

The D.C. Circuit Affirms Federal Maritime Commission Decision Denying Port Authority Sovereign Immunity

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In *Oakland v. FMC*, D.C. Cir., No. 12-1080, July 26, 2013, the question of port authority sovereign immunity from private suit before the Federal Maritime Commission (FMC) was again before D.C. Circuit. The Court affirmed the FMC's denial of the Port of Oakland's sovereign immunity defense, concluding that the indicators of state control and impact on state finances advanced by the port authority were insufficient to show state intent to convey immunity on the port authority. Like Winston's successful appeal for the Puerto Rico Ports Authority in *Puerto Rico Ports Authority v. FMC*, 531 F.3d 868 (D.C. Cir. 2008) cert. denied, which overturned an FMC decision denying sovereign immunity of the Puerto Rico Ports Authority, the *Oakland* decision against the port authority highlights the legal uncertainty and fact-intensive nature of sovereign immunity in cases of uniquely-structured public entities, like many port authorities, that do not fit squarely within the existing sovereign immunity legal framework.

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