



Court Dismisses Demurrage Claim Against NVOCC Identified as Agent on Bill of Lading

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As many non-vessel operating common carriers (NVOCCs) are aware, carriers have recently escalated their efforts to recover demurrage claims against shippers and NVOCCs. Indeed, it appears that many carriers have come to view demurrage claims as profit centers in an otherwise difficult ocean transportation environment. In such an environment, it is important for NVOCCs to protect against potentially catastrophic demurrage claims that may accrue for which recovery is sought against them.

We recently successfully defended against a demurrage claim by Mediterranean Shipping Company (MSC) in an instance where the NVOCC was identified on some of the bills of lading at issue as agent for the shipper. In *Mediterranean Shipping Company v. American Cargo Shipping Lines, Inc.*, 13 cv-6357 (ER) (S.D. N.Y. 2013), MSC sued American Cargo Shipping for demurrage claims in excess of \$240,000 that accrued when containers were held up by Indian Customs. On three of the four bills of lading at issue, American Cargo was identified “as agent for” the shipper. In those instances, the named shipper was another NVOCC.

We sought to dismiss MSC’s demurrage claims on the grounds that one who acts in the capacity as an agent for disclosed principal is not liable for claims arising out of a contract executed by the agent on behalf of its principal. Thus, because American Cargo was identified as the agent of the shipper on the bill of lading, it could not be held liable for demurrage and other freight charges.

MSC, relying upon prior cases which it had brought seeking demurrage claims, argued that the booking confirmations, rather than the bills of lading, established the relationship between the parties. It argued that because the booking confirmations identified American Cargo as the shipper, rather than the agent for the shipper, American Cargo could be sued for demurrage charges. MSC further asserted that American Cargo, even if it was acting as an agent for a disclosed principal, fell within the expansive definition of “Merchant” set forth under the terms and conditions of MSC’s bill of lading.

The district court rejected both of MSC’s arguments. First, the court held that the booking agreements, while referencing the terms and conditions of the bill of lading, did not incorporate the bills of lading terms and conditions. Thus, the contract between MSC and

American Cargo did not become final until the bills of lading were issued. Accordingly, American Cargo was acting as an agent for disclosed principal with respect to the three bills of lading at issue.

The court also rejected MSC's argument that American Cargo fell within the definition of Merchant under the terms of the bill of lading. The court held, as addressed above, that American Cargo was not identified as the Shipper on the bill of lading, nor was it expressly alleged to be acting on behalf of a person owning, entitled to, or claiming possession of the goods. Accordingly, dismissal of the claims in which American Cargo was identified as the agent of the shipper was warranted.

Defense of demurrage claims often turn upon the specific words appearing on the face of the bill of lading, as well as the carrier's terms and conditions. Please feel free to contact us if you want to discuss how best to protect against demurrage claims and/or to minimize the size of such claims. If such claims are asserted, a vigorous legal defense can protect against claims that can potentially cripple your company.

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