

Federal Maritime Commission Highlights Uptick in Enforcement

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On August 4, 2015, the U.S. Federal Maritime Commission issued a press release highlighting the collection of \$1.3 million in penalty payments from six non-vessel owning common carriers (NVOCCs) and one vessel-owning common carrier (VOCC). In the charge against the VOCC, Commission staff asserted that the VOCC had unlawfully rebated to an NVOCC an “administrative fee” not identified in the contract and for which no services were provided and that the VOCC had provided transportation not otherwise in accordance with its tariff. In the NVOCC cases, Commission staff alleged that:

- NVOCCs obtained transportation at less than the applicable rate by improperly utilizing “named accounts” in service contracts and through the collection of forwarder compensation on shipments for which they acted in the capacity of NVOCC;
- An NVOCC collected forwarder compensation on shipments in which shipper NVOCCs had a beneficial interest;
- An NVOCC provided ocean transportation at less than applicable rates by misrepresenting the names of shipper accounts under service contracts, misdescribing cargo under the contracts, and providing transportation not in accordance with its published tariff;
- An NVOCC obtained transportation at less than applicable rates by improperly allowing third parties to access service contracts to which it was the signatory party;
- NVOCCs obtained unlawful rebates from a VOCC in the form of an “administrative fee” effectively reducing the amount paid for transportation below the applicable service contract rate; and
- An NVOCC obtained transportation at less than applicable rates by improperly obtaining access to service contracts to which it was not a signatory.

The announcement underscores increased interest by the Commission’s Bureau of Enforcement in the NVOCC sector and serves as a warning that both vessel owning and non-vessel owning carriers need to be vigilant in reviewing their agreements with other carriers and with forwarders.

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