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GKG Law Wins a Major Victory for NVOCCs

GKG Law has won a major legal victory in a decision just issued by the United States Court of Appeals for the Third Circuit in the case of *World Imports Ltd. v. OEC Group New York,* This decision upholds a broad lien clause used by an NVOCC in its bill of lading, credit agreement and standard terms and conditions. The Court's decision resulted from the efforts of Brendan Collins and David Street of GKG Law and will provide a powerful tool for NVOCCs with the appropriate documentation to collect past due charges from their customers for shipments that have already been delivered.

The case arose in a bankruptcy proceeding initiated by World Imports, Ltd., an importer of furniture. At the time of its bankruptcy, World Imports owed one of GKG Law's NVOCC clients $1,452,956.00 for freight and logistics charges for shipments that were in the NVOCC's possession at the time, as well as for previous shipments handled by the NVOCC that had already been delivered. In the bankruptcy court, the NVOCC claimed that it was a secured creditor for the entire amount owed because of language in its tariff, its terms and conditions, and its credit agreement with World Imports extending its maritime lien on the goods in its possession for money owed on those goods and money owed for previous shipments. Because the goods in the NVOCC's possession at the time of the bankruptcy were worth considerably more than World Imports' debt, the NVOCC asserted that it was fully secured for the money owed.

World Imports admitted that the NVOCC's lien on the goods in its possession secured the charges due on those shipments, but asserted that, notwithstanding the language in the NVOCC's documentation, the lien did not cover the charges owed on the shipments that had already been delivered in the past. World Imports argued that the NVOCC had waived its liens on the prior shipments and that, in any event, maritime liens cannot be broadened or extended by contract, even if the shipper and carrier agree to do so. The bankruptcy court agreed with World Imports and ordered the NVOCC to give up possession of the goods. GKG Law appealed the bankruptcy court's decision to the U.S. District Court, which issued an opinion agreeing with the bankruptcy court that the NVOCC's lien did not extend to the money owed by World Imports for the previous shipments. GKG Law then appealed to the Third Circuit Court of Appeals.

The Circuit Court issued a unanimous decision on April 20, 2016 reversing the lower courts. In its opinion, the Appeals Court made clear that there is a strong presumption that carriers do not waive their maritime liens and that, in this case, the clear documentation showed that GKG Law's client had not waived its lien on the previous shipments. The Court also held, based on the Supreme Court decision in *The Bird of Paradise* (1866), that maritime liens can be modified or extended by contract, including contracts in bills of lading. And, because the NVOCC's documents were clear that its maritime lien on the goods in its possession extended to the World Imports debts for the shipments that had already been released, the Court ordered the lower courts to grant the NVOCC's status as a secured creditor for the entire $1,452,956.00 owed by World Imports.

The Third Circuit's decision has clarified what had been, up to now, a murky area of the law. It is clear now that NVOCCs can protect themselves when they release cargo to a customer on credit by maintaining a lien on that customer's future shipments for the charges owed. At the same time – and as the Third Circuit recognized – "OEC's contractually modified lien further promotes commerce over a series of transactions by ensuring that the carrier can retain its secured claims in an ongoing business relationship." Thus, there are benefits for the customers as well who will likely find carriers more willing to enter into credit agreements for a team of continuing shipments.

This is a significant victory for NVOCCs who wish to secure charges owed by their customers for cargo they release on credit. As the Court made clear in its opinion, it is important that NVOCCs have the right documentation in place to achieve this result. We would be happy to review your documents to make sure you have the appropriate language as approved by the Court. Please feel free to contact us for this purpose or if you have any other questions about this case and what it could mean for you.

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