

**UNITED STATES DISTRICT COURT  
DISTRICT OF DELAWARE**

WILLIAM SAVIDGE, Individually and On Behalf of All Others Similarly Situated,	)	
	)	<b>CIVIL ACTION NO.</b>
Plaintiff,	)	
	)	
vs.	)	<b>CLASS ACTION COMPLAINT</b>
	)	
HORIZON LINES, INC., CHARLES G. RAYMOND, M. MARK URBANIA, GABRIEL SERRA, R. KEVIN GILL, and GREGORY GLOVA,	)	<b><u>JURY TRIAL DEMANDED</u></b>
	)	
Defendants.	)	
	)	

Plaintiff, William Savidge ("Plaintiff"), alleges the following based upon the investigation by Plaintiff's counsel, which included, among other things, a review of the defendants' public documents, conference calls and announcements made by defendants, United States Securities and Exchange Commission ("SEC") filings, wire and press releases published by and regarding Horizon Lines, Inc. ("Horizon Lines" or the "Company"), securities analysts' reports and advisories about the Company, and information readily available on the Internet, and Plaintiff believes that substantial additional evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

**NATURE OF THE ACTION AND OVERVIEW**

1. This federal class action is brought on behalf of all purchasers of Horizon Lines securities between March 2, 2007 and April 25, 2008, inclusive (the "Class Period"), seeking remedies under the Securities Exchange Act of 1934 (the "Exchange Act").

2. Horizon Lines engages in container shipping and integrated logistics operations. The Company ships consumer and industrial items ranging from foodstuffs to household goods, auto parts to building materials and various materials used in manufacturing industries, and the Company offers inland transportation and logistics services through its own trucking operations and relationships with third-party truckers, railroads, and barge operators in the United States. Horizon Lines serves various customers primarily consumer and industrial products companies and it also serves various agencies of the U.S. government, including the Department of Defense and the U.S. Postal Service. The Company operates its own terminals in Alaska, Hawaii, and Puerto Rico; and contracts for terminal services in six ports in the continental United States and in ports in Guam, Hong Kong, Yantian, and Taiwan.

3. On April 17, 2008, Horizon Lines shocked investors when the Company revealed that it was the subject of an investigation being conducted by the Antitrust Division of the United States Department of Justice ("DOJ"). The Company also disclosed that federal agents had served the Company with search warrants and a grand jury subpoena related to an investigation into the pricing practices of ocean carriers operating in the Puerto Rico trade.

4. Upon the release of this news, the Company's shares declined \$3.53 per share, or 19.36 percent, to close on April 17, 2008 at \$14.70 per share, on unusually heavy trading volume.

5. Then, on April 25, 2008, Horizon Lines again shocked investors when the Company released its financial results for the first quarter of fiscal 2008 (ended March 23, 2008), and revised its earnings guidance downward for fiscal year 2008. The Company updated its earnings guidance for the full year 2008, and stated that its operating revenue would now be between \$1.315 - \$1.350 billion, its EBITDA would be between \$145 - \$160 million, and its

diluted earnings per share would be between \$1.30 - \$1.69. The downward revisions to Horizon Lines' fiscal year 2008 earnings guidance was shocking to investors because the Company had just increased its fiscal 2008 guidance on February 1, 2008.

6. Upon the release of this news, the Company's shares declined an additional \$3.83 per share, or 23.10 percent to close on April 25, 2008 at \$11.25 per share, again on unusually heavy trading volume.

7. Subsequently, on October 1, 2008 the DOJ announced that four shipping executives, including three Horizon employees (Defendants Serra, Gill and Glova), agreed to plead guilty for their roles in a conspiracy to eliminate competition and fix shipping charges for shipment to Puerto Rico.

8. The Complaint alleges that, throughout the Class Period, defendants failed to disclose material adverse facts about the Company's financial well-being, business relationships, and prospects. Specifically, defendants failed to disclose the following: (1) that Horizon Lines had engaged in a price-fixing scheme to set the prices of rates, surcharges, and other fees charged to its customers for Puerto Rico freight services, in violation of the laws of the United States; (2) that Horizon Lines' conduct, with respect to its price-fixing scheme, amounted to an unreasonable restraint of interstate and foreign trade and commerce; (3) that, as a result of Defendants' conduct, Horizon Lines' publicly reported earnings and revenue had been artificially inflated due to illegal price-fixing activities; (4) that the Company lacked adequate internal and financial controls; (5) that, as a result of the foregoing, the Company's financial statements were materially false and misleading at all relevant times; and (6) that, as a result of the above, the Company's statements about its financial well-being and future business prospects were lacking in any reasonable basis when made.

9. As a result of defendants' conduct, which resulted in the sharp decline in the market value of the Company's securities, Plaintiff and other Class Members have suffered significant losses and damages.

### **JURISDICTION AND VENUE**

10. The claims asserted herein arise under and pursuant to Sections 10(b) and 20(a) of the Exchange Act, (15 U.S.C. §§ 78j(b) and 78t(a)), and Rule 10b-5 promulgated thereunder (17 C.F.R. § 240.10b-5).

11. This Court has jurisdiction over the subject matter of this action pursuant to Section 27 of the Exchange Act (15 U.S.C. § 78aa) and 28 U.S.C. § 1331.

12. Venue is proper in this Judicial District pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa and 28 U.S.C. § 1391(b). Many of the acts and transactions alleged herein, including the preparation and dissemination of materially false and misleading information, occurred in substantial part in this Judicial District. Additionally, the Company is incorporated in this Judicial District.

13. In connection with the acts, conduct and other wrongs alleged in this Complaint, defendants, directly or indirectly, used the means and instrumentalities of interstate commerce, including but not limited to, the United States mails, interstate telephone communications and the facilities of the national securities exchange.

### **PARTIES**

14. Plaintiff, William Savidge, as set forth in the accompanying certification, incorporated by reference herein, purchased Horizon Lines' securities at artificially inflated prices during the Class Period and has been damaged thereby.

15. Defendant Horizon Lines is a Delaware corporation with its principal executive

offices located at 4064 Colony Road, Suite 200, Charlotte, North Carolina.

16. Defendant Charles G. Raymond ("Raymond") was, at all relevant times, the Company's President, Chief Executive Officer ("CEO"), and Chairman of the Board of Directors.

17. Defendant M. Mark Urbania ("Urbania") was, at relevant times, the Company's Chief Financial Officer ("CFO") and Executive Vice President until his resignation from the Company effective April 4, 2008.

18. Defendant Gabriel Serra ("Serra") was, at all relevant times, Senior Vice President and General Manager for the Puerto Rico Division of Horizon.

19. Defendant R. Kevin Gill ("Gill") was, at relevant times, Vice President of Marketing for Horizon and was responsible for marketing Horizon's Puerto Rico freight services until April 2008.

20. Defendant Gregory Glova ("Glova") was, at all relevant times, Marketing and Pricing Director for the Puerto Rico Division of Horizon.

21. Defendants Raymond, Urbania, Serra, Gill and Glova are collectively referred to hereinafter as the "Individual Defendants." The Individual Defendants, because of their positions with the Company, had the ability to control Horizon Lines' reports to the SEC, press releases and presentations to securities analysts, money and portfolio managers and institutional investors, i.e., the market. Because of their positions and access to material non-public information, each of these defendants knew that the adverse facts specified herein had not been disclosed to, and were being concealed from, the public, and that the representations which were being made were then materially false and misleading. The Individual Defendants are liable for the false statements pleaded herein as those statements were each "group-published" information,

the result of the collective actions of the Individual Defendants.

## **SUBSTANTIVE ALLEGATIONS**

### **Background**

22. Horizon Lines is the nation's leading *Jones Act*<sup>1</sup> container shipping and integrated logistics company, operating 16 U.S.-flag vessels on routes linking the continental United States with Alaska, Hawaii, Guam, and Puerto Rico. Horizon Lines also owns Horizon Services Group, an organization with a diversified offering of cargo management and tracking services being marketed to shippers, carriers, and other supply chain participants. Horizon Lines trades on the New York Stock Exchange under the ticker symbol HRZ.

23. Horizon Lines owns or leases a fleet of 21 U.S.-flag containerships and 5 port terminals linking the continental United States with Alaska, Hawaii, Guam, Micronesia and Puerto Rico. Horizon Logistics offers customized logistics solutions to shippers from a suite of transportation and distribution management services designed by Aero Logistics, information technology developed by Horizon Services Group and intermodal trucking and warehousing services provided by Sea-Logix.

