage.

We feel that approval of this bill would be consistent with the national transportation policy, as stated in the Act, and that by putting the freight forwarders in a more competitive position with the long haul truckers, we would be able to more freely move our products in interstate commerce.

We appreciate your allowing us this opportunity to present our views on the bill now being considered.

Mr. FRIEDEL. Thank you. Do you have any questions, Mr. Adams?

Mr. ADAMS. I have no questions.

Mr. FRIEDEL. Mr. William J. Thrasher, traffic manager, Walker Manufacturing Co., Aberdeen, Miss.

(No response.)

Mr. FRIEDEL. Mr. Andrew Fiduccia, general traffic manager, Overnite Motor Service, Inc., Rockford, Ill.

STATEMENT OF ANDREW FIDUCCIA, GENERAL TRAFFIC MANAGER,
OVER-NITE MOTOR SERVICE, INC., ROCKFORD, ILL.

Mr. FIDUCCIA. Mr. Chairman, I have a brief statement I would like to submit for the record. I want to enter one comment.

Mr. FRIEDEL. You may proceed.

Mr. FIDUCCIA. I heard a statement here that the carrier, short-line carrier or trucking company, is an agent for a carloading company. I don't agree. We are participating carriers with the carloading company the same as we are with trucklines. Joint rates are published, divisions of rates are published. I feel that that word "agent" should not be part of our statement.

(Mr. Fiduccia's prepared statement follows:)

STATEMENT OF ANDREW FIDUCCIA, GENERAL TRAFFIC MANAGER, OVER-NITE MOTOR
SERVICE, INC., ROCKFORD, ILL.

Gentlemen, my name is Andrew Fiduccia and I am the general traffic manager of the Over-Nite Motor Service, Inc., 3600 West State Street, Rockford, Ill.

My company's position in this matter is in support of the freight forwarding industry because:

The bulk of our tonnage is between Freeport, Rockford, and Chicago. Our Authority to operate is under I.C.C.-M.C. 109611. We serve as a feeder line on freight where origin or delivery is required to off line points. Contracts with carloading carriers affords us to be competitive to long haul motor carriers.

The failure to pass this bill will put our company in a restricted area for handling freight, and allow long haul motor carriers to establish service and rates of their own choosing because of no competition.

Shippers and consignees need the service rendered by carloading companies on through service and rates which are established thru present contracts with short line carriers. Passage of H.R. 10831 will help carloading company to be competitive on future transportation.

Thank you very much, gentlemen, for allowing me to testify before your committee.

Mr. FRIEDEL. Do you have any questions, Mr. Adams?

Mr. ADAMS. No questions.

Mr. FRIEDEL. Thank you very much.

Mr. R. E. Liverett, traffic manager, Beacon Manufacturing Co., Swannanoa, N.C.

(No response.)

Mr. FRIEDEL. Mr. Joe Ratto, president, F. J. Burns Draying, San Francisco, Calif.

(No response.)

Mr. FRIEDEL. Mr. R. J. Stewart, president, Trans-Postal Systems, Inc., New York.

Mr. Stewart has left his statement for the record.

(The statement referred to follows:)

STATEMENT OF R. J. STEWART, PRESIDENT, TRANS-POSTAL SYSTEMS, INC.,
NEW YORK, N.Y.

Honorable sirs, I am R. J. Stewart, president of Trans-Postal Systems, Inc., maintaining our main office and plant at 644 West 28th Street, New York, N.Y. Our prime business is to provide a service to various sized companies and organizations throughout the United States consisting of the preparation and collating as well as distribution of various types of advertising matter and samples throughout the United States and in foreign countries.

In presenting this complete service to the shipping public, we include in our price the cost of transportation. We have in the past, and plan to continue in the future, the use of all modes of transportation subject to the Interstate Commerce Act as well as air freight service.

We are vitally concerned with the continued rising cost of transportation to the shipping public as well as ourselves, and honestly feel that passage of H.R. 10831 would materially assist in stemming the continual rising spiral of transportation charges.

Our shipments are basically of the L.C.L. and L.T.L. nature weighing an average of less than 1,000 pounds each. From years of experience we have found that the only dependable and comparatively inexpensive method of shipping is freight forwarder service. Railroads of this great Nation, have restricted to a great extent the handling of our type shipments so that we can not favor them. The motor carrier industry both long-haul and short-haul have discouraged us from using their service to a great extent only because of the service rendered from our place of business to destination cities. They are reluctant to provide adequate service on small shipments. We therefore have found the use of freight forwarder to be a definite answer to our distribution problem.

This bill, H.R. 10831, permitting the forwarders subject to part IV of the Interstate Commerce Act to negotiate and enter into contract arrangement with the railroads would permit them to receive equal treatment with the motor carriers who are now permitted to do this, as well as create a healthy competitive situation all to the benefit of the shipping public.

We feel also that passage of this bill would tend to restrict the rising line-haul cost for the freight forwarders, as well as possibly reducing some of these costs so that at least if these savings are not passed on to the shipping public in their entirety, the leveling off of costs would prevent the possibility of further rising freight charges.

The principle outlined in this bill is not new since it is permitted in piggyback plans 1 and 5 between motor carriers and railroads, and between freight forwarders and motor carriers for pickup and delivery services. I firmly support the intent and wording of this proposed legislation to permit the freight forwarders more flexibility to coordinate their operations for a better service. I urge you to consider this bill favorably.

Thank you for permitting me these few minutes of your time to express my opinion.

Mr. FRIEDEL. Mr. Joseph A. Illes, director of transportation, Outboard Marine Corp., Waukegan, Ill.

(No response.)

Mr. FRIEDEL. Mr. E. A. Bolick, vice president, Threads, Inc., Gastonia, N.C.

Mr. Bolick has submitted his statement for the record.

(The statement referred to follows:)

STATEMENT OF E. A. BOLICK, VICE PRESIDENT, THREADS-INC., GASTONIA, N.C.

Our testimony is in support of H.R. 10831.

Threads Inc. manufactures cotton and synthetic sewing thread for industrial uses. We are the second largest manufacturer of this nature in the United States. We ship our products to every State in the Union. Approximately 1,000,000 pounds of sewing thread is marketed in the western coastal States annually.

Since practically all of the railroads have discontinued handling less-carload traffic we are restricted to freight forwarders and motor trucks to transport our products to the west coast area.

Due to the nature of our finished products and the marketing pattern we must use, all of our shipments to the western States move via freight forwarders. We have been receiving good, dependable and consistent service over a number of years. A consistent service is of great value to us in properly serving our customers. This service must be under a level of rates consistent with the service rendered.

This bill would authorize freight forwarders and railroads to enter into and make contracts. This would not set any new precedents as forwarders and motor carriers now and always have operated under contracts.

This would provide for equality in competition. The forwarders and motor carriers should be allowed to compete under equal rules. This would allow more

flexibility on an equal basis for the freight forwarders which should be in the public interest as provided in the Act.

Passage of this bill would not result in rate reductions but could possibly put the freight forwarders in a position to forego some rate increases in the future, which again would be in the public interest. It would result in the freight forwarders being in a more flexible position to deal with some of their operating problems regarding certain underlying costs.

The freight forwarders competitive through rates become of more interest to us as some of the motor carriers, the only competition on less-truckload shipments, have canceled their through routes and joint rates to certain points.

The freight forwarders are performing a much needed service on less carload shipments. They should be allowed to compete for this traffic on an equal basis.

We respectfully urge your committee to give favorable action to this bill.

Mr. FRIEDEL. Gentlemen, this concludes the hearing. I want to thank you very much.

Those witnesses who were unable to appear may file their statements for the record, and the record will be held open for 5 days to afford others the same opportunity.

(The following material was submitted for the record:)

STATEMENT OF CHARLES A. BINDER, VICE PRESIDENT, NATIONAL RETAIL MERCHANTS ASSOCIATION

The National Retail Merchants Association is a non-profit membership corporation under New York State laws, comprising approximately 2,400 corporations and partnerships operating about 14,000 department and specialty stores located in every state and in the District of Columbia. This 56 year old organization, hereinafter called NRMA, is the trade association for these type of stores and in 1966 its members had a combined annual sales volume approximating \$21 billion.

NRMA members use all kinds of transportation to bring goods from manufacturers' plants to their stores. Therefore we are deeply interested in legislation which affects such transportation and wish to express our strong opposition to H.R. 10831. We offer the following in support of our position:

1. We concur with the opinions of the American Retail Federation, the Washington-Oregon Shippers Cooperative Association, the Pacific Northwest Shippers Cooperative Association, the Northwest Furniture Manufacturers Association, the Pacific Northwest Traffic League, the National Industrial Traffic League, the Terminal Freight Cooperative Association and other shippers and shipper groups who feel that the freight forwarder in his relation to the rail carrier, is actually no different than a railroad shipper and should receive the same, but not more special, treatment as any private shipper association or shipper.

2. According to Commission statistics, the freight forwarders have prospered substantially under current laws, experiencing their most profitable years during the last six years. It is in this same period that the freight forwarders claim they have suffered as a result of the truck/rail concurrences. In view of the growth of this industry in size and profit, it is evident that there is no need for legislation preferential to it.

3. The position of the freight forwarders with the railroads is strong enough already, considering the fact that they purchase about \$170 million dollars in transportation from the railroads annually.

4. The rate contract privilege, unrestricted by ICC control, would discriminate against similar carload traffic tendered under identical circumstances by non-profit shipper associations or others. The carload rate publishing mechanism is certainly adequate for the purpose of the establishment of freight carload rates and not, as was claimed by the forwarders in the Section 409 consideration of motor carrier assembly rates, any burden on the forwarders.

