



GKG LAW WINS MAJOR VICTORY FOR NVOCCS

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In a case handled by GKG Law, the United States Court of Appeals for the Third Circuit recently held that contracts extending a non-vessel operating common carrier's (NVOCC's) common law maritime liens are enforceable as written. The decision is a major victory for NVOCCs and reinforces the benefit to carriers of utilizing expansive lien language in their tariffs, bills of lading and credit agreements with shippers.

On April 20, 2016, the Third Circuit in *In re World Imports Ltd. (World Imports, Ltd. v. OEC Group New York)*, 15-1498 (3d Cir. 2016), issued an Opinion holding that contractual modifications to common law maritime liens are enforceable. The dispute between the parties turned on the question of whether a carrier could enforce a lien up to the value of cargo in its possession for freight owed not only on the shipments at issue but for prior shipments handled by the carrier as well. Both the bankruptcy court and the district court held that the NVOCC could not do so because the carrier's lien rights were waived when it released cargo associated with the prior shipments. In reversing those lower court decisions, the Third Circuit relied upon the Supreme Court's decision in *Bird of Paradise*, 72 U.S. 545 (1866), which recognized that while ordinarily a cargo lien is lost upon delivery, where the parties extend the lien by contract, the lien is enforceable as written. Thus, because OEC, the NVOCC, had included language in its credit application, its tariff, and the terms and conditions of its bills lading, providing it with a continuing lien on property of the customer with regard to the shipments on which the lien was claimed and "prior shipments," and because those documents spelled out that the liens survived delivery, OEC's maritime liens were enforceable up to the value of the goods.

In holding that this contractual extension of the traditional maritime lien is enforceable, the Third Circuit recognized that policy concerns articulated by the shipper did not compel a different result. Specifically, the court held that any risk to third parties was alleviated by the fact that these liens were reflected in the carrier's tariff so they had actual notice of the risk. In addition, the court recognized that its ruling promotes maritime trade because absent providing such protections to carriers, carriers would not take the risk of transporting cargo without being paid in full for all prior shipments. Finally, the court recognized that its holding was consistent with parties' right to frame the terms of their contracts as they desire. "In sum, we do not think the policy concerns roused by World Imports and accepted by the Bankruptcy Court and District Court are sufficient to either outweigh the benefit to commerce of allowing two sophisticated businesses to contract to a mutually agreeable transportation and credit

arrangement, or to curtail the broad contractual freedom the *Bird of Paradise* on its face allows.”

The Third Circuit’s Opinion constitutes an important victory for NVOCCs seeking to protect their maritime lien rights. It also highlights the importance of having language in the transportation documents asserting a lien for sums due on both past and present transportation services and the need to make clear that the lien rights have not been waived for previous shipments. We would be happy to provide assistance in framing such language.

Please let us know if you have any questions regarding these issues. Brendan Collins can be reached by telephone at 202.342.6793 or by email at bcollins@gkglaw.com.