24. In Puerto Rico, Horizon Lines is the largest provider of marine container shipping, accounting for approximately 34% of Puerto Rico's total container loads from the continental U.S. The Puerto Rico market was, at all relevant times, primarily served by two containership

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<sup>1</sup> The Jones Act is a long-standing cornerstone of U.S. maritime policy. Under the Jones Act, all vessels transporting cargo between covered U.S. ports must, subject to limited exceptions, be built in the U.S., registered under the U.S. flag, manned by predominantly U.S. crews, and owned and operated by U.S.-organized companies that are controlled and 75% owned by U.S. citizens. U.S.-flagged vessels are generally required to be maintained at higher standards than foreign-flagged vessels and are supervised by, as well as subject to rigorous inspections by, or on behalf of the U.S. Coast Guard, which requires appropriate certifications and background checks of the crew members. Horizon Lines' trade routes between Alaska, Hawaii and Puerto Rico and the continental U.S. represent the three non-contiguous Jones Act markets. Vessels operating on these trade routes are required to be fully qualified Jones Act vessels. Other U.S. maritime laws require vessels operating on the trade routes between Guam, a U.S. territory, and U.S. ports to be U.S.-flagged and predominantly U.S.-crewed, but not U.S.-built.

companies, Horizon Lines and Sea Star Lines.

**Materially False and Misleading  
Statements Issued During the Class Period**

25. The Class Period begins on March 2, 2007. On this day, the Company issued a press release entitled, "Horizon Lines Reports Record Fourth Quarter and Full Year 2006 Earnings." Therein, the Company stated, in relevant part:

*Net income for the fourth quarter of 2006 was \$10.6 million or \$.32 basic earnings per share compared to a net loss of \$(10.9) million or \$(.38) basic earnings per share in 2005's fourth quarter.* After adjustment to exclude non-recurring secondary offering, IPO and transaction-related expenses, and loss on early extinguishment of debt, and to include interest expense savings on debt prepayment, and to apply tonnage tax on pro-forma basis, adjusted net income was \$11.5 million or \$.34 basic earnings per share in the fourth quarter of 2006 compared to \$8.0 million or \$ .24 basic earnings per share in the fourth quarter of 2005. *The fourth quarter 2006 adjusted basic earnings per share of \$.34 was \$.01 - \$.03 higher than earnings guidance of \$.31 - \$.33.*

Operating revenue increased by \$8.5 million or 3% to \$287.5 million compared to \$279.0 million in the fourth quarters of 2006 and 2005, respectively. This revenue growth was fueled by cargo mix upgrades, rate increases and higher fuel recovery, more than offsetting some volume softness.

Operating income in the fourth quarter 2006 was \$22.5 million compared to \$12.5 million for the fourth quarter 2005. Operating income would have been \$22.9 million in the 2006 fourth quarter, and \$19.9 million in the fourth quarter of 2005, excluding the impacts of non-recurring secondary offering, IPO and transaction-related expenses.

Earnings before net interest expense, taxes, depreciation and amortization (EBITDA) was \$37.9 million for the fourth quarter 2006 compared to \$15.3 million for the 2005 fourth quarter. Excluding the non-recurring secondary offering, IPO and transaction-related expenses, and loss on early extinguishment of debt, EBITDA was \$38.9 million in the 2006 fourth quarter versus \$35.9 million in the fourth quarter of 2005.

For the full year 2006, net income was \$72.4 million or \$2.16 basic earnings per share compared to a net loss of \$(18.3) million or \$(1.05) basic earnings per share in 2005. After adjustment to exclude non-recurring secondary offering expenses and the loss on early extinguishment of debt, 2006 adjusted net income was \$74.8 million or \$2.23 basic earnings per share, or \$.02 - \$.04

better than earnings guidance of \$2.19 - \$2.21. Excluding non-recurring secondary offering, IPO and transaction-related expenses, management fees, and loss on early extinguishment of debt, and to apply tonnage tax on a pro-forma basis, interest expense savings on debt prepayment, and net savings on vessel lease buyouts, adjusted net income was \$45.0 million or \$1.34 basic earnings per share in 2006 versus \$34.8 million or \$1.04 basic earnings per share in 2005. Please see attached schedules for reconciliation of fourth quarter and full year 2006 adjusted results and EBITDA amounts to reported results.

"The fourth quarter brought to a very successful close a milestone year in 2006 for Horizon Lines," said Chuck Raymond, Chairman, President and Chief Executive Officer. "We completed the transition that commenced with our September 2005 initial public offering, from private equity ownership to full public company status. The implementation of our fleet enhancement strategic initiative continued ahead of schedule. Horizon Edge, our process re-engineering and customer service initiative, was launched and captured benefits in excess of first-year targets. We also renewed and extended through 2010 all of our principal commercial and operating arrangements with the A.P. Moller Maersk Group. Horizon Services Group, our technology company, accomplished an industry first with the implementation of radio frequency identification (RFID) technology and broadened its outreach as a third party provider of technology services. We elected application of the tonnage tax, which provides for significant tax savings in 2006 and beyond. Our Company continued to deliver strong and improving financial results, setting both earnings and cash flow records in 2006. Finally, we strengthened our Board with the addition of three highly qualified Board Members that will help set the course for Horizon Lines in 2007 and beyond." [Emphasis added.]

26. That same day, the Company held an earnings conference call with investors and financial analysts. In addition to reiterating the Company's financial results for the Company's fiscal fourth quarter and full year 2006 financial results, Defendant Raymond stated, in pertinent part:

[Analyst]: Staying on Puerto Rico, then, if it has become more of a -- where are we in the Puerto Rico rate recovery story? If volumes are soft, how much more pricing power does Horizon have, looking into 2007?

[Defendant Raymond]: I think that that the way we would answer that is *it looks like all the carriers were pretty responsible in terms of tonnage in the trade last year*. As the market softened, we, of course, withdrew a vessel for a period of time; I think one or two of the barge lines did the same. One of the other competitors, SeaStar, actually pulled a vessel out, so the available

capacity more represented the demand in the marketplace. As a result of that, the pricing, I don't think, suffered. ***I believe that we are still gaining in terms of real dollar increases in our prices in Puerto Rico. I don't see that stopping. I believe we still have a little bit of a ways to go there.*** [Emphasis added.]

27. Also on March 2, 2007, Horizon Lines filed its Annual Report with the SEC on Form 10-K for the fiscal year 2006. The Company's 10-K was signed by Defendants Raymond and Urbania, and reaffirmed the Company's financial results announced that same day.

28. The Company's 10-K filed on March 2, 2007 also contained Sarbanes-Oxley required certifications, signed by Defendants Raymond and Urbania, who stated:

I, [Charles G. Raymond, President and Chief Executive Officer /M. Mark Urbania, Senior Vice President and Chief Financial Officer], certify that:

1. I have reviewed this report on Form 10-K of Horizon Lines;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of

the end of the period covered by this report based on such evaluation; and

- c) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

29. On April 26, 2007, the Company issued a press release entitled, "Horizon Lines Reports Record First Quarter Earnings." Therein, the Company stated, in relevant part:

***Net income for the first quarter of 2007 was \$7.1 million or \$.21 per basic and diluted share compared to \$2.4 million or \$.07 per basic and diluted share in the 2006 first quarter.*** After adjustments to exclude a deferred tax revaluation benefit in 2007, and apply tonnage tax on a pro-forma basis in 2006, adjusted net income was \$4.5 million or \$.13 per basic and diluted share in the first quarter of 2007 versus \$3.6 million or \$.11 per basic and diluted share for the first quarter of 2006. The first quarter 2007 adjusted earnings per share of \$.13 was within the Company's previously announced earnings guidance of \$.10 - \$.15 per share and equaled the analysts' consensus.

Operating revenue was essentially flat, falling slightly by \$1.2 million or .4% to \$273.7 million for the first quarter of 2007 compared to \$274.9 million during the 2006 first quarter. The revenue decline was primarily due to a 6.5% reduction in volumes, reflecting continued soft market conditions in Puerto Rico and an extended winter in Alaska. Higher margin cargo mix, general rate increases and fuel recoveries nearly offset the volume-related revenue decline.

Operating income for the first quarter of 2007 grew by 3.8% to \$16.5 million versus \$15.9 million in the first quarter of 2006. The increase in operating income was driven by the Company's on-going focus on controlling operating costs and its Horizon EDGE program.