Substantial credit benefits will accrue to freight forwarders if forwarder/railroad contract rates are allowed. These would extend to six months (compared to 120 hours) the time by which the forwarder must pay his freight bill. Thus the railroads would be financing, to a great extent, the forwarders' operations, weakening the railroads' already difficult credit position.

5. Trucks and forwarders have parity rates now in the most realistic sense, and, if anything, the freight forwarder rates in current tariffs are more favor-

able than truck contracts between the railroads and the truck lines. In fact, the ICC has found that truck lines should have the right to use rates that forwarders and shippers have available to *them* under current tariffs.

STATEMENT OF JOE G. FENDER, COUNSEL, NATIONAL CONFERENCE OF NONPROFIT SHIPPING ASSOCIATIONS, INC.

The National Conference of Nonprofit Shipping Associations, Inc., is a nonprofit trade association of member associations, also nonprofit in nature, which are engaged in the shipping and receiving of freight for the business houses which comprise their groups. Such member associations are located at major cities throughout the country, including: St. Louis, Mo.; Atlanta, Ga.; Dallas, Houston, and El Paso, Texas; Great Falls, Montana; Tampa, Fla.; Memphis, Tenn.; Cincinnati, Dayton, and Toledo, Ohio; Salt Lake City, Utah; and others. Conference member groups include in their membership a few manufacturers, a number of large wholesalers, and a great many small retailers and wholesalers.

Nonprofit shipping associations have existed for many years because small business houses particularly have found them to be necessary. By associating and consolidating their shipments, these small firms realize the economy incident to volume movement and obtain the personalized and expeditious transportation which they require. It should be stressed that service has been a factor as important as savings to these companies.

House Bill 10831 is sponsored by the freight forwarding industry. By its terms, it would give forwarders a right to contract for railroad freight rates lower than are generally available to shippers under published railroad tariffs. Forwarders presently have the right to negotiate rates with motor carriers but only to a limited extent. Beyond 450 miles, negotiated rates are subject to the published tariff as a minimum. Apparently the forwarders predicate their demands on their present recognition as carriers in Part IV and see no objection to what is here proposed, in view of their regulations under that part.

What may not be made plain to this committee is the fact that the forwarder continues to operate as it always has in a dual status, being in the position of a shipper in its relation to the railways. This fact has long been judicially recognized [*I.C.C. vs. Delaware Railroad Co.*, 2220 US 235]. At this time, except with respect to the provisions for distribution in motor carrier service, all shippers, including forwarders, are compelled to pay precisely the same rate for the same service that they receive from rail carriers. There is no reason why the situation now prevailing should be changed to give forwarders and the railroads a legal right to negotiate rates required to be nondiscriminatory with respect *only* to their effect on other railroads and freight forwarders. The Conference cannot agree that forwarders and railroads should be unrestrained in their negotiation of rates which are discriminatory of shippers of all other kinds and classes.

It would seem that the proposed legislation would be objectionable to the railroads. Those carriers joined with shippers and even with the freight forwarders themselves to obtain the protection of Part IV. Be that as it may, the National Conference would make plain to this committee that it does not want Congress to permit freight forwarders to have Railroad rates which discriminate against them, their members, or shippers generally.

It is hoped that the discriminatory aspects of the proposed legislation will be apparent to this committee. The potential for discrimination in this type law must have been recognized by Congress when it saw fit to impose the 450-mile limitation under Section 409 as it relates to rates with motor carriers. In any event, the Conference cannot agree that what is here proposed is proper.

If, however, the proposed legislation is enacted over this protest, and such other protest as there may be, then the Conference requests that such legislation be amended to at least include nonprofit shipping associations along with those to whom negotiation of favored rates may be extended. If the privilege is granted to the freight forwarders, there is justification factually and legally for extending it to nonprofit groups. Such groups are similar to freight forwarders in their physical operations and have been so recognized by the Interstate Commerce Commission [16 FCC 35,694, Atlanta Shippers Association, Inc., Atlanta, Ga.—Investigation of Operations; No. FF C-7 (and other decisions cited therein)]. Unless shipping associations are included in the legislation, there will be nothing to protect them against the unrestrained negotiation of rates by

freight forwarders. Such power in the hands of freight forwarders would expose associations to possible selective rate cutting in areas harmful to them and they might not survive the competition. If the legislation has that result its long range effect will be to increase the rates that shippers pay.

In summary, this group most vigorously opposes House Bill 10831. If the bill is enacted over this protest, however, then the Conference requests that it be so worded as to permit the negotiation of rates by nonprofit shipping associations as that term is used in Section 402(c) of Part IV.

STATEMENT OF RICHARD C. CHILDS, PRESIDENT, WILSHIRE CENTER CHAMBER OF COMMERCE, LOS ANGELES, CALIF.

I am Mr. Richard C. Childs and I am employed as vice president and branch manager of the Bank of America located at Wilshire Boulevard and Western Avenue, Los Angeles, Calif.

I am president of the Wilshire Center Chamber of Commerce of Los Angeles, representing a great cross section of approximately 500 metropolitan business houses engaged in all type of business enterprise, most of which are effected by interstate commerce.

I wish to go on record in behalf of the Wilshire Center Chamber of Commerce of Los Angeles urging passage of House of Representatives bill, H.R. 10831. Our organization clearly understands H.R. 10831 which seeks to change the wording of Section 409(a), part 4 of the Interstate Commerce Act, making it possible for freight forwarders subject to this part to enter into contracts with the railroads. We favor this legislation since it will allow the freight forwarders to be competitive with the motor carrier who presently have the right to make contracts with railroads. Section 409(b) of the Interstate Commerce Act clearly indicates that contracts must be investigated, reviewed and approved by the Interstate Commerce Commission, thus providing the necessary safeguards for the public interest.

We favor H.R. 10831 primarily since our many members must have access to competitive modes of transportation.

STATEMENT OF C. G. LUNDQUIST, GENERAL TRAFFIC MANAGER, SCM CORP., NEW YORK, N.Y.

SCM (Smith-Corona Marchant) Corp., a major shipper via freight forwarders recognizes that passage of the subject bill permitting freight forwarders to enter into contracts with common carriers by railroad will provide the small lot shipper with many economic advantages.

Only if freight forwarders are permitted to negotiate contracts with railroads based on the individual circumstances of each move, will they be in a position to establish a competitive level of rates to the shipper; thus offsetting the rising cost of the small shipment. Obviously, if freight forwarders are constrained in negotiating with the line haul carrier, the level of rates that must assess the shipper will never truly reflect the inherent economic advantage of freight forwarders as a mode of transportation.

In this day and age when competition between motor carriers and freight forwarders generally sets the level of rates, freight forwarders, particularly on long haul shipments in many instances are in a better position to offer expedited service at less cost. If the freight forwarders are allowed, depending upon characteristics of the individual move, to negotiate a compensatory carload or piggyback trailer load rate, to be sure, the freight forwarders will be in a position to pass off part of the line haul savings to the shipper.

It is the ever rising cost of the less-than-truckload shipment that forces many companies, such as SCM Corp. to divert freight forwarder traffic to consolidators, shippers associations, and private fleet operations.

In summary, SCM Corp. wishes to go on record in favor of the subject bill which will facilitate even further progress by freight forwarders to move long haul traffic expeditiously at lower cost to the shipper.

STATEMENT OF JOSEPH A. ILLES, DIRECTOR OF TRANSPORTATION, OUTBOARD MARINE CORP.

As director or transportation for Outboard Marine Corp., my obligations extend to and demand continued transportation cost studies, reviews of economic trends in distribution and presentation of facts pro or con before quasi-judiciary bodies and governmental agencies to foster the needs not only of my employer but of the national and international transportation needs of our great nation.

Obligated with this unselfish determination and representing my employer, Outboard Marine Corp., and its respective divisions; Johnson Motors, OMC, Gale Products, Cushman Motors and Evinrude Motors, and subsidiaries; Trade Winds Company, A & D Enterprises, Cushman Sales and San Francisco Distributors, my appearance is necessitated in support of House bill 10831.

As a manufacturer of various products, large and small, also a provider of parts for each product, we are often considered a volume shipper yet are constantly categorized in the same breath as a volume shipper of small shipments. This is the very area stigmatized by the common motor carrier industry as their relentless, insurmountable burden in transportation.

Small shipments per se have carried this stigma for several years placing undue obstacles upon shippers or payers of freight only to be deprived of many markets due to prohibitive costs. In our opinion the harassment has exceeded the stage of reasonableness; therefore, to obtain the required satisfaction necessary to maintain progress and equitable service, we have through letters to various Representatives in Congress expressed and in fact solicited their support favoring bill HR 10831.

Careful study of the subject bill appears to open the necessary gap in progressing inter-model transportation, afford "small shipments" the required protection which shipments are under constant attack by motor carrier bureaus as previously implied through increasing rate proposals, and would undoubtedly improve the measure of protection in service and transportation costs of both small shipment shippers as well as those shippers with volume shipments. It is obvious that railroad interests and common motor carrier interests may be vigorously object to the text of this bill; however, the need of industry and the welfare of our national transportation requirements are at issue—therefore, selfish interests of one mode of transportation versus another must be obliterated in this instance to gain the needed requirements of our distribution pattern and to serve the best interest of our national transportation policy.

Should this bill fail or "sine die" before your honorable committee or in Congress, the results would lead to catastrophic jeopardies to an industry paramount in our national transportation system and would undoubtedly distort many manufacturers' futures.

