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JANUARY 15-16, 2015
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CHICAGO FAIRMONT MILLENNIUM PARK HOTEL

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Federal Maritime Commission's Authority TO REGULATE PRACTICES OF NVOCC IS UPHeld BY THE SECOND CIRCUIT COURT OF APPEALS

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Issues of agency authority and standards of review are issues that are often being addressed by the courts. The case of *Chief Cargo Services, Inc. vs. Federal Maritime United States of America*, 2014 U.S. App. LEXIS 18831 (2nd Circuit 2014 October 2, 2014), involves an appeal to the Second Circuit as the result of a petition by a Non-Vessel Operating Common Carrier by the name of Chief Cargo Services, Inc. contesting a ruling of the Federal Maritime Commission. The appeal was from a decision entering a cease and desist order to apply indefinitely to the Non-Vessel Operating Common Carrier holding that it should require an original bill of lading before releasing cargo.

In so ruling, the first issue that was decided by the Appellate Court was that the Federal Maritime Commission did have jurisdiction to issue such an order under the Shipping Act of 1984. As a part of the Shipping Act of 1984, the Federal Maritime Commission has authority to issue orders that a Non-Vessel Operating Common Carrier's practices as a Non-Vessel Operating Common Carrier may not fail to establish, observe, and enforce just and reasonable regulations and practices with regard to handling cargo under 46 U.S.C.S. § 41102 (c). In fact, Non-Vessel Operating Common Carriers are specifically licensed by

the Federal Maritime Commission, and along with Ocean Freight Forwarders can be referred to as an Ocean Transportation Intermediary. There is a stringent process involved in obtaining this type of license. They act as carriers even though they do not operate vessels. Very often, they function in part as cargo consolidators and can obtain a better rate for a shipper than what it could obtain on its own. They are analogous to a Surface Transportation Freight Forwarder in the domestic transportation industry. As a common carrier, they issue their own bills of lading. In fact they can and do assert many of the limitations of liability available under various federal statutes including the Carriage of Goods by Sea Act with a \$500 per package limitation and one year Statute of Limitation.

In examining these issues the Court stated that where there is substantial evidence to support an agency's determination, an Appellate Court cannot override the agency's determination. The basis for overruling an agency action would be that it was an abuse of discretion. In this case, it was found that the Order was not an abuse of discretion. The Second Circuit found that there were repeated instances of this unjust and unreasonable practice of not requiring original bills of lading. There was a

part of the Order where the Court stated that it would not express an opinion per se as to the merits, and noted a rehearing was offered to Chief Cargo Services, Inc. to see if it could demonstrate why there would be instances where it would not have to ask for an original bill of lading.

This case is of significance as it demonstrates the basis for sustaining an administrative decision and upholds a ruling by the Federal Maritime Commission to require that a particular Non-Vessel Operating Common Carrier require an original bill of lading and observe proper practices. The Federal Maritime Commission had authority to issue its Cease-and-Desist Order forcing Chief Cargo Services, Inc. to require it to release cargo only upon the presentation of an original bill of lading. The decision does not address instances where an original bill of lading might not be required in a shipping transaction. This issue was not raised in the appeal. 

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