*Earnings before net interest expense, taxes, depreciation and amortization (EBITDA) was \$33.7 million for the first quarter of 2007, growing by 6.0% from \$31.8 million in the 2006 first quarter.*

*Horizon Lines delivered record first quarter earnings and our 21st consecutive quarter of adjusted EBITDA growth, despite less than ideal market conditions," said Chuck Raymond, Chairman, President and Chief Executive Officer. "Stringent cost controls, Horizon EDGE savings, cargo mix upgrades and rate improvements all combined to more than offset some lingering volume softness. Horizon EDGE, our customer service and process improvement program, captured all of its first quarter milestones and is delivering increasing benefits. Our TP1 fleet enhancement initiative is on track and the deployment of this new tonnage is nearing completion. We continue to invest in our business and were honored once again as the recipient of two prestigious service excellence awards in the first quarter. Additionally, we continue to focus on reducing our leverage, prepaying \$25 million of debt on March 30th, at the beginning of the second quarter. The Horizon Lines team overcame challenging conditions in the first quarter, as they have so many times in the past, and we look forward to an improving market environment throughout the remainder of 2007." [Emphasis added.]*

30. Also on April 26, 2007, Horizon Lines filed its Quarterly Report with the SEC on Form 10-Q for the 2007 fiscal quarter. The Company's 10-Q was signed by Defendant Urbania, and reaffirmed the Company's financial results previously announced on April 26, 2007. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in ¶ 28, *supra*.

31. On July 27, 2007, the Company issued a press release entitled, "Horizon Lines Reports Solid Second Quarter 2007 Earnings." Therein, the Company stated, in relevant part:

*Net income for the second quarter of 2007 was \$9.6 million or \$.28 per diluted share compared to net income of \$6.4 million or \$.19 per diluted share for the second quarter of 2006. After adjustment to exclude the non-recurring loss on extinguishment of debt in 2007 and secondary offering expenses in 2006, and to retroactively apply tonnage tax to 2006, adjusted net income was \$10.0 million or \$.29 per diluted share in 2007's second quarter, versus \$9.7 million or \$.29 per diluted share in the second quarter of 2006.*

Operating revenue grew by \$5.9 million or 2.0% in the second quarter of 2007 to \$295.7 million, compared to \$289.8 million for the second quarter of 2006.

Operating income in the second quarter of 2007 was \$22.9 million versus \$22.4 million in 2006's second quarter. Absent non-recurring secondary offering expenses, adjusted operating income in the second quarter of 2006 would have been \$23.3 million.

***Earnings before net interest expense, taxes, depreciation and amortization (EBITDA) was \$39.5 million for the second quarter of 2007 compared to \$39.8 million for the 2006 second quarter.*** Excluding the non-recurring loss on extinguishment of debt in 2007 and secondary offering expenses in 2006, adjusted EBITDA would have been \$40.0 million in the second quarter of 2007 in contrast to \$40.7 million for the second quarter of 2006.

***"Despite some lingering volume softness, we once again overcame challenges and delivered solid earnings in the second quarter of 2007", said Chuck Raymond, Chairman, President and Chief Executive Officer.*** "Benefits generated by our Horizon EDGE process re-engineering and customer service program, stringent cost controls and unit revenue and cargo mix improvements, all combined to more than offset the volume shortfall. We completed our Transpacific (TP1) fleet enhancement initiative and all five new vessels are now deployed and are operating in the new TP1 service. Investment in our business continued with the addition of 707 new refrigerated containers and 238 new flat racks. Finally, we initiated a process to refinance our capital structure that we expect will result in reduced interest expense going forward when completed in the third quarter of 2007.

***The Company also updated its earnings guidance for the full year 2007, with projections of operating revenue at \$1,190 - \$1,200 million, EBITDA at \$168 - \$173 million, diluted earnings per share (EPS) at \$1.46 - \$1.58 and free cash flow at \$30 - \$37 million.*** Earnings guidance for the third quarter of 2007 was also provided, with forecasts of operating revenue of \$314 - \$322 million, EBITDA of \$49 - \$52 million and diluted EPS of \$0.56 - \$0.63. The earnings guidance for the third quarter and full year does not reflect any impact from the Company's recently announced planned refinancing. [Emphasis added.]

32. Also on July 27, 2007, Horizon Lines filed its Quarterly Report with the SEC on Form 10-Q for the second quarter of fiscal 2007. The Company's 10-Q was signed by Defendant Urbania, and reaffirmed the Company's financial results announced on July 27, 2007. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar

to the certifications contained in ¶ 28, *supra*. Additionally, the Company stated, in relevant part:

***Operating revenue increased by \$5.9 million or 2.0% from the quarter ended June 25, 2006 to the quarter ended June 24, 2007 and by \$4.6 million or 0.8% from the six months ended June 25, 2006 to the six months ended June 24, 2007.*** This increase in revenue is primarily attributable to rate improvements resulting from favorable changes in cargo mix and general rate increases as well as increased slot charter revenue, partially offset by fewer revenue containers shipped.

Operating expense increased by \$5.4 million or 2.0% for the quarter ended June 24, 2007 from the quarter ended June 25, 2006 and by \$3.5 million or 0.7% from the six months ended June 25, 2006 to the six months ended June 24, 2007, primarily as a result of increased vessel operating costs due to the deployment of the new vessels, partially offset by a decrease in variable operating costs due to lower revenue container volumes shipped. [Emphasis added.]

33. On August 9, 2007, the Company issued a press release entitled, "Horizon Lines Closes on Refinancing and Increases 2006 Financial Guidance." Therein, the Company stated, in relevant part:

***Horizon Lines reported today that it has closed on all transactions related to its previously announced capital structure refinancing. Earnings and free cash flow guidance for the third quarter and full year 2007 were also increased in recognition of the benefits resulting from the refinancing.***

Horizon Lines completed a series of transactions through which it:

- Repaid the \$193.1 million balance, interest and fees on its previous LIBOR plus 2.25% senior credit facility.
- Repaid the \$314.3 million balance, call premiums and interest on its previous 9% senior notes and 11% senior discount notes.
- Entered into a new \$375.0 million senior credit facility at LIBOR plus 1.50% with initial borrowings of \$258.5 million.
- Issued \$330.0 million of 4.25% convertible notes.
- Entered into separate hedging transactions at a net pretax cost of \$40.6 million or \$24.6 million after future tax benefits to increase the conversion premium on the convertible notes from 30% to 80%.

- Purchased 1 million shares of its common stock for \$28.6 million.
- Paid transaction costs of \$11.8 million.

Interest savings from the new structure are expected to be \$1.7 million on a pretax basis or \$1.2 million after tax in the third quarter, and \$5.0 million pretax or \$3.5 million after tax for 2007, under current accounting methods. Interest expense savings in 2008 are expected to be \$15.0 million on pretax basis or \$10.5 million on an after tax basis, under current accounting methods.

*As a result of the refinancing, the Company is increasing its financial guidance. Earnings per share guidance for the third quarter is being increased to \$.59 - \$.66 and earnings per share guidance for 2007 is being increased to \$1.56 - \$1.68, both excluding the impact of one-time expenses. Horizon Lines' previous earnings guidance for earnings per share was \$.56 - .63 for the third quarter and \$1.46 - \$1.58 the full year 2007. Free cash flow guidance for 2007 was also increased to reflect the benefits of the refinancing to \$34 - \$41 million from the previous \$30 - \$37 million. Free cash flow benefits in 2008 are expected to be \$13 million. [Emphasis Added].*

*"Horizon Lines closed on a refinancing of our capital structure yesterday that will yield significant benefits in terms of a lower cost of capital, improved cash flow, enhanced flexibility and greater liquidity," said Chuck Raymond, Chairman, President and Chief Executive Officer.*

*"This new capital structure represents an opportunistic refinancing that is cash flow positive, EPS accretive and provides access to low cost capital that will allow us to take advantage of future growth opportunities", said Mark Urbania, Senior Vice President and Chief Financial Officer. "We are pleased with the very successful execution of this refinancing in a challenging credit market and believe the refinancing demonstrates the market's confidence in Horizon Lines and its strategy". [Emphasis added.]*

34. On August 13, 2007 the Company held an earnings conference call with investors and financial analysts. In addition to reiterating the Company's financial results for the quarter, Defendant Raymond stated, in pertinent part:

*I think that we clearly have the management team here that can deliver this business plan and strong financial results going forward. But when you couple that with our Board of Directors and the strategic guidance that they have and that they offer us, and the strong balance sheet which now we have made even stronger, this is a company that is a company ready to grow in a number of ways, and to continue to bring superlative returns for our shareholders.*

That is what we're here to do, and we're looking forward very much to making this structure work for us. And communicating with you in a few more weeks about the end of the third quarter and then about 2008. As Mark said, there is no reason right now for us to take any different view on 2008 than we already have. We feel good about the TP1. That is working very well for us. Our vessel schedule is very predictable at 98% on time measured to the minute. Our customers are reacting to that in a very positive way. And we see clear seas ahead. [Emphasis added.]