We respectfully pray facts submitted by this payer of freight will be favorably weighed, and as a result thereof will not permit one or more segments of transportation interests to influence or destroy the best interest of our nation's future integrated transportation outlook.

STATEMENT OF HAROLD H. STEVENS, GENERAL TRAFFIC MANAGER, CARSTENSEN FREIGHT LINES, INC., CLINTON, IOWA

Gentlemen, my name is Harold H. Stevens and I am the general traffic manager of Carstensen Freight Lines, Inc., Highway 30, West, Clinton, Iowa 52732.

My company's position in this matter is in support of the freight forwarding industry because our company is a common carrier, via motor, authorized to handle general commodities with the usual exceptions as would pertain to household goods, explosives, livestock articles of unusual value, etc. We are considered a class I carrier and for the year 1966 our transportation revenues amounted to \$3,000,000, plus.

Our operations, for the most part, cover the handling of goods and articles, moving in all the existing phases of transportation, including long haul motor carriers and freight forwarders subject to the Interstate Commerce Act.

Chicago, Ill. is the primary interchange point of our concern, as well as Rock Island, Ill. and Cedar Rapids, Iowa.

We find the existence of various competing modes of transportation has enabled our shippers to secure reasonable freight rates, as well as a diversified choice of transportation service. Thus, as a result, they can market their commodities throughout the United States and stay competitive with other markets in other sections of the country. This has created a healthy and wholesome financial

condition in our area of operation and has enabled all phases of commerce and industry in our territory to enjoy financial stability and thus improve our own financial picture as a common motor carrier. It only stands to reason that we will only be as prosperous as the area we serve.

Thus, it is of importance to us that we remain independent through the established fact that there is a sufficient and competitive outlet for the goods we handle and that our shippers have a freedom of choice of service beyond our line. We would like to elaborate a bit on this fact.

In recent years we have seen many of our smaller competitors swallowed up by major motor carrier systems. Previously, many of these major systems came no further east than Chicago. As of late years, they have been slowly closing in on our territory to the extent that in a number of cases, they now maintain terminals at just about every site we maintain a terminal. In some cases, freight that we used to have a line haul out of is nothing more than a peddle operation. In other situations where we used to receive freight from these same major systems for these same terminal points, we now receive nothing at all as they are able to handle the point themselves. Thus, we look to the freight forwarder as a still open source of freight to all of our points without being a direct competitor operating to our terminal points. We also find that our shippers can still market to areas on through rates, whereby some major carriers must pay through rates plus various surcharges and arbitraries.

The freight forwarder, with whom our small industry has done a goodly share of business at all times, will perish if they do not have a right to make agreed rates with railroads similar to those agreements already covered by law and already in effect between railroads and motor carriers. If the freight forwarders perish and our shippers do not have this additional service, it can only lead to an invitation to the larger carriers to come into the area. Undoubtedly, it would not be long before we would either look for one of them to purchase our authority because of lack of patronage or just cease operations entirely. The only result of this would be the fact that many small communities we serve would be denied a healthy and vigorous transportation service which they presently enjoy.

We urge very strongly that this bill will be passed as soon as possible, allowing freight forwarders to make agreed rates with railroads.

Thank you very much, gentlemen, for allowing me to testify before your committee.

STATEMENT OF H. L. ROSENTHAL, GENERAL TRAFFIC MANAGER, LIFSCHULTZ FAST FREIGHT, CHICAGO, ILL.

The regulated freight forwarder is presently unfairly burdened with unjust and judicial regulation. The proposed amendment is long overdue and will remove an unreasonable inequity and operate to the general public interest as shown.

Part IV of the Interstate Commerce Act, which presently regulates the freight forwarder, defines him a "Common Carrier". In spite of this, interpretations have prevailed which make him only one-half "Common Carrier". He has been adjudged "Common Carrier" in his relations with shippers and "Shipper" in his relations with other carriers. This has been grossly unfair to the forwarder and injurious to the public because it has limited the forwarder's ability to contribute fully to the development of improved transportation service for the nation at the lowest cost to the public.

As a "Common Carrier", the freight forwarder's obligations and liabilities are the same as for any other common carrier. His responsibility to the public is identical. His rates and tariffs are subject to complaint, investigation and suspension. He cannot establish rates or rate changes without legal advance notice to the public and to the Interstate Commerce Commission, the same as all other common carriers. His files are open to the Commission's investigators and he must maintain to the satisfaction of the Commission, continuing proof of adequate insurance for the protection of the public. He is obligated to furnish his service to all who request it.

Opposing forces have prevailed, that in his relations with other carriers, the forwarder has been forced to observe the status of a shipper (except under Section 409, I.C. Act where he is permitted to negotiate with motor carriers on less-than-truck-load traffic; and on truckload traffic where the distance is less than 450 miles). Since the forwarder is primarily a long haul carrier, the result

is that practically all of his service and compensation arrangements with railroads and other underlying carriers, are under "open tariffs". This means under the same provisions established to provide compensation and rules covering the handling of merchandise for the general public. This has directly caused the formation of many "non-profit shippers' associations". These associations generally benefit a relatively small number of large shippers at selected points.

The freight forwarder primarily utilizes railroad service for his underlying transportation and is in direct competition with motor carriers. Where the railroad has found it practical to extend arrangements to the forwarder, which will permit him to more effectively compete with motor carriers for traffic which will ultimately move in railroad service, the railroad must publish such arrangements in its "open tariffs". The railroads have, from time to time, published such provisions which the forwarders have utilized in their service to the general public. At the same time however, these provisions are attractive to enterprising individuals (referred to many times by the ICC as "entrepreneurs") who organize "not-for-profit" shippers associations, exempt from regulation.

Their operations are confined to major industrial and mercantile centers so the expense of transferring to and from the smaller, removed, communities is avoided. Rates which undercut the rates of the regulated carriers can be "quoted" as inducement for shippers to join association.

The foregoing is verified by the numerous proceedings before the Commission, some instituted by the Commission and others by the regulated motor carrier associations, as to the lawfulness of some "not-for-profit" shippers' associations. Private shippers too, affluent and substantial, benefit from keeping the forwarders' negotiations with other carriers limited to an "open tariff" basis. Inasmuch as their business volume is conducive to shipping in carload and truckload quantities, they can use to their advantage, any rate and traffic adjustments which the forwarding industry, in return for increased traffic and improved forwarder service in the public interest, may secure from the railroads.

Some in the regulated motor carrier industry too, seek to maintain the status quo, evidently under the assumption that denying the forwarders the right to negotiate traffic arrangements with railroads will limit the effectiveness of the freight forwarder as a competitor. This view is patently defective because the motor carriers themselves, as evidenced by their formal complaints, acknowledge that substantial volumes of traffic are continually being diverted from regulated carriage to unregulated "associations". And it is further known that the "open tariff" provisions which the railroads initially established, whereby the freight forwarders could attract large shipments and more effectively serve the general public, are the magnets which attract certain "gray area" operators.

Another adverse by-product of the present restriction on freight forwarders, is higher freight rates to smaller communities involving transfer, and higher charges on small shipments. With the "cream" traffic skimmed off by the associations, the full burden must fall on the freight which can least absorb it (small shipments and interline). It was the existence of "cream" traffic which permitted the regulated carriers to maintain bearable charges on the less productive traffic. Now however, with the "cream" traffic gone, we see increased charges on small shipments and on interline.

Further, the freight forwarder is the subject of unequal and unjust treatment. He is worse off than the "associations". He presently has no more right than those associations to negotiate rates with the underlying railroads, yet he is subject to full common carrier liability and responsibility. The record is indisputable. Where there is a common carrier liability or obligation the freight forwarder is included; but as to the major common carrier benefit, negotiated rates with other carriers, the freight forwarder is barred.

A recent example is Public Law 89-170 which became effective September 6, 1965. Prior to that date motor carriers were not liable for reparations to shippers where collected tariff rates were found to exceed a reasonable amount, although railroads were. With the effective date of P.L. 89-170, motor carriers and freight forwarders became liable. Here the prevailing pattern was followed . . . if it is a common carrier liability, the freight forwarder is unquestionably included.

The present inequality cries for removal. Forwarder regulation as it now stands is tailored to accommodate his competitors and those large mercantile and industrial organizations who demand all forwarder-with-railroad transactions be under "open tariffs" so they can "ride on the forwarders' coat-tails". They reject from consideration, the fact that the forwarder is a public carrier

operating under regulations designed to promote the public interest; that the forwarder is a valuable arm of the nation's transportation system providing expedited movement of industry's products and is one of the few remaining carriers actively soliciting and willingly providing service on small shipments for all shippers. This unnatural dual classification of freight forwarders has given birth to "gray area shippers' associations", has been responsible for diversion of the most profitable traffic to unregulated carriage and has compelled regulated carriers to increase their rates in order to keep their facility on a sound operating basis.

Motor carriers are permitted to, and do, negotiate rates with other carriers. They even negotiate rates with railroads on piggyback service, while the freight forwarder must pay the railroad the higher "open tariff" rate. There is no physical difference between the manner in which the railroad hauls or services motor carrier piggyback loads or freight forwarder piggyback loads. Yet the motor carriers may negotiate lower contract rates. The motor carriers are even permitted to choose either contract rates (Plan 1) or "open tariff" rates, whichever best suits their purpose when they tender their loaded trailers to the railroad.

It is in the public interest that the freight forwarder be relieved of his restrictive dual classification. The granting of common carrier rights (to go with his common carrier liabilities), would permit him to more effectively serve the public. With the railroads almost completely out of the small shipments business, the freight forwarder is the motor carrier's only effective competitor on less than volume traffic. Clearly it is to the public's interest that this competition be not destroyed.

