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Federal Maritime Commission Affirms Administrative Law Judge in *Chassis* Case

David Popowski*

As described by Senior Reporter Dan Ronan in his article *Federal Maritime Commission Sides with IMCC on Dispute*, in the February 24, 2024 edition of *Transport Topics*:

> Ocean shipping companies historically have controlled the chassis-leasing business at most major ports under the Uniform Intermodal Interchange and Facilities Access Agreement, which a 10-member group of industry representatives administers. At these ports, trucking companies are directed toward chassis available for rent and the rates being charged.
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> For years, ocean carriers owned and leased chassis and other intermodal equipment to trucking companies that drivers use to move containers from ports to inland locations. About 10 years ago, ocean carriers began working with third-party leasing companies to reduce their cost of managing and owning containers.

In the April, 2023 edition of *The Transportation Lawyer*, I authored an article entitled *Intermodal Chassis, Motor Carriers and the Federal Maritime Commission* in which I discussed Federal Maritime Commission ("FMC" or "Commission") Administrative Law Judge ("ALJ") Erin Wirth's 67-page decision dated February 23, 2023, 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).* ALJ Wirth 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."[1] 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."[2] Merchant haulage is transportation between the ports and inland facilities. 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 general operative statute states that: "A common carrier, marine terminal operator, 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."[3]

Almost to the day, a year later, on February 13, 2024, by a 4-1 vote in a 73-page decision, the Commission affirmed the decision of ALJ Wirth in all respects. The Commission stated:

> This Order addresses whether certain ocean common carrier practices that restrict motor carriers' choice of chassis providers for port-to-port shipments (merchant haulage) violate 46 U.S.C. § 41102(c). The [ALJ] ruled that Respondents' practice of designating an exclusive chassis provider for merchant haulage and using merchant haulage volume to obtain discounted carrier haulage rates where motor carriers have no choice of chassis providers violates Section 41102(c) and ordered Respondents to cease and desist engaging in those practices.[4]
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> In framing the relief to address Respondents' violation of Section 41102(c), the ALJ appropriately ordered Respondents to cease and desist from designating an exclusive chassis provider, enforcing rules that restrict motor carriers to the chassis provider the ocean common carrier has chosen, and practices that lock in the motor carrier to the chassis provider the ocean carrier selected.[5]

I will not compare *seriatim* the analysis of ALJ Wirth and the FMC, but will refer you to one interesting point. The Chassis Interests argued that it was reversible error for ALJ Wirth to rely on the venerable *Norfolk S. Railway Co. v. Kirby*, 543 U.S. 14 (2004), for the general principle that maritime law does not cease to apply as soon as cargo moves away from a coastal port. The Commission stated:

> Respondents argue that citing *Kirby* shows that the ALJ misapplied the law because that case involved a claim under the Carriage of Goods by Sea Act

* Popowski Law Firm LLC (Charleston, S.C.)

(COGSA).[citation omitted]. The ALJ only cited *Kirby* to make the point that whether maritime law applies depends on the nature of the conduct at issue, not where it occurred, and that it does not cease to apply the moment cargo leaves the port. [citation omitted] (quoting *Kirby*, 543 U.S. at 27). The ALJ cited *Kirby* as authority for a universal principle that guides maritime law, not for any principle unique to COGSA.

So, the intermodal chassis saga continues as a Petition for Reconsideration has been filed by the Chassis Interests. I feel confident that an appeal to the United States Circuit Court of Appeals will follow and thus I will keep you advised.

Endnotes

1 Docket No. 20-14, *Intermodal Motor Carriers Conference, American Trucking Ass'n, Inc., (Complainant) v. OCEMA, et al., (Respondent)*, decision dated February 23, 2023, at 61.
2 *Id.* at 1.
3 *Id.* at 12-13.
4 Docket No. 20-14, *Intermodal Motor Carriers Conference, American Trucking Ass'n, Inc., (Complainant) v. OCEMA, et al., (Respondent)*, decision dated February 13, 2024, at 1.
5 *Id.* at 72.