35. On October 26, 2007, the Company issued a press release entitled, "Horizon Lines Reports Gain in Comparable Third Quarter 2007 Earnings." Therein, the Company stated, in relevant part:

***Horizon Lines reported an increase in the third quarter 2007 earnings versus the 2006 third quarter, adjusted to exclude the impact of non-recurring items associated with the Company's refinancing in August 2007, secondary public stock offering in September 2006, and tonnage tax election in 2006.***

The Company completed a refinancing of its capital structure in August with associated one-time, upfront costs significantly impacting the third quarter of 2007, despite the ongoing interest expense savings. Net income for the third quarter of 2007 was \$1.6 million or \$.05 per diluted share compared to net income of \$52.9 million or \$1.57 per diluted share for the third quarter of 2006. After adjustment to exclude the non-recurring loss on extinguishment of debt in 2007 and secondary offering expenses in 2006, and to retroactively apply tonnage tax to 2006, adjusted net income was \$20.7 million or \$.61 per diluted share in 2007's third quarter, versus \$20.2 million or \$.60 per diluted share in the third quarter of 2006.

Operating revenue grew by \$16.4 million or 5.4% in the third quarter of 2007 to \$321.1 million, compared to \$304.7 million for the third quarter of 2006.

Operating income in the third quarter of 2007 was \$35.3 million, slightly better than the \$35.2 million in 2006's third quarter. Absent non-recurring secondary offering expenses, adjusted operating income in the third quarter of 2006 would have been \$36.0 million.

***Earnings before interest expense, taxes, depreciation and amortization (EBITDA) was \$12.8 million for the third quarter of 2007 compared to \$51.0 million for the 2006 third quarter.*** Excluding the non-recurring loss on extinguishment of debt in 2007 and secondary offering expenses in 2006, adjusted EBITDA would have been \$50.8 million in the third quarter of 2007 in contrast to \$51.8 million for the third quarter of 2006.

***"Horizon Lines once again rose to the challenge and overcame a less than ideal operating environment, to deliver improved earnings in the third quarter of 2007," said Chuck Raymond, Chairman, President and Chief Executive Officer. "Volume softness, primarily caused by lingering difficult economic conditions in our Puerto Rico tradelane, was offset by unit revenue improvements, benefits derived from our Horizon EDGE process re-engineering and customer service program and tight controls on our costs. We closed on a refinancing of our capital structure in August that is generating significant benefits in terms of a lower cost of capital, improved cash flow, and enhanced flexibility and greater liquidity that will allow us to take advantage of future growth opportunities. In addition, we changed the structure of Horizon Lines into two separate transportation and logistics operations. This will allow us to stay focused on our core Jones Act transportation operations, while at the same time providing for future growth and development of our fully integrated logistics services. As the first step in growing our new logistics offering, we also acquired Aero Logistics during the quarter."***

The Company also reaffirmed its earnings guidance for the full year 2007, with projections of operating revenue at \$1,190 - \$1,200 million, EBITDA at \$168 - \$173 million, and diluted earnings per share (EPS) at \$1.56 - \$1.68. Free cash flow was updated and projected at \$27 - \$31 million. Earnings guidance for the fourth quarter of 2007 was also provided, with forecasted operating revenue of \$300 - \$310 million, EBITDA of \$43 - \$48 million and diluted EPS of \$.53 - \$.65. [Emphasis added.]

36. Also on October 26, 2007, Horizon Lines filed its Quarterly Report with the SEC on Form 10-Q for the fiscal third quarter of fiscal 2007. The Company's 10-Q was signed by the Defendants Urbania and reaffirmed the Company's financial results announced on October 26, 2007. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in ¶ 28, *supra*.

37. On November 19, 2007, the Company issued a press release entitled, "Horizon Lines Revises 2007 Guidance; Provides 2008 Guidance; Announces Board Authorization for Share Repurchase Program." Horizon Lines today revised its financial guidance for the fourth quarter and full year 2007. The Company stated in relevant part:

***Based on current market conditions, the Company now expects for the fourth quarter of 2007, operating revenue of \$310 - \$315 million, earnings before interest expense, net, taxes, depreciation and amortization (EBITDA)***

*of \$35 - \$38 million, and diluted earnings per share (EPS) of \$.28 - \$.35. Previous fourth quarter 2007 guidance included operating revenue of \$300 - \$310 million, EBITDA of \$43 - \$48 million, and diluted EPS of \$.53 - \$.65*

*The Company also updated its financial guidance for the full year 2007, with projections of operating revenue of \$1,200 - \$1,205 million, EBITDA of \$160 - \$163 million, diluted EPS of \$1.31 - \$1.38 and free cash flow of \$19 - \$22 million. Prior full year 2007 guidance projected operating revenue of \$1,190 - \$1,200 million, EBITDA of \$168 - \$173 million, diluted EPS of \$1.56 - \$1.68, and free cash flow of \$27 - \$31 million.*

"The very rapid and steep rise in fuel costs has resulted in prices at unprecedented levels and significantly higher than anticipated when we most recently gave guidance on October 26th," said Chuck Raymond, Chairman, President and Chief Executive Officer. "The average price of bunker fuel has soared over \$55 per ton or 12% from \$445 per ton on October 26th to \$500 per ton today. As we reminded on our third quarter 2007 earnings release call on October 26th, Horizon Lines is unable in the short term to fully recover the impact of rapidly rising fuel prices, despite our fuel surcharge recovery program. We estimate that higher fuel costs were responsible for \$5 million of the \$9 million reduction in EBITDA, with the \$4 million balance primarily attributable to continued weakness in Puerto Rico. In addition to implementing higher fuel surcharges that will be effective between next week and December 14th, we are moving forward aggressively to constrain costs, in order to mitigate the impact of historically high fuel prices. We also continue to execute on our Horizon EDGE program, which is on target to meet or exceed \$13 million in net benefits by year-end."

*"Horizon Lines will still deliver very satisfactory results in 2007 despite an environment that was extraordinarily challenging in numerous, unforeseen ways. Results in 2007 were adversely impacted by the continuation of a deep recession in Puerto Rico and fuel prices that have soared to record levels. In the face of all of these challenges, 2007 results will be essentially equal to those in 2006. This accomplishment is made even more impressive by the fact we incurred about \$15 million in net costs to deploy our new vessels."*

*Horizon Lines also provided financial guidance for 2008. Based on current market conditions and forecasts, the Company projects full year 2008 operating revenue of \$1,360 - \$1,380 million, EBITDA of \$175 - \$185 million, diluted EPS of \$1.94 - \$2.18 and free cash flow of \$115 - \$125 million. At the mid-ranges of the EPS guidance, 2008 results are projected to be up 53% from 2007 levels.*

Separately, the Board of Directors of Horizon Lines, Inc. authorized the purchase of up to \$50 million of its Class A common stock. The Company intends to make purchases from time to time as market conditions warrant and

may buy shares through open market repurchases and privately negotiated transactions.

"We remain very confident in the long-term performance of our business, despite some of the near term challenges we are facing," said Mark Urbania, Executive Vice President and Chief Financial Officer. "The sharp decline in our stock price provides an opportunity to repurchase stock at attractive prices. Our recent refinancing provides the Company with a stable balance sheet and the flexibility to consider a share repurchase program. The approval by our Board allows Horizon Lines to move very quickly with a stock buyback if conditions warrant." [Emphasis added.]

38. On February 1, 2008, the Company issued a press release entitled, "Horizon Lines Reports Fourth Quarter 2007 Earnings In Line With Expectations." Therein, the Company stated, in relevant part:

*Horizon Lines today reported results for the fourth quarter and full year ended December 23, 2007. Net income for the fourth quarter of 2007 was \$10.7 million or \$.32 per diluted share versus net income of \$10.6 million or \$.31 per diluted share in the fourth quarter of 2006.*

"The fourth quarter of 2007 brought to a close a year of many accomplishments for Horizon Lines," said Chuck Raymond, Chairman, President and Chief Executive Officer. "Over the past year, we have managed to offset soft market conditions in Puerto Rico and rising fuel costs by aggressively managing costs and introducing valuable complementary services to our customers. Going forward, we will continue to execute on our long term strategy of offering our customers innovative shipping and logistics solutions to enhance our core service offerings. We believe we are well positioned for continued growth and profitability in our markets."

