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# Intermodal Chassis, Motor Carriers and the Federal Maritime Commission

David Popowski\*



A Federal Maritime Commission (FMC) Administrative Law Judge recently jolted the intermodal chassis world. Eleven ocean carriers, by and through their two chassis distribution associations,<sup>1</sup> were prohibited from controlling the distribution of intermodal chassis to motor carriers.<sup>2</sup> In Docket No. 20-14, *Intermodal Motor Carriers Conference, American Trucking Associations, Inc. (Trucking Industry) v. Ocean Carrier Equipment Management Association, Inc., Consolidated Chassis Management, LLC et al (Chassis Interests)*, Chief Administrative Law Judge Erin M. Wirth (ALJ) on February 6, 2023, in a 62-page initial decision, as is here relevant, granted summary judgment to the Trucking Industry and ruled that the Chassis Interests “shall cease and desist from violating the Shipping Act in Chicago, Los Angeles/Long Beach, Memphis, and Savannah by ceasing and desisting adopting, maintaining, and/or enforcing any regulations or practices that limit the ability of a motor carrier to select the chassis provider of its choice for merchant haulage.”<sup>3</sup>

The Trucking Industry alleged that the Chassis Interests wrongfully required the Trucking Industry to use the chassis of the Chassis Interests exclusively and thus denied motor carriers the right to select their own chassis providers for what is known as “merchant haulage movements.” The Chassis Interests denied the allegations and raised affirmative defenses, including lack of jurisdiction, failure to join indispensable parties, and failure to demonstrate actual injury or causation. The ALJ’S initial decision considered only the three motions for summary decision filed by the parties. The general operative statute states that: “A common carrier, marine terminal operator,

\* Popowski Law Firm LLC (Charleston, SC)

or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”<sup>4</sup>

Chief Judge Wirth gave a concise and useful description of the role of chassis in intermodal transport and their historical interplay with the Trucking Interests:

Chassis are the metal frame and wheels upon which intermodal shipping containers are mounted for movement over the road. Chassis are critical to moving intermodal shipping containers throughout the country, as explained by a recent Federal Maritime Commission (“FMC”) or “Commission”) report.

Chassis are the wheels of the supply chain. Prior to 2005, intermodal chassis were typically owned and operated by the ocean carriers, which allowed carriers to more accurately deploy sufficient chassis resources to cover intermodal shipping needs. When the carriers made the decision to disinvest in chassis, because of increasing concerns about safety and the imposition of regulatory requirements for safe management of chassis, it created another coordinating point in the supply chain, the intermodal equipment provider.

While the approach has worked and injected higher levels of safety and maintenance in chassis operations, there have been other challenges as well. If chassis are not available, then containers do not move. By removing or delaying the use of one

component of operational equipment, the entire supply chain will slow down. Movements from marine terminals to inland and destination points in the interior are heavily reliant on chassis for intermodal trucking services.

Chassis are provided for lease by non-party intermodal equipment providers (“IEPs”), also referred to as chassis providers. Chassis may be provided by individual IEPs or competing IEPs may combine their chassis into interoperable pools with various methods for allocating chassis charges. Motor carriers, also referred to as truckers, arriving at a port or intermodal terminal generally pick up a chassis that is already loaded with a container in wheeled operations or pick up a chassis and have a container loaded onto it in grounded operations.

As part of door-to-door service, the ocean carrier is responsible for arranging and obtaining transportation between the port and a customer’s location, including payment to a chassis provider for the chassis used during transport. Such container movements are referred to as “carrier haulage” or “CH.” For port-to-port service,

the ocean carrier's responsibility ends at the port and the customer (such as a beneficial cargo owner ("BCO"), non-vessel-operating common carrier ("NVOCC"), or motor carrier hired by the customer) is responsible for arranging and obtaining transportation between the port and the customer's location, including paying for chassis. Such container movements are classified as "merchant haulage" or "MH." Generally, the ocean carrier is responsible for chassis used in CH, while the motor carrier is responsible for chassis used in MH. MH tends to be a greater percentage of total movements as compared to CH.