Adoption into law, of H.R. 10831 would establish the freight forwarder as a full fledged common carrier and would serve the aims of establishing a most adequate transportation system to meet the nation's needs, as express in the National Transportation Policy. Without equality the regulated freight forwarding industry cannot survive.

STATEMENT OF E. M. BURK, TRAFFIC MANAGER, WYATT INDUSTRIES, INC.,
HOUSTON, TEX.

My name is E. M. Burk and I am traffic manager of Wyatt Industries, Inc., with headquarters in Houston, Tex., who operate one heavy steel fabrication plant, one light steel fabrication plant, and one plastics product plant, one barge building yard and a field erection subsidiary at that point, and with heavy steel fabrication plants located in Dallas and Corpus Christi, Tex.

Our company has been a consistent user of the services of the freight forwarders for many years and have always felt that they are deserving of an important place in the transportation field. This, we believe, applies more at the present time than at any time in the past. The reason for this is that the railroads have, for all practical purposes, gone completely out of the less-carload business and the motor freight companies are continually stressing the idea that they are losing money on small shipments, and in an effort to avoid this, are gradually pricing themselves out of the field. While it is my personal belief that this view should be taken "with a grain of salt" and it is merely a revenue angle, nevertheless, this is the case.

As a result of the circumstances outlined, the freight forwarders represent about the only means remaining for movement of small shipments in any volume at a reasonable cost. We believe this will be true even more in the future than it is at this time, based on the present trend. Naturally, therefore, we feel that the freight forwarder should have the right to make contracts and agreed rates with railroads if they are to remain in competition with the motor freight industry. Presently, and for quite some time past, the motor freight industry is in a position to make contracts with the railroad, so their only real competition should likewise be in a position to do so.

It is an expressed feeling of Congress, as outlined in the national transportation policy that the inherent advantages of each mode of transportation should be preserved. In line with this policy and our feeling that the freight forwarder is a mode of transportation within itself, even though they do not actually perform the carriage of shipments, we feel that their inherent advantage should be preserved and that this proposal is a strong step in the right direction.

STATEMENT OF DONALD A. MACMILLAN, PRESIDENT, SELOVER TRUCKING CO., INC.,
SOUTH RIVER, N.J.

Mr. Chairman, my name is Donald A. MacMillan, and I reside at 21 Farmingdale Road, East Brunswick, N.J. I am the president and principal stockholder of Selover Trucking Co., Inc. of South River, N.J., a common carrier by motor vehicle duly authorized by the Interstate Commerce Commission, under Docket No. MC-37303, to conduct operations in interstate and foreign commerce over irregular routes in the states of New Jersey, New York, and Pennsylvania. A copy of Selover Trucking Co., Inc. authority is attached hereto and made a part hereof and marked appendix A. I have been engaged in the motor common carrier business for some 27 years.

I submit this statement in support of H.R. 10831 which amends Section 409 (a) of the Interstate Commerce Act so as to authorize freight forwarders and railroads to enter into contracts governing the use by freight forwarders of the services and instrumentalities of railroads.

A considerable portion of the traffic presently handled by my company consists of small less-than-truckload shipments picked up and destined for consolidation by freight forwarders and in the distribution of freight forwarder shipments to final destination in the area we are authorized to serve.

Most of our customers ship and receive shipments in small lots and must rely on freight forwarders to transport this traffic. We rely on this freight forwarder traffic as an essential part of our business. It provides us with a steady flow of traffic uninterrupted by the seasonal fluctuations which affect the balance of our operations and enables us to provide a steady regular service to those of our customers who ship between the points we are authorized to serve.

The proposed amendment will improve freight forwarder service and, because of the economies which will result from permitting the freight forwarders and the railroads to enter into continuing contracts for carriage, will make this co-ordinated service much more attractive to our shippers.

This, in turn, will result in greater use of their service by the shippers and, consequently, more extensive use of our company's services on a steady basis, and permit us to provide a better more complete service to those of our customers who ship between points we are authorized to serve. The flow of freight forwarder traffic provides us with additional revenues which permits us to handle many small, less-than-truckload local shipments which we would not otherwise be able to handle economically.

With the additional use of freight forwarder service, which can be anticipated if the subject legislation is enacted, we will be provided with a greater flow of steady uninterrupted traffic. This will enable us to improve our local interstate service in that we will be able to provide a more efficient, more economical and more comprehensive and complete local service to our customers.

APPENDIX A

CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

No. MC 37303

SELOVER TRUCKING CO., INC., SOUTH RIVER, NEW JERSEY

At a Session of the Interstate Commerce Commission, Division 5, held at its office in Washington, D.C., on the 4th day of September, A.D., 1942

AFTER DUE INVESTIGATION, It appearing that the above-named carrier has complied with all applicable provisions of the Interstate Commerce Act, and the requirements, rules, and regulations prescribed thereunder, and, therefore, is entitled to receive authority from this Commission to engage in transportation in interstate or foreign commerce as a motor carrier; and the Commission so finding;

IT IS ORDERED, That the said carrier be, and it is hereby granted this Certificate of Public Convenience and Necessity as evidence of the authority of the holder to engage in transportation in interstate or foreign commerce as a common carrier by motor vehicle; subject, however, to such terms, conditions, and limitations as are now, or may hereafter be, attached to the exercise of the privileges herein granted to the said carrier.

IT IS FURTHER ORDERED, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below :

General commodities, except those of unusual value, and except dangerous explosives, household goods as defined in *Practices of Motor Carriers of Household Goods*, 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading, with no seasonal restrictions, over irregular routes,

Between South River, N.J., and points and places in New Jersey and New York within 45 miles of South River, on the one hand, and, on the other, Bethlehem, Easton, Marcus Hook, Philadelphia, and Reading, Pa., and Tarrytown, N.Y., and points and places in Middlesex, Monmouth, Somerset, Union, Essex, Hudson, Bergen, Passaic, Mercer, Morris, Ocean, Burlington, and Hunterdon Counties, N.J.

General commodities, with exceptions specified above, during the season extending from the 1st day of June to the 1st day of October, inclusive, over irregular routes,

Between points and places in New Jersey on and south of New Jersey Highway 33, on the one hand, and, on the other, New York, N.Y.

RESOLUTION RELATING TO FREIGHT FORWARDER CONTRACT RATES, ADOPTED BY THE
FLORIDA TRUCKING ASSOCIATION, INC., SEPTEMBER 26, 1967

Whereas, the Freight Forwarder Institute, for and on behalf of its members, is advocating an amendment to the Interstate Commerce Act which will permit freight forwarders to enter into contracts with railroads for rates lower than paid by other shippers for the transportation of the same kind and quantity of traffic between the same points; and,

Whereas, a bill (H.R. 10831) to accomplish such amendment is pending in the Congress of the United States; and,

Whereas, the Surface Transportation Subcommittee of the Senate Commerce Committee of the Congress of the United States has such amendment under consideration with said Subcommittee's consideration of S. 751 and S. 1768; and,

Whereas, freight forwarders are shippers in their relations with common carriers, whether rail or motor, providing no facilities for transportation between the cities at which they operate and are not entitled to the special privilege such amendment will accord them; and

Whereas, such special privilege is contrary to the public interest and inimical to the economic stability of common carriers, by rail and by motor vehicles: Now, therefore, be it

Resolved by the Florida Trucking Association, in annual convention assembled at Miami Beach, Florida, this 26th day of September 1967, That:

1. The Association does hereby express its strong opposition to the amendment proposed by the Freight Forwarder Institute; and

2. A copy of this resolution shall be forwarded promptly, upon its adoption, to:

(a) The Chairman of the Surface Transportation subcommittee of the Commerce Committee of the United States Senate;

(b) The Interstate and Foreign Commerce Committee of the United States House of Representatives; and,

(c) To each of the members of the delegation from the state of Florida to the Congress of the United States.

CERTIFICATION

I hereby certify this to be a true and correct copy of Formal Resolution unanimously Adopted by the membership of the Florida Trucking Association, Inc., in 30th Annual Convention meeting, September 26, 1967 in Miami Beach, Florida.

FLORIDA TRUCKING ASSOCIATION, INC.,

By C. A. GERTNER,

Managing Director.

[Telegram]

LOS ANGELES, CALIF., *January 23, 1968.*

Chairman HARLEY O. STAGGERS,
Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.:

Our 20 corporate members oppose H.R. 10831 set for hearing January 23, 24. Since railroads serve all freight consolidators alike, there is no reason to favor for-hire forwarders over non-profit shipper associations. Both now pay same published tariff rates.

CALIFORNIA MANUFACTURERS FREIGHT ASSOCIATION,
 THOMAS KEARNS, *President.*

[Telegram]

BRIDGEPORT, CONN., *January 12, 1968.*

HON. HARLEY O. STAGGERS,
House Office Building, Washington, D.C.:

I am opposed to House Bill H.R. 10831 unless it is amended to include the same benefits to bonafide shippers associations.

THE ACME SHEAR CO.,
 LOUIS F. PARADIS,
Traffic Mgr.

[Telegram]

NASHVILLE, TENN., *January 19, 1968.*

INTERSTATE AND FOREIGN COMMERCE COMMITTEE,
House of Representatives, Washington, D.C.:

This association vigorously opposes House Bill 10831 as unjustly favoring freight forwarders and discriminating against non-profit shipping groups. If legislation is to be enacted it should include and provide for equal treatment of non-profit shippers associations operating under section 402(c) of the Interstate Commerce Act, with the regular forwarders.

