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OTI MONTHLY RISK MANAGEMENT ALERT
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New York/New Jersey Foreign Freight Forwarders & Brokers Association, Inc.

The Landstar Case.

The Federal Maritime Commission issued an Order served November 6, 2009 (Docket No. 06-08) granting a Petition for Declaratory Order that substantially changes the regulatory structure and the way ocean freight forwarders and NVOCCs can do business. The Order was triggered by a decision of the D.C. U.S. Court of Appeals which basically decided that the FMC cannot require agents of OTIs in the United States to be licensed. The following are the highlights of the Order, and some comments on what impact it may have on the OTI industry.

Comments.

- a. **What OTI activities are covered?** The Order would allow OTIs (both forwarders and NVOCCs) to enter relationships with non-licensed companies or individuals to perform any and all OTI services (without limitation as to the type of activity) on behalf of the licensed OTI. This will encourage “franchise” type operations which may be beneficial (more cost effective than branch offices) for smaller and mid-sized companies to open operations across the U.S.
- b. **How should the “agency” be structured?** The Order does emphasize that the agency relationship must act on behalf of a **disclosed** licensed OTI. Therefore, the regulatory concern here is that these relationships best be formalized with an agreement with “do’s and don’ts” which clearly spell out the relationship and establishes controls by the OTI over the agents. The OTI becomes fully responsible for the acts of its agent under traditional agency law principles. This structure does increase risks and the OTI must manage it.
- c. **Are bonds required for agents?** At this juncture, there is no bond requirement from the FMC for agents, only for branches. It definitely puts those OTIs with branches who have the burden of providing bonds for their branches at a disadvantage. Secondly, claimants against NVOCC bonds are restricted to the bonds of the OTI. Since agent activity does not require additional bond coverage, claimants are restricted to the OTIs existing bonds. It appears that the FMC may later determine that the public interest requires that agents’ activities be bonded by the OTI. Ironically, Team Ocean Services, Inc., the NVO which petitioned the FMC for this Order, has publicly expressed that it will require bonds for its agents, whether or not the FMC requires such bonds. It appears that the market place may dictate this.
- d. **Will Agents Impact Licensing of OTIs?** This might have an impact on the number of new applicants for OTI licenses since a firm can become an agent instantly while currently license applications are a time consuming undertaking since applications are at record peaks at this time.

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