



Defending Demurrage Claims – Does the Carrier’s Tariff Contain the Proper Surcharge Provisions

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Carriers continue to pursue demurrage and detention claims against shippers and NVOCCs. Indeed, it appears that many carriers view demurrage and detention claims as profit centers in an otherwise difficult ocean transportation environment. In such an environment, it is important for NVOCCs to recognize that there are a variety of defenses against such potentially catastrophic demurrage and detention claims for which recovery is sought against them.

We previously had success in defending against a demurrage claim brought by Mediterranean Shipping Company (MSC) in an instance where the defendant was identified on some of the bills of lading at issue as agent for the shipper. *Mediterranean Shipping Company v. American Cargo Shipping Lines, Inc.*, 13 cv-6357 (ER) (S.D. N.Y. 2013). In addition to that defense, and as particularly relevant here, we have been successful in defending against such claims on the grounds that the demurrage claims being sought were inconsistent with the carrier’s tariff. Indeed, in one case the VOCC actually paid refunds to our client because it had been charging more for demurrage and detention than the rates set forth in its tariff.

The Shipping Act of 1984, 46 U.S.C. § 40101 , *et. seq.*, requires that the rates and surcharges billed to shippers, including demurrage and detention, be published in the carrier’s tariff. Oftentimes, shippers and NVOCCs assume that such surcharges are reflected in the carrier’s tariff. That is not always the case, however. Indeed, an audit of the carrier’s tariffs may reflect that the freight rates and surcharges for which the shipper is being invoiced are higher than the rates set forth in the tariff, or in some instances, that the tariff does not include any provisions whatsoever for collecting demurrage and other surcharges. Under those circumstances, not only is the failure of the carrier to comply with the Shipping Act a defense to the claim being sought, it may provide a basis for recovering payments previously made to the carrier. (Timely recognition of these overcharges is important because of the three year limitation period for recovering such claims under the Shipping Act.)

Defense of demurrage and detention claims may turn upon a variety of issues, including but not limited to, the language appearing on the face of the bill of lading, the carrier’s terms and conditions, and whether the carrier’s tariff provisions are consistent with the charges being

assessed. 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. Further, an audit of the carrier's tariff provisions may reflect that you have been overcharged by the carrier and are entitled to a substantial refund.

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