MID-TENNESSEE FREIGHT ASSOCIATION,
 HARRY ZIMMERMAN, *President.*

INTERNATIONAL BROTHERHOOD OF TEAMSTERS, CHAUFFEURS,
 WAREHOUSEMEN & HELPERS OF AMERICA,
Detroit, Mich., January 22, 1968.

HON. HARLEY STAGGERS,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: We wish to express our opposition to H.R. 10831 now before the Transportation and Aeronautics Subcommittee for consideration.

H.R. 10831 is injurious and prejudicial to bona fide carriers who have to abide by ICC regulations with respect to the setting of tariffs. This bill would authorize freight forwarders to enter into contracts with railroads for tariffs which are less than those which other shippers of whatever type have to pay in order to have their freight moved by rail.

This is discriminatory and constitutes an open door to deregulation which is adverse to the best interests of a unified transportation system and to other shippers. Anyone who is only slightly familiar with the problems of the Interstate Commerce Commission in dealing with so-called shippers associations readily recognizes the present and potential dangers of permitting so-called shippers associations to negotiate with the railroads for tariffs below those required to be established for other shippers.

This bill would open the door to long haul transport of goods by railroads in behalf of freight forwarders solely because the freight forwarders could negotiate a substandard tariff with the railroads for the transportation of freight tendered by the freight forwarders.

Shippers would soon become aware that freight forwarders were in a position to offer a substandard tariff. They would tend to shift or transfer their business

to the freight forwarder from the carriers that were previously hauling their goods under regulated tariffs. The regulated carriers, especially motor carriers, who employ members of the International Brotherhood of Teamsters, would lose traffic to the freight forwarder.

To the extent that the regulated motor common carrier industry lost out on long haul transportation, our members, employees of these carriers, would likewise suffer. It is the long haul operation which is most profitable to the motor carrier and in some instances enables him to provide service to areas where profits are marginal. A healthy motor freight industry is essential to maintain the economic well being of this nation and of our members.

Any legislation or regulation which provides another mode of transportation with a competitive advantage, as would be the case here, would tend to reduce long haul volume of the motor carrier industry and would have an adverse effect on the employment opportunities and earnings of Teamster drivers.

In short, we believe this legislation, if enacted, would destroy the motor freight industry as we know it today. We would appreciate your giving full consideration to our position and oppose this legislation.

Sincerely yours,

CARLOS MOORE,
Legislative Director.

SEARS, ROEBUCK & Co.,
Chicago, Ill., November 2, 1967.

HON. HARLEY O. STAGGERS,
House Office Building, Washington, D.C.

DEAR SIR: The provisions of bill H.R. 10831 which was introduced in Congress on June 14, 1967 would allow freight forwarders to enter into individual contracts with railroads. We are opposed to this bill for the following reason.

Under the provisions of this bill a railroad could charge a lesser amount to a freight forwarder than to a shippers association, such as Terminal Freight Cooperative Association, of which Sears Roebuck & Co. is a member, for identical services under identical conditions.

Section 1 (5) of Part I of the Interstate Commerce Act reads in part as follows:

All charges made for any service . . . shall be just and reasonable.

We feel that to be just and reasonable, rates must be identical for identical service.

If a freight forwarder has unusual tonnage or shipments with special characteristics, for which he desires specific rate arrangements, he can secure these rates through the present rate making procedures. He does not need the privilege of negotiating a private contract.

Your support of our position would be appreciated. May we please hear from you.

Cordially,

R. E. STUDNICKA,
Regional Traffic Manager.

S. S. KRESGE Co.,
Detroit, Mich., January 16, 1968.

HON. JOHN D. DINGELL,
Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR SIR: Speaking as General Traffic Manager of the S. S. Kresge Company, main office at Detroit, and as a member of many shippers co-operative associations throughout the United States, I want to strongly oppose H.R. 10831.

This bill is not necessary. I ask your cooperation in opposing same. This writer takes the position that the freight forwarder is in reality nothing more than a railroad shipper and should be entitled to the same, but no more preferential treatment than a private shipper or a private shipper association.

The rate contract privilege unrestricted by I.C.C. control would discriminate against similar carload traffic tendered under identical conditions by non-profit shipper associations and others.

The carload rate publishing mechanism is adequate for the purpose of the establishing of freight forwarder carload rates and not, as claimed by the forwarders in the Section 409 consideration of motor carrier assembly rates, any burden on the forwarders.

The forwarders purchase millions of dollars worth of rail transportation each year and need no additional help in the form of legislation to enhance their bargaining power. The railroads furnish most of the loading and unloading terminals for the freight forwarders and most of the line-haul equipment, except for some line-haul trailers. In short, the railroads are doing everything possible for the freight forwarders now, and there is no need to give them further advantages over shippers using identical railroad services.

Again I repeat, the bill is not needed, is totally unwarranted and would appreciate your whole-hearted cooperation in opposing this legislation.

Sincerely,

H. E. CHAPMAN,
General Traffic Manager.

THE SHIPPERS' CONFERENCE OF GREATER NEW YORK, INC.,

New York, N.Y., January 19, 1968.

HON. HARLEY O. STAGGERS,

Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: The Shippers' Conference of Greater New York is vigorously opposed to H.R. 10831 (Friedel-Md.) to amend Sec. 409 of Part IV of the IC Act, as amended, to authorize contracts between freight forwarders and railroads, unless such legislation is amended to encompass bona fide shippers' Associations as provided for in Sec. 402 (C) (1), Part IV of the IC Act.

Members of this Conference wish to call attention to the fact that those engaged in consolidating small shipments into carload lots were all shippers as one class of freight forwarders, prior to the enactment of Part IV of the IC Act in 1942. At that time, not all consolidating and forwarding operators were serving the public for profit. It was only those seeking profit who sought to restrain competition via the route of regulation.

The proposed negotiated rates for regulated freight forwarders could effectively eliminate the last real nonprofit shipper forwarding competition that exists. Today, more than a hundred such nonprofit shipper groups pool their freight to overcome the long spiral of World War II rate increases. Several thousand industries whose product lends itself to consolidation before shipment belong to these nonprofit, freight-pooling shipper associations. As noted recently by the Federal Court, and affirmed by the Supreme Court only a few days ago (Baltimore Shippers and Receivers Association, Inc., et al vs. Public Utilities Commission of the State of California, judgment and order handed down September 7, 1967, U.S. District Court, N.D. of Calif. S. Div.—affirmed Supreme Court 1/15/68), there is virtually no functional differences between a freight forwarder and a shipper association in utility to shippers. One operates for profit—the other almost identically—except not for profit.

Should the Congress grant for-hire forwarders the special privilege of negotiating contract rates with railroads, the equality between freight forwarders and nonprofit shipper associations would be destroyed.

"For Profit" freight forwarders, with or without assistance from the railroads, would be in the position to develop rates by unfair advantage that would soon cause the dissolution of shipper associations everywhere. Once these arch-competitors were eliminated, the forwarders would be free to raise rates back to higher levels—as much as the traffic would bear.

Turning to the small shipment crisis, shipper associations are one of the most effective remedies available to shippers. Contract rail rates for forwarders would not help solve the small shipment problem to any measurable degree but, rather, would aggravate it by giving an unnecessary advantage to the regulated freight forwarders. To include shipper associations and distinguish them from occasional co-loading shipper arrangements, such associations could be defined, by amending this bill, as a group of six or more shippers who, from time to time, jointly load freight, 402 (C) (1) of the IC Act, Part II, thus would be amended to read: "The provisions of this part shall not be construed to apply (1) to the operations of a shipper, or a group of six or more shippers in consolidating or distributing freight for themselves, etc."

Those members of this Conference who are predominantly rail shippers are also adamantly opposed to this bill. They see a sharp loss of rail revenues because of the extraordinary bargaining power of the forwarding industry. Some of the railroads already are giving contract Plan I rates to motor carriers that

presently depresses net rail revenue which shippers have been compelled to make up in recent rail rate increases.

In conclusion, the Shippers' Conference of Greater New York believes that on balance, any possible benefits to the shipping public are offset by the serious damage this bill would do to the national small shipment problem, in destroying the efficacy of nonprofit shipper associations. It believes that railroads would lose a great deal in net revenues and that the shipping public would end up subsidizing the freight forwarding industry.

The Conference would be less opposed if the same privilege was accorded bona fide shipper associations. It urges, however, that the bill be defeated.

Respectfully submitted.

T. J. O'NEILL, *President.*

HOUSTON MERCHANTS SHIPPERS ASSOCIATION, INC.,
Houston, Tex., January 25, 1968.

HON. SAMUEL N. FRIEDEL,
*Chairman, Aeronautics and Transportation Subcommittee,
Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN FRIEDEL: The Aeronautics and Transportation Subcommittee has before it H.R. 10831 which proposes to give to regulated freight forwarders the right to establish rates with rail carrier by contract at a lower or different basis than fixed by tariff for other shippers.

H.R. 10831 is basically discriminatory in its favored treatment of the regulated forwarder over non-profit shipping associations, which would not have the same privilege to negotiate.

The Houston Merchants Shipping Association is a non-profit association of 100 large and small Houston business firms, to consolidate their small shipments into carload lots thereby receiving the benefit of carload rates. Consolidation services are maintained at four points of origin—New York, Philadelphia, Chicago and Charlotte, North Carolina. The Association operates on a cost basis, thereby passing on savings generated from use of carloads, to its participating members.

This Association vigorously opposes H.R. 10831 as unjustly favoring freight forwarders and discriminating against non-profit shipping groups, of which there are many throughout the nation. If legislation in this area is needed, then it should include and provide for equal treatment of such groups with the freight forwarders.