#### **Fourth Quarter and Full Year 2007 Financial Highlights**

"2007 presented some challenges and opportunities for us," said Mark Urbania, Executive Vice President and Chief Financial Officer. "Despite the continuing soft market in Puerto Rico and unprecedented increases in fuel prices, we were able to generate net income and earnings per share that were in line with the 2006 fourth quarter and full year periods and our expectations. *These challenges were offset by improved cargo mix, a stable rate environment in all three of our offshore markets, and the benefits of our cost reduction efforts.* In addition, our debt refinancing and \$28.5 million share repurchase in August of 2007 and our \$50 million share buyback program initiated in November, which is now complete, will significantly benefit our shareholders in 2008 and beyond."

- Operating Revenue - Operating revenue increased by \$28.5 million or 9.9% to \$316.0 million for the quarter, compared to \$287.5 million for the fourth quarter of 2006. The growth in revenue was driven by cargo mix upgrades, rate improvement and revenue from acquisitions, which more than offset some volume softness.

- Operating Income - Operating income for the fourth quarter of 2007 was \$20.5 million compared to \$22.5 million for the fourth quarter of 2006. Absent the impact of secondary offering expenses, operating income in the 2006 fourth quarter would have been \$22.9 million.

- EBITDA and Adjusted EBITDA - Earnings before net interest expense, taxes, depreciation and amortization (EBITDA) was \$35.9 million for the fourth quarter of 2007 compared to \$37.9 million for the 2006 fourth quarter. Excluding the non-recurring loss on extinguishment of debt and secondary offering expenses, adjusted EBITDA would have been \$38.9 million for the fourth quarter of 2006.

***- Net Income and Adjusted Net Income- Net income for the fourth quarter of 2007 was \$10.7 million or \$.32 per diluted share versus net income of \$10.6 million or \$.31 per diluted share in the fourth quarter of 2006.*** After adjustment to exclude the loss on early extinguishment of debt and secondary offering expenses, adjusted fourth quarter 2006 net income was \$11.5 million or \$.34 per diluted share.

***- 2007 Full Year Results - For the full year 2007, net income was \$28.9 million or \$.85 per diluted share compared to net income of \$72.4 million or \$2.14 per diluted share in 2006.*** After adjustment to exclude non-recurring loss on extinguishment of debt in 2007 and 2006, secondary offering expenses in 2006, and certain tax adjustments in 2007 and 2006, adjusted net income was \$45.9 million or \$1.36 per diluted share in 2007 versus adjusted net income of \$45.0 million or \$1.33 per diluted share in 2006. Please see attached schedules for reconciliation of fourth quarter and full year 2007 and 2006 adjusted results and EBITDA amounts to reported results.

- Share Repurchase - The Company completed its \$50 million share repurchase program this past month.

#### **Fourth Quarter and Full Year 2007 Performance Highlights**

"Our team really pulled together to accomplish a number of significant achievements in 2007," Raymond stated. "We successfully executed our TransPacific (TP-1) fleet enhancement initiative, and all five new vessels are now operating in the new TP-1 service. We also accomplished the re-

deployment of our Jones Act tonnage. As a result, we now have the appropriate capacity in all trades to support volume growth in future years, which will further improve the cost efficiency and reliability of the ocean services we provide to our customers."

"We completed a capital structure refinancing that is generating significant benefits in terms of a lower cost of capital, improved cash flow, enhanced flexibility and greater liquidity that will allow us to take advantage of future growth opportunities," Raymond continued. "2007 also saw us accomplish a corporate realignment that resulted in the creation of Horizon Logistics, which will enable us to grow our fully integrated logistics services offerings. We also successfully completed the first full year of our Horizon EDGE process re-engineering and customer service program. Horizon EDGE is delivering significant process improvements that are benefiting our customers and associates, while yielding cost savings that have met our internal targets and have somewhat mitigated the softness in Puerto Rico. In addition, we successfully integrated the Hawaii Stevedores, Inc. and Aero Logistics acquisitions, which have been earnings and cash flow accretive since inception."

*"Looking ahead, we expect solid earnings growth in our core shipping business and expect to see increased momentum in our new logistics business as we continue to implement our growth strategy in 2008," Raymond said. "We believe we are well positioned to significantly grow earnings and free cash flow in 2008, despite the uncertain national economic outlook."*

*Based on current market conditions, the Company updated its earnings guidance for the full year 2008, with projections of operating revenue at \$1,345 - \$1,365 million, EBITDA at \$175 - \$185 million, and diluted earnings per share at \$2.01 - \$2.26. Free cash flow is projected at \$115 - \$125 million. [Emphasis added.]*

39. On February 6, 2008, Horizon Lines filed its Annual Report with the SEC on Form 10-K. The Company's 10-K was signed by the Defendants Raymond and Urbania, and reaffirmed the Company's financial results previously announced on February 1, 2008. The Company's 10-Q also contained Sarbanes-Oxley required certifications, substantially similar to the certifications contained in ¶ 28, *supra*.

40. On April 3, 2008, the Company issued a press release entitled, "Horizon Lines Announces Changes in Senior Management." Therein, the Company stated in relevant part:

Horizon Lines, Inc., the nation's leading domestic ocean shipping and integrated logistics company, announced today the promotion of Michael T. Avara to the position of Senior Vice President and Chief Financial Officer.

Mr. Avara, 49, has a strong record of leading financial organizations, having spent more than 20 years in various accounting and finance roles at CSX Corporation, Sea-Land Service Inc., and Horizon Lines. Since 1999, Mr. Avara has served as Controller for Sea-Land Service and CSX Lines, Assistant VP of Corporate Finance for CSX Corporation, and most recently as Vice President, Investor Relations and Treasurer of Horizon Lines. Mr. Avara also spent three years in public accounting with Coopers & Lybrand and is a certified public accountant. Mr. Avara received both a Master of Business Administration in Finance degree and Bachelor of Arts in Accounting from Loyola College in Baltimore, Maryland.

In his new role Mr. Avara will report to Charles G. Raymond, Chairman, President and Chief Executive Officer of the Corporation and will be a member of the Company's Executive Committee.

***Mr. Avara replaces M. Mark Urbania, who is departing Horizon Lines after four years of service as the Company's Chief Financial Officer.*** Mr. Urbania had previously been employed in senior finance positions with several operating units of private equity investor groups and he is leaving the Company to pursue other opportunities in this area.

***"Our Executive Committee and Board of Directors are pleased to have strong financial leadership at Horizon Lines that is appropriately prepared and able to manage through this change," said Mr. Raymond, Horizon Lines' Chief Executive Officer.*** "Mike Avara brings strong leadership skills and broad financial experience to his new role and I'm excited about the opportunity for Mike to take on this additional responsibility as our Chief Financial Officer. Mark Urbania has been a strong contributor to our solid performance as we emerged from private equity ownership to public company structure. We thank him for his many contributions and wish him every success in his new pursuits." [Emphasis added.]

41. The statements in ¶¶ 25 – 40 were materially false and/or misleading when made because defendants failed to disclose and/or indicate the following: (1) that Horizon Lines had engaged in a price-fixing scheme to set the prices of rates, surcharges, and other fees charged to its customers for Puerto Rico freight services, in violation of the laws of the United States; (2) that Horizon Lines' conduct, with respect to its price-fixing scheme, amounted to an unreasonable restraint of interstate and foreign trade and commerce; (3) that, as a result of

Defendants' conduct, Horizon Lines' publicly reported earnings and revenue had been artificially inflated due to illegal price-fixing activities; (4) that the Company lacked adequate internal and financial controls; (5) that, as a result of the foregoing, the Company's financial statements were materially false and misleading at all relevant times; and (6) that, as a result of the above, the Company's statements about its financial well-being and future business prospects were lacking in any reasonable basis when made.

### **The Truth Begins to Emerge**

42. On April 17, 2008, Horizon issued a press release entitled, "Horizon Lines Issues Statement on Antitrust Investigation." Therein, the Company disclosed, in relevant part:

*Horizon Lines has confirmed federal agents today served search warrants and a grand jury subpoena relating to an investigation of pricing practices of ocean carriers operating in the Puerto Rico trade.*

Horizon Lines is cooperating fully with the government officials. Horizon Lines has not been informed of the specific subject matter of the inquiry, being conducted by the U.S. Department of Justice's Antitrust Division.

Horizon Lines does not expect the government inquiry to impact the service levels provided to its customers. [Emphasis added.]

43. On this news, the Company's shares fell \$3.53 per share, or 19.36 percent, to close on April 17, 2008 at \$14.77 per share, on unusually heavy trading volume.

