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**OVERCHARGED TRUCKERS CASE AGAINST OCEAN CARRIERS ADVANCES PER
JUDGE'S RULING**

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On November 18, 2020, an Administrative Law Judge with the Federal Maritime Commission ("FMC") denied a motion to dismiss filed by the Ocean Carriers Equipment Management Association ("OCEMA") with respect to an action filed against it by the Intermodal Motor Carriers Conference of the American Trucking Association, Inc. ("IMCC"). In the action, the IMCC alleges that the OCEMA and eleven other international ocean carriers violated the Shipping Act of 1984 by, among other things, inflating prices and overcharging truckers for the use of intermodal chassis at dozens of ports throughout the United States. The IMCC Complaint further alleges that the defendants' actions have cost the trucking industry over \$1.8 billion in damages.

In her eight-page decision ruling on the motion to dismiss, Administrative Law Judge Erin Wirth wrote that IMCC had alleged sufficient facts in its Complaint to proceed with its action against the OCEMA and the other international ocean carrier defendants. The Judge stated that "[t]he complaint makes sufficient factual allegations to plausibly allege a violation of the Shipping Act." She also wrote that the "[IMCC] will need to further develop and establish the factual basis supporting its complaint and must demonstrate that the facts support finding a violation of the Shipping Act. At this stage of the proceeding, however, [IMCC] has plausibly alleged its claim and will be permitted to move forward."

In its motion to dismiss filed with the FMC, the OCEMA had argued that ocean carriers should be "free to structure their relationships with shippers and chassis providers as they see fit." OCEMA also took the position in its motion papers that the FMC was not the proper legal forum for IMCC's alleged claims as the FMC's jurisdiction did not apply to transportation activities between trucking companies and ocean carriers. Judge Wirth stated in her ruling, however, that the OCEMA did not make a strong enough case for dismissal of the IMCC action. Judge Wirth noted that "[t]he complaint alleges that OCEMA and CCM are agents or conferences of common carriers subject to Commission jurisdiction. [OCEMA and the other defendant ocean carriers] have not provided Commission case law to support their argument that Section 41102(c) applies only to the activities of individual common carriers but not to agents or conferences of common carriers"

CCM is the Consolidated Chassis Management pool, which was formed in 2005 to address "industry needs to develop a more efficient model for operating chassis." Section 41102(c) is a part of the Federal Code that relates to obtaining transportation at less than applicable rates, and it says: "[a] person may not knowingly and willfully, directly or indirectly, by means of false billing, false classification, false weighing, false report of weight, false measurement, or any other unjust or unfair device or means, obtain or attempt to obtain ocean transportation for property at less than the rates or charges that would otherwise apply."

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Judge Wirth further wrote, “[a]ccepting the allegations in the complaint as true, [IMCC] sufficiently alleges a plausible basis for jurisdiction over the OCEMA and CCM. Accordingly, the Complaint will not be dismissed against OCEMA and CCM.” The Judge added, “[e]ven if OCEMA and CCM were dismissed as defendants to the action, the case would continue against the individually named ocean carriers.”

Prior to its filing of the Complaint, the IMCC had announced that it was displeased with the leasing arrangements for chassis at ports and suggested legal action could follow if the situation was not properly addressed. At most major ports, ocean shipping companies have historically controlled the chassis leasing business under the Uniform Intermodal Interchange and Facilities Access Agreement, which is administered by a 10-member group of industry representatives. At these ports, trucking companies are directed toward chassis available for rent, and the rates being charged.

The IMCC alleged that trucking companies were being overcharged for chassis and that shipping companies also were leasing inferior and outdated equipment to the truckers. In May, 2020, IMCC issued a specific warning to the OCEMA that the situation had to be addressed immediately, and the two sides began negotiations in an attempt to reach a business resolution. After weeks of negotiations, discussions between the parties concluded with no agreement being reached, and the action with the FMC was subsequently filed by the IMCC.

Our Firm’s Trucking and Logistics Group members will provide updates on any developments that take place in this action over the upcoming months. In the meantime, we are happy to address any questions that our clients and any trucking and logistics firms may have as to any excess charges that they may have incurred for the use of intermodal chassis.

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