Very truly yours,

W. J. Wallace, *Secretary.*

NEW ENGLAND INDUSTRIAL TRAFFIC LEAGUE,
Worcester, Mass., January 10, 1968.

Re H.R. 10831.

HON. HARLEY O. STAGGERS,
*Chairman, Interstate and Foreign Commerce Committee,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN STAGGERS: The New England Industrial Traffic League membership is comprised of the major industrial and commercial traffic managers in New England. The writer has been instructed by the New England Industrial Traffic League to record with your committee, for the public hearings on the bill Jan. 23, and 24, the opposition of this organization to the bill as currently drawn. In this action we join other shipper organizations such as the National Industrial Traffic League and the American Institute of Shipper Associations.

Our concern is based on the lack of equal treatment and privilege for Shipper Co-operatives. As your committee is aware, Shipper Co-operatives have grown rapidly during the past decade in the face rising freight costs which would otherwise tend to "Balkanize" the United States. The individual shipper associations do not have the massed bargaining power that the large freight forwarders do, so according the same right to shipper associations to negotiate rates with the railroads (as is proposed in this bill for freight forwarders) is a necessity if the shipper association is to preserve his level of costs vis a vis the freight forwarder. The forwarders are, of course, common carriers but their rate structure is such

that the lower classifications of less than carload freight are excluded from utilization of forwarder service by the cost. This is one reason for the growth of shipper associations.

Hence, we plead that this bill be amended to accord shipper associations the same right to negotiate rates with railroads. If this were done we are confident other organizations would withdraw their objections to the bill too.

Sincerely yours,

JOHN T. FLOYD,
Chairman, Legislative Matters Committee.

HAMMOND ORGAN CO.,
Chicago, Ill., January 16, 1968.

HON. SAMUEL N. FRIEDEL,
*Chairman, Committee on Transportation and Aeronautics,
Rayburn Building, Washington, D.C.*

DEAR CONGRESSMAN FRIEDEL: I am unable to attend the hearing on bill H.R. 10831, however, I would like to support legislation in its favor, to authorize contracts between Freight Forwarders and Railroads.

We have throughout our history used the services of all of the types of transportation for the conveyance of our products to the consignee.

We do feel that Freight Forwarders should be given the opportunity to make agreed or contract rates with the Railroads.

If the transportation industry is to prosper and progress in the future, we must have competition, which in reality, is a necessity in any business.

Freight Forwarders offer a number of services not readily available by the other types of transportation which we have found to be an advantage in our operations.

Sincerely,

R. N. SPITZER, *Traffic Supervisor.*

MATTEL, INC.,
Hawthorne, Calif., January 18, 1968.

HON. SAMUEL N. FRIEDEL,
Chairman, Transportation and Aeronautics Subcommittee, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR SIR: We have given careful consideration to Bill H.R. 10831 which you have sponsored, a bill which we understand will authorize contracts between railroads and freight forwarders. My company is most anxious to support this proposed legislation. Were it not for the press of prior commitments, I would have requested an opportunity to testify in behalf of the bill. Since I cannot be there in person, I will appreciate my testimony being made part of the record favoring support of H.R. 10831.

Mattel, Inc., Toymakers, is the largest toy manufacturer in the world, with general offices located at 5150 Rosecrans Avenue, Hawthorne, California, 90250. Mattel has multi-million dollar sales with plants located in the United States, Japan, Hong Kong, Taiwan, West Germany, England, Canada, and Mexico. Our products are distributed world wide and we rely almost exclusively on common carriers.

At the present time, the prime toy market is located in the eastern part of the United States. The East is also where most of our competition is located. Since we are a West Coast manufacturer, we, of course, find it very difficult to compete in the Eastern market because of the distance we must move our goods compounded by the seasonal nature of the movement. As a result, our domestic distribution is very complex, characterized by numerous small shipments requiring expedited service to literally thousands of destinations within a relatively short span of time. Our solution to this complex distribution problem has, to a large extent, been solved by the freight forwarders. These carriers have been able to adjust their operation to fulfill our needs and have definitely helped to keep us competitive in this most important toy market.

There are only two modes available to us for the movement of our LCL traffic to Eastern markets, either by motor carrier or freight forwarder. Presently, freight forwarders can utilize only railroads as their underlying mode for the long haul move. A freight forwarder must pay to the rail line the rail tariff published rates for these services. The rails and forwarders complement each other, exercise considerable flexibility in the melding of their operations and

fixed charges reflecting the economics inherent in this type of coordinated operation.

As the result of the Supreme Court having recently upheld an interpretation of the Commission in Ex Parte 230, the motor carriers may now ship their freight in trailers on rail flatcars and pay whatever rate is provided in rail tariffs which, heretofore, has been basically the province of the freight forwarder. In essence, it means the motor carriers may become forwarders in the piggyback arena.

It is also clear that motor carriers may participate in all of the piggyback plans whether constructed on the basis of joint rates or published in open tariffs. Trucks also have the right to make contracts with railroads, a privilege to this point denied the freight forwarder.

The advantages accorded the motor carriers can only result in placing them in position of dominance with possible serious deleterious effect upon the long haul freight forwarder. In any competitive arena, when one competitor is accorded excessive advantages, it can only result in the ultimate weakening or defeat of all but the most advantaged. Should this occur, we, and other small lot shippers, would be restricted ultimately to the one mode for the movement of our tonnage to our markets and, thus, would be virtually subjected to what could amount to almost dictatorial powers of the one mode as to the service to be performed and charges to be applied thereto.

We must, in the interest of our free enterprise system, maintain a sound competitive structure in all industries and none is more important than the transportation industry. The forwarders are basically handlers of small lots which they consolidate into volume or carload lot movements. These types of shipments have been a problem for all carriers for a considerable number of years. However, the forwarders have shown an ability to flourish and provide an outstanding service in the handling of this type of traffic, acting somewhat in the nature of the less than carload arm of the railroads who have substantially abandoned less than carload service throughout the country.

Permitting the freight forwarder equal opportunity with their principal competitors, the long haul motor carriers, is a must to preserve a healthy competitive situation. We need, and must have, all forms of transport competing under equal rules. This bill will give the freight forwarders one measure of parity to help preserve their competitive posture.

H.R. 10831 is, in our opinion, excellent legislation and we urge its early passage.

Respectfully submitted.

J. K. CHRISTENSEN,
Manager of Traffic.

NEW YORK LIFE INSURANCE CO.,
New Providence, N.J., January 16, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: As a shipper of small l.c.l. freight, I would like to express myself in favor of Bill H.R. 10831 to amend Section 409(a) of the Interstate Commerce Act.

Shipments made by the New York Life Insurance Company are with few exceptions 500 lbs. or less. In many shipments we must pay the minimum rate charge.

By granting freight forwarders the right to make contractual agreements with railroads, with whom they must operate to survive, is another step in their efforts to serve the need of the shipping public, especially the small shipper.

It is contingent on us to encourage that any reasonable legislation be passed which makes it advantageous for freight forwarders to continue to serve l.c.l. shippers such as the New York Life Insurance Company.

I strongly support amending Section 409(a) as set forth in Bill H.R. 10831.

Sincerely,

N. TRIMARCHI,
Manager, Supply Department.

WUNDA WEAVE CARPET CO.,
Greenville, S.C., January 5, 1968.

HON. SAMUEL N. FRIEDEL,
*Chairman, House Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.*

DEAR SIR: I would like to commend you for introducing into the House of Representatives, bill H.R. 10831. If this bill is passed it will undoubtedly result in better and more extensive service to thousands of shippers.

Freight Forwarders fill a definite gap in our transportation system by basically handling small shipments, consolidating them, and giving shippers prompt service. Many long-haul carriers discourage small shipments by giving poor service and charging excessive rates.

Bill H.R. 10831 will authorize freight forwarders and railroads to make contracts, which they should be able to do. Railroads and freight forwarders are complementary to each other and should be allowed to meld their operations and fix charges which reflect the economy of a coordinated operation.

If my appearance before a sub-committee hearing would aid the passage of this bill, I would be more than glad to attend.

Thank you again for introducing and supporting bill 10831.

Respectfully yours,

BOBBY M. GREEN,
Manager of Physical Distribution.

WINGARD & COMPANY, INC.,
Tacoma, Wash., January 8, 1968.

Re H.R. 10831, to amend section 409 of part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: Our firm has been organized and in business since 1903, and we have found that companies like ourselves need and appreciate the type of service given to us by freight forwarders. Their performance and attention to our problems are very vital to us. We purchase supplies and material from a great many parts of the United States in small lot shipments, and sometimes in larger tonnages, and these shipments are moved via both motor carriers and freight forwarders.

At the present time, motor carriers are allowed to enter into contracts with railroads to ship their trailers. H.R. 10831 will also allow freight forwarders to ship their trailers with railroads under contract agreements. We need all forms of transport, competing under equal rules.

My business keeps me very busy, but if my testimony is needed, kindly advise me, so that I may be absent without inflicting a hardship on my firm, by making suitable arrangements. Representative Brock Adams, 7th District, State of Washington, has also been advised as to our firm's concern on H.R. 10831.

Sincerely,

A. R. WINGARD, *President.*

THE VINTON CO.,
Portland, Oreg., January 10, 1968.

Subject: Bill H.R. 10831.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.*

DEAR SIR: We urgently solicit your support of Bill H.R. 10831. It is vitally important, in our opinion, that prompt action be taken and hearings be scheduled.