44. Then on April 25, 2008, the Company issued a press release entitled, "Horizon Lines Reports First Quarter 2008 Results." Therein, the Company stated, in relevant part:

*Horizon Lines today reported results for the first quarter ended March 23, 2008. Net income for the first quarter of 2008 was \$2.1 million or \$.07 per diluted share. This compares to net income for the first quarter of 2007 of \$7.1 million or \$.21 per diluted share on an unadjusted GAAP basis. After an adjustment to exclude a \$2.6 million deferred tax revaluation benefit, adjusted net income was \$4.5 million or \$.13 per diluted share in the first quarter of 2007.*

"In the first quarter of 2008, Horizon Lines continued to improve the strength and efficiency of its operations in the face of a number of macroeconomic challenges," said Chuck Raymond, Chairman, President and Chief Executive Officer of Horizon Lines "Reduced southbound volumes in Puerto Rico and extreme weather conditions in our otherwise robust Alaska trade offset the strength of the Hawaii market. Despite these challenges, we grew volumes from key customers and scored impressive wins in our logistics business. As reflected by our revenue growth and revenue per container, our business lines are fundamentally healthy and poised for future growth. While fuel prices in the quarter rose at a faster pace than anticipated, we were able to minimize their impact through reduced consumption and fuel cost recovery measures. We also continue to make vital investments in our terminal infrastructure and our EDGE program continues to achieve notable advances. Together, these efforts lay the groundwork for long-term growth and profitability."

## **Outlook**

*Mr. Raymond concluded, "The outlook for our Puerto Rico market in particular is somewhat softer than we had originally anticipated and fuel costs have continued to rise at unprecedented rates, impacting our profitability in the near-term.* While we will clearly face some economic challenges in 2008, we are actively taking all measures we can to control our cost base. We also remain focused on utilizing our solid cash flows to reinvest in our business, positioning the Company to continue providing the highest quality service to our customers, and taking advantage of the eventual rebound in our Puerto Rico market."

*Based on current market conditions, the Company updated its earnings guidance for the full year 2008, with projections of operating revenue at \$1,315 - \$1,350 million, EBITDA at \$145 - \$160 million, and diluted earnings per share at \$1.30 - \$1.69. Free cash flow is projected at \$72 - \$87 million. Financial guidance does not include the potential impact of the previously announced Puerto Rico pricing investigation, which cannot be estimated at this time.* [Emphasis added.]

45. On this news, the Company's shares fell an additional \$3.83 per share, or 23.1 percent, to close on April 25, 2008 at \$11.25 per share, on unusually heavy trading volume.

46. Subsequently, on May 30, 2008, Horizon Lines filed a current report with the SEC on Form 8-K. Therein, the Company stated, in pertinent part:

*As previously reported, on April 17, 2008, the Company was served with search warrants and a grand jury subpoena relating to an investigation by the U.S. Department of Justice of potential antitrust violations by ocean*

*carriers operating in the domestic trade. As a result of management's review of issues raised by this investigation, the Company placed six employees on administrative leave. Three of the six employees subsequently submitted their resignations to the Company. The Company intends to continue to fully cooperate with the Department of Justice in its investigation.* [Emphasis added.]

47. On October 1, 2008, the DOJ issued a release entitled "Four Shipping Executives Agree to Plead Guilty to Conspiracy to Eliminate Competition and Raise Prices for Moving Freight to and from the Continental U.S. and Puerto Rico – Fifth Executive Agrees to Plead Guilty to Destroying Evidence." Therein, the DOJ stated, in pertinent part:

*Four U.S. shipping company executives have agreed to plead guilty and serve jail sentences for their roles in a wide-ranging conspiracy to rig bids, fix prices and allocate market shares for customers transporting goods between the continental United States and Puerto Rico by ocean vessel, the Department of Justice announced today.* The Department also announced that a fifth shipping executive has agreed to plead guilty to destroying evidence of the shipping conspiracy. These are the first charges in the Antitrust Division's ongoing investigation into collusion in the coastal shipping industry.

*A one-count felony antitrust charge was filed today in U.S. District Court in Jacksonville, Fla., against each of the four shipping executives: Peter Baci of Jacksonville; Kevin Gill and Gregory Glova of Charlotte, N.C.; and Gabriel Serra of San Juan, Puerto Rico.* Under the terms of their plea agreements, each of the four executives has agreed to serve a jail term that will be determined by the court, pay a \$20,000 criminal fine and cooperate fully in the Department's ongoing antitrust investigation. The pleas, fines and jail sentences are subject to court approval.

A one-count felony obstruction of justice charge also was filed against a fifth shipping executive, Alexander Chisholm, of Jacksonville, who has agreed to plead guilty and serve jail time, subject to court approval.

*"We are committed to prosecuting executives who violate U.S. antitrust laws and harm consumers and competition in the United States,"* said Thomas O. Barnett, Assistant Attorney General in charge of the Department's Antitrust Division. "Acts of obstruction of justice threaten the ability of the Department to fully uncover and prosecute antitrust crimes, and we will pursue individuals who engage in obstruction with the same vigor as we pursue those who engage in the underlying criminal violations."

*The five executives charged today work for large U.S. companies that provide freight shipping services to customers transporting goods between the continental U.S. and Puerto Rico.* These companies transport a variety of cargo shipments, such as heavy equipment, medicines and consumer goods, on scheduled ocean voyages between the continental U.S. and Puerto Rico. The U.S. to Puerto Rico shipping lane is governed by the Jones Act, a portion of the Merchant Marine Act of 1920. The Jones Act dictates that any cargo being sent between two U.S. ports (including U.S. possessions and territories like Puerto Rico) must be on ships that were built in the U.S., owned by U.S. citizens, and fly the American flag. Sales of freight services in the U.S. to Puerto Rico shipping lane total hundreds of millions of dollars every year, as ocean shipping is a primary way for customers to move goods to and from the island of Puerto Rico.

*The four individuals charged with violating the federal antitrust laws have agreed to plead guilty for their roles in a conspiracy that began at least as early as May 2002 and continued until as late as April 2008, the object of which was to eliminate competition and raise prices for the movement of goods in the U.S. to Puerto Rico shipping lane. The Department charged that the executives sought to eliminate competition and raise prices by agreeing not to compete for one another's customers; agreeing to rig bids submitted to government and commercial buyers; and agreeing to fix the prices of rates, surcharges and other fees charged to customers.*

*Baci, Gill, Glova and Serra are each charged with violating the Sherman Act, which carries a maximum sentence of 10 years imprisonment and fines of \$1 million for individuals.* The maximum fine may be increased to twice the gain derived from the crime or twice the loss suffered by the victims of the crime, if either of those amounts is greater than the statutory maximum fine.

Chisholm has agreed to plead guilty for his conduct in obstructing the Department of Justice's investigation of the shipping conspiracy. The charge alleges he destroyed documents on a computer server that were material to the coastal shipping grand jury investigation and responsive to a grand jury subpoena. He faces a maximum sentence of 20 years imprisonment and a fine of \$250,000. [Emphasis added.]

48. Also on October 1, 2008, the Company issued a press release entitled, "Horizon Lines Responds to Department of Justice Announcement." Therein, the Company stated, in relevant part:

Today the U.S. Department of Justice announced that four individuals have agreed to plead guilty for their involvement in a conspiracy to eliminate competition and raise prices for moving freight between the Continental U.S. and Puerto Rico. A fifth shipping executive has agreed to plead guilty to destroying evidence of the shipping conspiracy. *Three of the individuals,*

*Gabriel Serra, Kevin Gill and Gregory Glova, are former Horizon Lines managers, and have agreed to plead guilty, serve time in jail, pay criminal fines and cooperate fully with the Department's ongoing antitrust investigation.* [Emphasis added.]

### **PLAINTIFF'S CLASS ACTION ALLEGATIONS**

49. Plaintiff brings this action as a class action pursuant to Federal Rule of Civil Procedure 23(a) and (b)(3) on behalf of a Class, consisting of all those who purchased Horizon Lines' securities between March 2, 2007 and April 25, 2008 inclusive (the "Class Period") and who were damaged thereby. Excluded from the Class are defendants, the officers and directors of the Company, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

50. The members of the Class are so numerous that joinder of all members is impracticable. Throughout the Class Period, Horizon Lines' securities were actively traded on the New York Stock Exchange ("NYSE"). While the exact number of Class members is unknown to Plaintiff at this time and can only be ascertained through appropriate discovery, Plaintiff believes that there are hundreds or thousands of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Horizon Lines or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

51. Plaintiff's claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

52. Plaintiff will fairly and adequately protect the interests of the members of the Class and has retained counsel competent and experienced in class and securities litigation.

53. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

- (a) whether the federal securities laws were violated by defendants' acts as alleged herein;
- (b) whether statements made by defendants to the investing public during the Class Period misrepresented material facts about the business, operations and management of Horizon Lines; and
- (c) to what extent the members of the Class have sustained damages and the proper measure of damages.

54. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracticable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

#### **UNDISCLOSED ADVERSE FACTS**

55. The market for Horizon Lines' securities was open, well-developed and efficient at all relevant times. As a result of these materially false and misleading statements, and failures to disclose, Horizon Lines' securities traded at artificially inflated prices during the Class Period. Plaintiff and other members of the Class purchased or otherwise acquired Horizon Lines' securities relying upon the integrity of the market price of Horizon Lines' securities and market information relating to Horizon Lines, and have been damaged thereby.

56. During the Class Period, defendants materially misled the investing public, thereby inflating the price of Horizon Lines' securities, by publicly issuing false and misleading statements and omitting to disclose material facts necessary to make defendants' statements, as set forth herein, not false and misleading. Said statements and omissions were materially false and misleading in that they failed to disclose material adverse information and misrepresented the truth about the Company, its business and operations, as alleged herein.

57. At all relevant times, the material misrepresentations and omissions particularized in this Complaint directly or proximately caused or were a substantial contributing cause of the damages sustained by Plaintiff and other members of the Class. As described herein, during the Class Period, defendants made or caused to be made a series of materially false or misleading statements about Horizon Lines' financial well-being, business relationships, and prospects. These material misstatements and omissions had the cause and effect of creating in the market an unrealistically positive assessment of Horizon Lines and its financial well-being, business relationships, and prospects, thus causing the Company's securities to be overvalued and artificially inflated at all relevant times. Defendants' materially false and misleading statements during the Class Period resulted in Plaintiff and other members of the Class purchasing the Company's securities at artificially inflated prices, thus causing the damages complained of herein.

### **LOSS CAUSATION**

58. The defendants' wrongful conduct, as alleged herein, directly and proximately caused the economic loss suffered by Plaintiff and the Class.

59. During the Class Period, Plaintiff and the Class purchased Horizon Lines' securities at artificially inflated prices and were damaged thereby. The price of Horizon Lines'

securities significantly declined when the misrepresentations made to the market, and/or the information alleged herein to have been concealed from the market, and/or the effects thereof, were revealed, causing investors' losses.

### **SCIENTER ALLEGATIONS**

60. As alleged herein, defendants acted with scienter in that defendants knew that the public documents and statements issued or disseminated in the name of the Company were materially false and misleading; knew that such statements or documents would be issued or disseminated to the investing public; and knowingly and substantially participated or acquiesced in the issuance or dissemination of such statements or documents as primary violations of the federal securities laws. As set forth elsewhere herein in detail, defendants, by virtue of their receipt of information reflecting the true facts regarding Horizon Lines, their control over, and/or receipt and/or modification of Horizon Lines' allegedly materially misleading misstatements and/or their associations with the Company which made them privy to confidential proprietary information concerning Horizon Lines, participated in the fraudulent scheme alleged herein.

61. Additionally, during the Class Period, and with the Company's securities trading at artificially inflated prices, Company insiders sold 313,052 shares of the Company's stock for gross proceeds of \$9,045,396, including \$2,897,619 in gross proceeds received by the Individual Defendants. This trading by Company insiders is evidenced by the following chart:

<b>Date of Trade</b>	<b>Inside Trader</b>	<b>Number of Shares</b>	<b>Price per Share</b>	<b>Gross Proceeds</b>
April 21, 2008	Keenan John V	3,000	\$14.00	\$42,000
April 10, 2008	Privratsky Kenneth L	1,000	\$18.11	\$18,110
March 31, 2008	Raymond Charles G	6,000	\$18.60	\$111,600
March 24, 2008	Keenan John V	3,000	\$18.88	\$56,640
March 10, 2008	Privratsky Kenneth L	1,000	\$17.97	\$17,970

February 29, 2008	Raymond Charles G	6,000	\$20.18	\$121,080
February 22, 2008	Keenan John V	3,000	\$21.24	\$63,719
February 11, 2008	Privratsky Kenneth L	1,000	\$22.94	\$22,940
January 29, 2008	Raymond Charles G	6,000	\$18.91	\$113,460
January 23, 2008	Keenan John V	3,000	\$17.98	\$53,940
January 10, 2008	Privratsky Kenneth L	1,000	\$16.25	\$16,250
December 31, 2007	Raymond Charles G	6,000	\$18.56	\$111,359
December 21, 2007	Keenan John V	3,000	\$19.08	\$57,239
December 10, 2007	Privratsky Kenneth L	1,000	\$18.28	\$18,280
November 29, 2007	Raymond Charles G	6,000	\$20.02	\$120,120
November 21, 2007	Keenan John V	3,000	\$20.02	\$60,060
November 15, 2007	Serra Gabriel M	650	\$27.01	\$18,000
November 12, 2007	Privratsky Kenneth L	1,000	\$26.62	\$26,620
November 7, 2007	Down James W	853	\$29.32	\$25,009
November 5, 2007	Urbanian M Mark	3,000	\$30.00	\$90,000
October 29, 2007	Raymond Charles G	6,000	\$31.52	\$189,000
October 19, 2007	Keenan John V	3,000	\$32.82	\$98,000
October 15, 2007	Serra Gabriel M	650	\$32.93	\$21,000
October 10, 2007	Privratsky Kenneth L	1,000	\$31.36	\$31,000
October 9, 2007	Urbanian M Mark	3,000	\$31.58	\$95,000
October 1, 2007	Raymond Charles G	6,000	\$30.98	\$186,000
September 24, 2007	Keenan John V	3,000	\$28.57	\$86,000
September 17, 2007	Serra Gabriel M	650	\$25.99	\$17,000
September 10, 2007	Privratsky Kenneth L	1,000	\$26.79	\$27,000
September 5, 2007	Urbanian M Mark	3,000	\$27.49	\$82,000
August 29, 2007	Raymond Charles G	6,000	\$27.51	\$165,000
August 22, 2007	Keenan John V	3,000	\$29.85	\$90,000
August 10, 2007	Urbanian M Mark	3,000	\$26.40	\$79,000
August 10, 2007	Privratsky Kenneth L	1,000	\$26.74	\$27,000
July 30, 2007	Raymond Charles G	6,000	\$28.67	\$172,000
July 23, 2007	Keenan John V	3,000	\$35.75	\$107,000
July 10, 2007	Privratsky Kenneth L	1,000	\$33.06	\$33,000

July 5, 2007	Urbania M Mark	3,000	\$33.78	\$101,000
June 29, 2007	Raymond Charles G	6,000	\$32.96	\$198,000
June 21, 2007	Keenan John V	3,000	\$32.91	\$99,000
June 11, 2007	Privratsky Kenneth L	1,000	\$33.39	\$33,000
June 5, 2007	Urbania M Mark	3,000	\$34.24	\$103,000
May 29, 2007	Raymond Charles G	6,000	\$33.46	\$201,000
May 21, 2007	Keenan John V	3,000	\$32.11	\$96,000
May 16, 2007	Cameron James G	25,200	\$32.84	\$828,000
May 15, 2007	Cameron James G	14,800	\$33.01	\$489,000
May 10, 2007	Privratsky Kenneth L	1,000	\$33.12	\$33,000
May 7, 2007	Urbania M Mark	3,000	\$33.87	\$102,000
April 30, 2007	Raymond Charles G	6,000	\$34.23	\$205,000
April 23, 2007	Keenan John V	3,000	\$33.54	\$101,000
April 10, 2007	Privratsky Kenneth L	1,000	\$33.47	\$33,000
April 5, 2007	Urbania M Mark	3,000	\$32.88	\$99,000
March 29, 2007	Raymond Charles G	6,000	\$32.78	\$197,000
March 21, 2007	Keenan John V	3,000	\$31.71	\$95,000
March 21, 2007	Privratsky Kenneth L	19,100	\$31.72	\$606,000
March 20, 2007	Privratsky Kenneth L	28,400	\$31.67	\$899,000
March 16, 2007	Zuckerman Robert S	23,749	\$30.00	\$712,000
March 14, 2007	Jungers Francis	2,000	\$28.99	\$58,000
March 7, 2007	Castle John K	40,000	\$27.19	\$1,088,000
	<b>TOTALS:</b>	<b>313,052</b>		<b>\$9,045,396</b>

**Applicability of Presumption of Reliance:  
Fraud On The Market Doctrine**

62. At all relevant times, the market for Horizon Lines' securities was an efficient market for the following reasons, among others:

- (a) Horizon Lines' securities met the requirements for listing, and were listed and actively traded on the NYSE, a highly efficient and automated market;
- (b) As a regulated issuer, Horizon Lines filed periodic public reports with the SEC and the NYSE;
- (c) Horizon Lines regularly communicated with public investors via established market communication mechanisms, including through regular

disseminations of press releases on the national circuits of major newswire services and through other wide-ranging public disclosures, such as communications with the financial press and other similar reporting services; and

- (d) Horizon Lines was followed by several securities analysts employed by major brokerage firms who wrote reports which were distributed to the sales force and certain customers of their respective brokerage firms. Each of these reports was publicly available and entered the public marketplace.