Respondent OCEMA [Ocean Carrier Equipment Management Association, Inc.] is a non-profit corporation established pursuant to an FMC-filed agreement ... to establish and oversee the operation of chassis pools managed by CCM [Consolidated Chassis Management, LLC]. Respondent CCM, its affiliates, and its affiliated pools are created by and operate pursuant to an FMC-filed agreement. OCEMA and CCM have rules that impact how individual ocean carriers contract for and utilize chassis. Ocean carriers typically contract with IEPs to provide chassis in both CH and MH moves on an exclusive or preferred/default basis. The motor carriers are not

parties to these contracts between the ocean carrier and IEP. This proceeding focuses on MH, in which the motor carriers pay for the chassis but may not freely select the chassis provider of their choice, due to the ocean carriers' designation of exclusive or default chassis providers.<sup>5</sup>

The parties limited the geographic scope of this proceeding to initially focus their efforts on four regions - Chicago, Los Angeles/Long Beach, Memphis, and Savannah. As stated above, Chief Judge Wirth ruled in favor of the Trucking Industry.

As Chief Judge Wirth noted, typically, a grant of summary decision is appealable, while a denial of summary decision is not appealable as the case continues to a decision on the merits. Here, however, Chief Judge Wirth, as permitted by Commission Rule 153, permitted an interlocutory appeal stating: "Permitting an interlocutory appeal ... would allow the Commission to review novel legal issues before the parties engage in additional expensive and time-consuming discovery and briefing."<sup>6</sup>

As a separate but related issue, Chassis Interest Evergreen Joint Line Service ("Evergreen") adopted the Motion for Summary Judgment of the other Chassis Interests but also filed its own motion arguing that Evergreen provides chassis to motor carriers free of charge and allows choice.

The Trucking Industry contended that Evergreen's business model does not absolve its harm to the shipping public, asserting that Evergreen does not provide

chassis free of charge because its customers pay a chassis usage charge, and that Evergreen's model is harmful to MH carriage because it denies motor carriers chassis choice in MH movements.

The relevant facts are as stated by Chief Judge Wirth as follows: "Evergreen obtains chassis from the chassis distribution Associations at a single, fixed contractual daily rate for the transport of shipments on both a CH and MH basis. Evergreen's customers pay a fixed chassis usage charge ("CUC") if they want Evergreen to provide a chassis to the motor carrier for MH. Evergreen asserts that motor carriers then receive use of these chassis for MH 'free of charge' for the day of delivery plus four business days; but if the motor carrier does not return the chassis within the free time period, it must pay Evergreen a per diem rate of \$20 per day, commencing the day after 'free time' expired and running until the chassis is returned."<sup>7</sup> Chief Judge Wirth found this unreasonable and denied Evergreen's motion.

The FMC has not yet ruled on the appeal of Chief Judge Wirth's Initial Decision. If it is reversed, the parties will proceed to a full evidentiary hearing where the Trucking Industry will continue to contend as did in its Complaint that "[a]s a consequence of these unlawful practices, ocean carrier respondents have caused motor carriers, their shipping and receiving customers, and ultimately the consuming public, to be overcharged in an amount that [the Trucking Industry] estimates to be as much as \$1.8 billion during the three years prior to the filing of this Complaint."<sup>8</sup>

### Endnotes

<sup>1</sup> Those ocean carriers are as follows: CMA CGM S.A.; COSCO Shipping Lines Co. Ltd.; Evergreen Line Joint Service Agreement, FMC No. 011982; Hapag-Lloyd AG; HMM Co. Ltd.; Maersk A/S; MSC Mediterranean Shipping Company S.A.; Ocean Network Express Pte. Ltd.; Wan Hai Lines Ltd.; Yang Ming Marine Transport Corp.; and Zim Integrated Shipping Services.

<sup>2</sup> Initial Decision Partially Granting Summary Decision ("Initial Decision"), Trucking Industry Case, FMC No. 20-14 (No. 133).

<sup>3</sup> *Id.* at 61.

<sup>4</sup> 46 U.S.C. § 41102(c).

<sup>5</sup> Initial Decision at 2-3 (emphasis added).

<sup>6</sup> *Id.* at 59.

<sup>7</sup> *Id.* at 60.

<sup>8</sup> Complaint for Violation of the Shipping Act of 1984, 46 U.S.C. § 41102(C) at 4, Trucking Industry Case, FMC No. 20-14 (No. 1).