We are a receiver of large volumes of small shipments on which the forwarders have made great advancements in delivering this type of freight promptly. They are an important factor in the success of our business. We believe it is important that the forwarders & railroads be allowed the flexibility of fixing charges and coordinating operations toward economic benefits for all.

The forwarder service is basically the only l.c.l. Rail service left, and we feel that this bill is competitively necessary for the forwarder industry to compete equally with the Motor Freight industry, and also to preserve equality in competition.

In your capacity as a member of the Transportation and Aeronautics Subcommittee of the Interstate & Foreign Commerce Committee, we earnestly ask for your maximum support of this Bill.

Very truly yours,

F. C. CURL, *Traffic Manager.*

ASSOCIATED PRODUCTS, INC.,
New York, N.Y., January 18, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR SIR: We advocate that section 409(a) of the Interstate Commerce Act be amended to allow freight forwarders to enter into operating contracts with common carriers by railroad. Contracts have been negotiated with the railroads by over-the-road truckers for quite some time. Therefore, this amendment to the existing section of the Interstate Commerce Act would not seem to set a new precedent.

However, allowing freight forwarders to negotiate these contracts would be of great benefit to small lot shippers such as 5 Day Laboratories. This is so because these contracts should allow the freight forwarders to obtain the same low rates currently negotiated by over-the-road truckers. This would make for a more competitive situation. It might reasonably enable the freight forwarders to hold shipping rates at the present levels for a period of time or at least prevent any unreasonable rise in these rates.

5 Day Laboratories uses freight forwarders primarily to insure same day movement of small lot shipments to all points of the country. Same day movement is brought about by consolidation of shipments from many shippers and is something the over-the-road truckers very often cannot accomplish especially to certain sections of the country. It would also seem that contracts between freight forwarders and the railroads would be of benefit to the railroads since they could better schedule the movement of their rail cars with regard to shipping by freight forwarders. This should lead to a better coordinated transportation system as a whole.

Anything that speeds up delivery of finished goods and helps stabilize shipping costs is imperative to the small lot shipper. In the 4 years that I have been associated with 5 Day Laboratories our shipping costs have increased from 3.6% to 5.0% of net sales while delivery times have increased. A typical 350 pound shipment from Chicago to Los Angeles takes 9 days. This compares against 7 days 3 years ago when the rates were 20% lower.

Yours very truly,

ROLF KAHN,
Vice President, 5 Day Laboratories, Inc.

ACME BOOT CO., INC.,
Clarksville, Tenn., January 5, 1968.

HON. SAMUEL N. FRIEDEL,
Chairman, House Subcommittee on Transportation and Aeronautics,
Rayburn House Office Building, Washington, D.C.

DEAR MR. FRIEDEL: This letter is being written to ask your support of the Bill H.R. 10831.

My reasons for being in favor of the Bill are:

It authorizes freight forwarders and railroads to make contracts, while freight forwarders now must pay rail tariff rates for all service. Rails and forwarders are complementary to each other and should have flexibility to mold their operations and fix changes reflecting economics inherent in a coordinated operation. The bill equalizes opportunity to make contracts with railroads, and the railroads may make joint rates and use rail tariff rates.

Forwarders and motor carriers now operate under contracts, and this type of operation has been successful. I further believe that extension of principle to railroads will expand the opportunity for improved forwarder service.

Forwarders used extensively by Acme Boot handle basically small lots, which they consolidate, and small shipments are a problem for all carriers. Forwarders help to solve this problem, while railroads have substantially

abandoned less-than-carload service, and the only way an l.c.l. shipper may obtain rail service is through a freight forwarder.

Motor carriers and railroads make contracts under what is known as Plan 1 piggybacking. Additionally, they operate under joint rates, and a recent Supreme Court decision gives motor carriers the right to ship trailers by rail at tariff rates, the same as forwarders pay. This places forwarders at a severe competitive disadvantage with their principal competitors, the long-haul truckmen. The Bill makes for competitive equality, and it will also preserve healthy competition. We need all forms of transport, competing under equal rules.

Forwarders are essentially coordinators, and if we improve their ability to deal with railroads on a flexible basis, it will advance coordination.

I would be willing to appear in person in Washington to support this.

Yours very truly,

CHARLES B. SHANKS,
Distribution Manager.

NORCREST CHINA CO.,
Portland, Ore., January 11, 1968.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: Norcrest China Co. would like to go on record in support of bill H.R. 10831. We believe by enacting this bill it will improve forwarders' services and enable forwarders to offer a better, more extensive, transcontinental service to all shippers.

For years rails and forwarders have been complementary to each other and they both should have the flexibility to meld their operations and fix charges reflecting economics inherent in a coordinated operation. Transcontinental truck lines already have the right to make contracts with railroads and they also make joint rates with the railroads. For the sake of competition and to equalize opportunity for the forwarders we believe that forwarders should have the same privilege of making contracts and joint rates with the railroads.

We are always looking for a better coordination in our transportation system and forwarders are essentially coordinators. Forwarders initially inaugurated transcontinental piggy-back service and by improving their ability to deal with the railroads on a flexible basis will advance that coordination.

Yours very truly,

WILLIAM S. NAITO, *Vice President.*

ROL-AWAY TRUCK MANUFACTURING CO., INC.,
Portland, Ore., January 11, 1968.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: Rol-Away Truck Manufacturing Company, Inc., favors Bill H.R. 10831 because we believe it will improve forwarders' services and enable forwarders to offer a better, more extensive, transcontinental service to shippers.

Rails and forwarders are complementary to each other and should have flexibility to meld their operations and fix charges reflecting economics inherent in a coordinated operation. We also believe that this will equalize opportunity. Trucks already have the right to make contracts with railroads and they also may make joint rates and use rail tariff rates. For the sake of competition we believe that forwarders should have the same privilege of making contracts and joint rates with the railroads.

The bill should make for better coordination in the transportation system. Forwarders are essentially coordinators. Improving their ability to deal with railroads on a flexible basis will advance coordination.

Sincerely yours,

MARJORIE M. NELSON,
Secretary.

WHITE STAG MANUFACTURING Co.,
Portland, Oreg., January 19, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: I personally regret I cannot appear as a witness January 25, 1968, due to current work load requirements, but request my letter of testimony, be accepted and recorded in behalf of HR 10831.

My name is John Staudenmaier and am employed by White Stag Mfg. Co., at 5100 S.E. Harney Drive, Portland, Oregon. My capacity with the Company for the past fifteen years, has been Traffic Manager with the responsibility for the movement of raw materials and finished goods involving our five plants, forty sub-contractors, and from our import suppliers. Our Company involves all modes of transportation, and we are concerned with legislation affecting the transportation field, which in turn affects our operations and costs. In 1967 we shipped approximately 500,000 pounds eastbound via freight forwarders, which is a most important segment of our distribution.

It is my understanding of bill H.R. 10831, that it will authorize the freight forwarding industry and railroads to make contracts, which equalize the opportunity currently afforded the motor carriers. I am in support of bill H.R. 10831 for the following reasons:

1. The elimination of railroad LCL service availability has been picked up by the freight forwarders, and they need every equal opportunity to maintain and improve their existing services. Freight forwarders are complementary to the railroads, and they should have flexibility to meld their operations and fixed charges reflecting economics inherent in a coordinated operations.

2. Freight forwarders have and currently do operate with motor carriers under contract, and this bill would extend opportunity for improved forwarder service. The bill does not establish a new precedent, but merely extends the principle, and equalizes the opportunity motor carriers already have the right to execute.

3. As a manufacturer, like any other business today, we are constantly battling cost and service requirements of today's buying public. The freight forwarders, as coordinators, have continually worked in our behalf, and improving their ability to deal with the railroads on a flexible basis, will advance their coordination and services to their accounts and country's transportation needs in the LCL shipping field.

4. We need to maintain the existing level of transportation cost, improve existing services, and insure those in the transportation field, who are trying to solve our problems and improve service, are afforded equal opportunity under our transportation rules and regulations.

I do feel strongly in behalf of bill H.R. 10831 for the equal opportunities that should be afforded our systems of transportation.

Respectfully submitted.

JOHN F. STAUDENMAIER, JR.,
Traffic Manager.

BARRY & FOLEY MOTOR TRANSPORTATION, INC.,
Worcester, Mass., January 19, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce, House of Representatives, Washington, D.C.

DEAR MR. STAGGERS: Acknowledging your letter of January 16, 1968, I certainly appreciate your offer of having me appear as a witness in favor of Bill HR 10831. Unfortunately, sickness among some of our key men, will prevent me from attending the hearings. However, I would appreciate having my statement entered into the proceedings. I am President and Treasurer of the above company, and operate thirty-five vehicles.

We urge the passage of this bill, feeling the freight forwarders should have the privilege of negotiating contracts with the railroads, which motor carriers are unable to do.

As you know, freight forwarders handle all types of L.C.L. business, and in doing so, serve a great need to industries of all types. Since railroads in recent years have virtually abandoned L.C.L. traffic, I feel this is the most important reason that freight forwarders should not be discriminated against, and should be accorded equal and competitive standing with other interstate common carriers.

I firmly believe the passage of this bill would be in the best interests of the shippers, and strongly urge its passage. I hope, and trust, favorable action will be given to this measure.

Very truly yours,

F. DALTON BARRY,
President-Treasurer.

BRITISH INDUSTRIES CORP.,
Westbury, N.Y., January 19, 1968.

HON. HARLEY O. STAGGERS,
*Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.*

DEAR MR. STAGGERS: My interest in the passage of this bill rests in the fact that it would be of benefit to my company and the shipping public in general.