63. As a result of the foregoing, the market for Horizon Lines' securities promptly digested current information regarding Horizon Lines from all publicly-available sources and reflected such information in the price of Horizon Lines' securities. Under these circumstances, all purchasers of Horizon Lines' securities during the Class Period suffered similar injury through their purchase of Horizon Lines' securities at artificially inflated prices and a presumption of reliance applies.

#### **NO SAFE HARBOR**

64. The statutory safe harbor provided for forward-looking statements under certain circumstances does not apply to any of the allegedly false statements pleaded in this Complaint. Many of the specific statements pleaded herein were not identified as "forward-looking statements" when made. To the extent there were any forward-looking statements, there were no meaningful cautionary statements identifying important factors that could cause actual results to differ materially from those in the purportedly forward-looking statements. Alternatively, to the extent that the statutory safe harbor does apply to any forward-looking statements pleaded

herein, defendants are liable for those false forward-looking statements because at the time each of those forward-looking statements was made, the particular speaker knew that the particular forward-looking statement was false, and/or the forward-looking statement was authorized and/or approved by an executive officer of Horizon Lines who knew that those statements were false when made.

**FIRST CLAIM**  
**Violation of Section 10(b) of**  
**The Exchange Act and Rule 10b-5**  
**Promulgated Thereunder Against All Defendants**

65. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

66. During the Class Period, defendants carried out a plan, scheme and course of conduct which was intended to and, throughout the Class Period, did: (i) deceive the investing public, including Plaintiff and other Class members, as alleged herein; and (ii) cause Plaintiff and other members of the Class to purchase Horizon Lines' securities at artificially inflated prices. In furtherance of this unlawful scheme, plan and course of conduct, defendants, and each of them, took the actions set forth herein.

67. The defendants (i) employed devices, schemes, and artifices to defraud; (ii) made untrue statements of material fact and/or omitted to state material facts necessary to make the statements not misleading; and (iii) engaged in acts, practices, and a course of business which operated as a fraud and deceit upon the purchasers of the Company's securities in an effort to maintain artificially high market prices for Horizon Lines securities in violation of Section 10(b) of the Exchange Act and Rule 10b-5. All defendants are sued either as primary participants in the wrongful and illegal conduct charged herein or as controlling persons as alleged below.

68. The defendants, individually and in concert, directly and indirectly, by the use,

means or instrumentalities of interstate commerce and/or of the mails, engaged and participated in a continuous course of conduct to conceal adverse material information about Horizon Lines' financial well-being, business relationships, and prospects, as specified herein.

69. These defendants employed devices, schemes and artifices to defraud, while in possession of material adverse non-public information and engaged in acts, practices, and a course of conduct as alleged herein in an effort to assure investors of Horizon Lines' value and performance and continued substantial growth, which included the making of, or the participation in the making of, untrue statements of material facts and omitting to state material facts necessary in order to make the statements made about Horizon Lines and its business operations and future prospects in light of the circumstances under which they were made, not misleading, as set forth more particularly herein, and engaged in transactions, practices and a course of business which operated as a fraud and deceit upon the purchasers of Horizon Lines' securities during the Class Period.

70. Each of the Individual Defendants' primary liability, and controlling person liability, arises from the following facts: (i) the Individual Defendants were high-level executives and/or directors at the Company during the Class Period and members of the Company's management team or had control thereof; (ii) each of these defendants, by virtue of their responsibilities and activities as a senior officer and/or director of the Company, was privy to and participated in the creation, development and reporting of the Company's internal budgets, plans, projections and/or reports; (iii) each of these defendants enjoyed significant personal contact and familiarity with the other defendants and was advised of, and had access to, other members of the Company's management team, internal reports and other data and information about the Company's finances, operations, and sales at all relevant times; and (iv) each of these defendants

was aware of the Company's dissemination of information to the investing public which they knew or recklessly disregarded was materially false and misleading.

71. The defendants had actual knowledge of the misrepresentations and omissions of material facts set forth herein, or acted with reckless disregard for the truth in that they failed to ascertain and to disclose such facts, even though such facts were available to them. Such defendants' material misrepresentations and/or omissions were done knowingly or recklessly and for the purpose and effect of concealing Horizon Lines' financial well-being, business relationships, and prospects from the investing public and supporting the artificially inflated price of its securities. As demonstrated by defendants' overstatements and misstatements of the Company's financial well-being, business relationships, and prospects throughout the Class Period, defendants, if they did not have actual knowledge of the misrepresentations and omissions alleged, were reckless in failing to obtain such knowledge by deliberately refraining from taking those steps necessary to discover whether those statements were false or misleading.

72. As a result of the dissemination of the materially false and misleading information and failure to disclose material facts, as set forth above, the market price of Horizon Lines' securities was artificially inflated during the Class Period. In ignorance of the fact that market prices of Horizon Lines' securities were artificially inflated, and relying directly or indirectly on the false and misleading statements made by defendants, or upon the integrity of the market in which the securities trades, and/or in the absence of material adverse information that was known to or recklessly disregarded by defendants, but not disclosed in public statements by defendants during the Class Period, Plaintiff and the other members of the Class acquired Horizon Lines' securities during the Class Period at artificially high prices and were damaged thereby.

73. At the time of said misrepresentations and omissions, Plaintiff and other members

of the Class were ignorant of their falsity, and believed them to be true. Had Plaintiff and the other members of the Class and the marketplace known the truth regarding the problems that Horizon Lines was experiencing, which were not disclosed by defendants, Plaintiff and other members of the Class would not have purchased or otherwise acquired their Horizon Lines securities, or, if they had acquired such securities during the Class Period, they would not have done so at the artificially inflated prices which they paid.

74. By virtue of the foregoing, defendants have violated Section 10(b) of the Exchange Act and Rule 10b-5 promulgated thereunder.

75. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and the other members of the Class suffered damages in connection with their respective purchases and sales of the Company's securities during the Class Period.

**SECOND CLAIM**  
**Violation of Section 20(a) of**  
**The Exchange Act Against the Individual Defendants**

76. Plaintiff repeats and realleges each and every allegation contained above as if fully set forth herein.

77. The Individual Defendants acted as controlling persons of Horizon Lines within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their high-level positions, and their ownership and contractual rights, participation in and/or awareness of the Company's operations and/or intimate knowledge of the false financial statements filed by the Company with the SEC and disseminated to the investing public, the Individual Defendants had the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading. The Individual Defendants were

provided with or had unlimited access to copies of the Company's reports, press releases, public filings and other statements alleged by Plaintiff to be misleading prior to and/or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

78. In particular, each of these defendants had direct and supervisory involvement in the day-to-day operations of the Company and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same.

79. As set forth above, Horizon Lines and the Individual Defendants each violated Section 10(b) and Rule 10b-5 by their acts and omissions as alleged in this Complaint. By virtue of their positions as controlling persons, the Individual Defendants are liable pursuant to Section 20(a) of the Exchange Act. As a direct and proximate result of defendants' wrongful conduct, Plaintiff and other members of the Class suffered damages in connection with their purchases of the Company's securities during the Class Period.

**WHEREFORE**, Plaintiff prays for relief and judgment, as follows:

- (a) Determining that this action is a proper class action under Rule 23 of the Federal Rules of Civil Procedure;
- (b) Awarding compensatory damages in favor of Plaintiff and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;
- (c) Awarding Plaintiff and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees; and

(d) Such other and further relief as the Court may deem just and proper.

**JURY TRIAL DEMANDED**

Plaintiff hereby demands a trial by jury.

Dated: January 26, 2009

Respectfully submitted,

By: \_\_\_\_\_

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