It is my understanding that this bill provides authorization for freight forwarders and railroads to have contract arrangements. This is a move in the right direction as it would place the forwarders in a competitive position with the motor carriers. This can only eventually work out for the benefit of shippers and carriers alike.

Should this bill become law, it will lead to improved forwarder service throughout the Nation, making it possible for the forwarders to expand their services to the shipping public. My position calls for the ability to secure good transportation service for my company's products. Any legislation that will make this possible—I support.

Off-line forwarder service has been satisfactory through the years as a result of the forwarders and motor carriers having the ability to operate under contract. To extend this procedure to the railroads should, as I stated earlier, make for an enlarged and better line-haul service, by the freight forwarders.

I mentioned earlier that the bill would make for a better competition between the forwarders and motor carriers. Passage of the bill would equalize an unbalanced situation and it is bound to work out in the public interest.

This testimony is brief but expressed my views on the bill and hope that same will be passed to benefit the public.

HAROLD FRIEDLANDER,
Traffic Manager.

BLOCKSOM & Co.,
Michigan City, Ind., January 18, 1968.

HON. SAMUEL N. FRIEDEL,
*Chairman, House Subcommittee on Transportation and Aeronautics,
House of Representatives, Washington, D.C.*

DEAR CONGRESSMAN FRIEDEL: As a major manufacturer of cushioning products we are most concerned that Subject Bill HR 10831 be given serious consideration. This bill calls for a mode of transportation i.e. freight forwarder, to have the same competitive position as do other carriers.

As is well known, it is most important that we continue to maintain in our economy the basic concepts of our type of government and economic environment. It is only reasonable and just that any mode of transportation be given a fair and equitable competitive position under the laws of the land. We therefore think that the freight forwarders should be allowed to have their true economic rights through the passage and approval of this Congressional Bill.

We, as a manufacturer, ship several hundred thousand dollars in freight cost of product per year. We mainly use railroads, trucks and forwarders. It is most important to us that the freight forwarders be competitive with truck lines and that each be cognizant of this competitive situation. The shipper then does have the opportunity of using one of two modes of transportation that are competing. The railroads have, as you know, for all practical purposes ceased to handle L/C/L movement. The forwarders and the truck lines are the only regular surface common carriers handling L/T/L shipments. Their competing for the traffic is most essential to shippers to help maintain equitable rates.

Should the forwarders not be allowed to have the same opportunity as the truck lines have in establishing cost and rates, they could very possibly go out of existence. The forwarders must be in a competitive position to give service and rates or they lose their economic position in transportation.

Our company recognizes the high value of the forwarders to us and to our economy, so we strongly urge the passage of Congressional Bill H.R. 10831.

Sincerely,

J. E. DEVEREAUX,
Traffic Manager.

DEERING MILLIKEN, INC.,
Spartanburg, S.C., January 18, 1968.

HON. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
House of Representative, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: My name is B. R. Bland and I am General Traffic Manager of Deering Milliken, Incorporated, Spartanburg, South Carolina. I was scheduled to appear before this Subcommittee on H. R. 10831 on January 23, 1968. Prior commitments on a hearing in Atlanta will prevent my personal appearance. Please record this written statement into the record.

My company is a manufacturer and finisher of textiles and related products. Our 43 plants ship to all states and use every conceivable mode of transportation. The instant bill H. R. 10831 is of importance to us because we believe that freight forwarders and motor carriers should be treated equally regarding contracts with railroads. It would appear that this bill is within the framework of the National Transportation policy and is unquestionably in the public interest.

We have seen an evolution of picking and choosing in the motor carrier and railroad industries. The railroads will not handle LCL traffic, and the motor carriers will handle LTL traffic if it suits them to do so. We are experiencing extreme difficulties in serving our markets because of these conditions. On the other hand, the freight forwarders existence is built around small shipments and we have never had a shipment refused that they were authorized to handle, whether it was bulky, desirable, or undesirable.

The protestants in this case do not want a lot of this traffic, but neither do they want anyone else to have an advantage in hauling it.

We presently ship approximately 250 thousand pounds monthly by all freight forwarders to Transcontinental Territory, and any endeavor on their part to improve their service, lower their costs, and protect the movement of my products receives our complete support. We trust it will receive yours.

Respectfully,

B. R. BLAND,
General Traffic Manager.

WARNER-CHILCOTT LABORATORIES,
Morris Plains, N.J., January 18, 1968.

HON. HARLEY O. STAGGERS,
Committee on Interstate and Foreign Commerce,
House of Representatives, Washington, D.C.

DEAR CONGRESSMAN STAGGERS: I wish to go on record at hearings scheduled to begin January 23, 1968, in favor of the subject bill, because I believe that its enactment would be in the public interest and in line with the National Transportation Policy.

I have been engaged in the industrial traffic field for many years and recently have become very much concerned with the small shipment problem that has escalated to an alarming degree as the railroads have substantially abandoned less than carload service.

I believe that the passage of this bill is necessary to maintain the Freight Forwarders Industry in a healthy competitive position with ability to provide many small lot shippers with the only practical access to railroad service.

A recent Supreme Court decision gave motor carriers the right to ship trailer loads by rail at tariff rates the same as forwarders pay. This places the forwarders at a severe competitive disadvantage with the long haul truckmen. Therefore, amendment to the I.C.C. Act is needed to maintain the forwarders competitive position.

We need all modes of transport competing under reasonably equal rules and regulations. Therefore, I urge the subject bill be recommended favorably.

Very truly yours,

C. P. LESLIE, *Traffic Supervisor.*

THE STAR PIN CO.,
Shelton, Conn., January 15, 1968.

Congressman JOHN MONAGAN,
House Office Building, Washington, D.C.

DEAR CONGRESSMAN MONAGAN: In reference to House Bill H.R. 10831 dealing with amendments to the Interstate Commerce Act, we are opposed to this bill in its present form.

For many years we have been served very ably by shippers cooperative association which has done much to reduce our costs of shipping and increased our service to customers across the country. As a small company, we need the service of a shippers association for they have done a great deal for us that the regular freight forwarders have not been willing to do.

Unless H.R. 10831 is amended so as to extend the same benefits to shippers cooperative association as to the freight forwarders, with whom they compete, we feel that the proposed law would provide an unfair competitive edge to the freight forwarders.

If it is the wisdom of Congress to reduce railroad charges we would like to have the Cooperatives included in the benefits.

Sincerely,

ROBERT P. PORTER, *Treasurer.*

HOLMAN TRANSFER CO.,
Portland, Oreg., January 25, 1968.

Hon. HARLEY O. STAGGERS,
Chairman, Committee on Interstate and Foreign Commerce,
Rayburn House Office Building, Washington, D.C.

DEAR MR. CHAIRMAN: My name is Leonard P. Clark and I am employed by Holman Transfer Company located at 49 S. E. Clay Street, Portland, Oregon. My capacity with the company is Vice President and Secretary-Treasurer. I would like to submit testimony in support of House Resolution 10831.

Together with H. M. Clark, Sr., my brother and I own and operate Holman Transfer Company in Portland, Oregon. With its greatest investment in its public warehouse buildings, Holman operates eight warehouses in Portland with a total space of approximately 800,000 square feet and Holman operates 370,000 square feet of space on a contract warehouse basis in the Seattle-Tacoma area in the State of Washington.

These building are public warehouses (with the exception of our contract arrangements in Washington) designed to accommodate merchandise for storage and distribution to the Pacific Northwest. A few years ago we calculated rail car unloadings in excess of 8,000 cars per year—the current figure would be in excess of this. Total revenue from these warehousing operations in 1967 was \$2,450,000.00 We therefore are much concerned with legislation affecting the transportation and distribution industry.

In addition, Holman operates a fleet of over 100 pieces of motor truck equipment throughout the State of Oregon, producing total revenue in 1967 of \$1,000,000.00, of which amount about 20% consisted of hauling for freight forwarders. We are therefore acquainted first-hand with the services performed by forwarders and at the same time, as motor common carriers ourselves, we have knowledge of that mode of transportation as well.

H.R. 10831, as I understand it, is a bill to amend Section 409 of Part IV of the Interstate Commerce Act, as amended, to authorize contracts between freight forwarders and railroads. I am in favor of H.R. 10831 for the following reasons:

1. *The bill equalizes opportunities.*—Motor carriers already have the right to make contracts with the railroads, and they also may make joint rates and use rail tariff rates, but forwarders must pay rail tariff rates for all service. Since the forwarders specialize in consolidating shipments and the railroad discourage this type of traffic, it follows that the forwarders are performing a service complementary to the railroads and should have the flexibility to integrate their operations and fix charges reflecting economics inherent in a coordinated operation.

2. *This bill does not establish any new precedent.*—Freight forwarders presently operate under contract with motor carriers and have been doing so for year. This bill would simply extend this principle to railroads.

3. *This bill should be of benefit to small lot shippers.*—We who work in the transportation industry know that small lot shipments are a problem for all carriers and we further know the forwarders have helped to solve the problem. The railroads have, to a great extent, abandoned LCL service and the only avenue open to an LCL shipper to obtain rail service is through a freight forwarder.

4. *The forwarders are performing a vital service* basic to our entire transportation system in America. If they are not granted equal opportunity with motor carriers the ultimate result will handicap their ability to serve the public. This bill will improve the forwarders' service.

I do not feel that freight forwarders should be granted privileges above and beyond those of their competitors but I do feel strongly they should be given equal opportunity along with motor carriers in their negotiations with the railroads.

Respectfully submitted.

LEONARD P. CLARK,
Vice President, Secretary-Treasurer.

(Whereupon, at 12:05 p.m., the subcommittee adjourned.)



