

BEFORE THE
FEDERAL MARITIME COMMISSION

COMMENTS TO NOTICE OF INQUIRY
NON-VESSEL-OPERATING COMMON CARRIER SERVICE AGREEMENTS

DOCKET NO. 05-06

COMMENTS OF THE INTERNATIONAL TRADE SURETY ASSOCIATION

Submitted by:

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Dated: October 20, 2005

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The International Trade Surety Association (“ITSA”) submits the following comments to FMC Docket No. 054-06, Notice of Inquiry (“NOI”), Non- Vessel-Operating common carrier service agreements

I. INTRODUCTION AND SUMMARY

ITSA is an association whose members primarily consist of surety companies and insurance brokers that provide specialty insurance products and services, two of which are ocean freight forwarder and non-vessel-operating common carrier (“NVOCC”) bonds required by the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. ITSA estimates that its members presently underwrite over seventy-five percent (75%) of the ocean freight forwarder and NVOCC bonds in the United States.¹

¹ ASA members include: Washington International Insurance Company of Itasca, IL; Roanoke Trade Services, Inc., of Schaumburg, IL; Fleetwood Agency, Inc. of New York, NY; International Bond & Marine Brokerage, Inc. of Hoboken, NJ; Corporation for International Business of Barrington, IL; and

On January 19, 2005, the Federal Maritime Commission (“FMC” or “Commission”), issued a Final Rule exempting non-vessel-operating common carrier (“NVOCC”) from certain tariff publication requirements of the Shipping Act of 1984.

On August 30, 2005, the FMC issued a Notice of Inquiry indicating that after the publication of the final NSA rule, the FMC heard from the NVOCC industry, who indicated that it would be beneficial if the exemption allowed NSAs to be jointly offered by unaffiliated NVOCCs. At a meeting held by the FMC on August 3, 2005, it considered further comments on the issue of jointly filed NSAs offered by unaffiliated NVOCCs.

ITSA’s Comments to the FMC’s NOI

ITSA limits its comments to those issues specific to financial responsibility and the proposed jointly offered NSAs between unaffiliated NVOCCs. Specifically, ITSA addresses its comments to the following first part of the FMC’s question in its NOI relating to financial responsibility: Do any issues with regard to NVOCC financial responsibility arise stemming from jointly-offered NSAs. See NOI at 2, Question 7.

ITSA believes that as between jointly-offered NSA between unaffiliated NVOCCs, it is the NVOCC who issued the bill of lading to the shipper who is liable for any damages that were proximately caused by the transportation-related activities of that NVOCC. The NVOCC bond and its obligations are non-transferable or assignable, a third party (another NVOCC) cannot obligate the financial responsibility of another NVOCC’s bond without the consent of the surety or the FMC.

Avalon Risk Management, Inc., of Elk Grove Village, IL. (“ITSA Members” or “Sureties”).

ITSA submits that the contemplated jointly-offered NSA assumes that one NVOCC will issue a bill of lading to the shipper-customer. If this is the case, then the NVOCC issuing that bill of lading will be responsible for any damages to its shipper customer. The fact that two or more NVOCC offer services to one customer does not and should not result in double liability by two NVOCCs acting as common carriers. Only the NVOCC who issued the bill of lading should be held responsible, and if it does not respond to a claim, then the financial responsibility provider can be liable if the claim arose from that NVOCC's transportation-related activities.

ITSA maintains that issues will arise when two or more NVOCCs jointly offer services to a customer and in an agreement between the NVOCCs or between the NVOCCs and their customer, agree in writing to be jointly and severally liable. Here, one NVOCC or a third party cannot impose liability on a surety without the sureties knowledge. Sureties base their premiums and underwriting considerations on known risks or anticipated risks. Allowing jointly-offered NSAs with no measure of who is acting for whom in such an arrangement will prejudice the surety's risks and underwriting considerations since it agreed to be financially responsible for its bond principal's activities and not another NVOCC's activities.

Requiring Joint Bonds or Higher Bonds—What amount(s)?

ITSA cannot address this question at this time since the issues relating to jointly-offered NSAs is under consideration. ITSA reserves its comments to this question until such time that there is some clarification with respect to how the jointly-offered NSAs will work and what regulations the FMC may impose on such arrangements between two

or more NVOCCs. However, ITSA does offer some observations and conjectures. If two NVOCCs desire to offer joint NSAs, and also agree to be jointly and severally liable, one consideration is that the NSA shipper, require additional insurance or bond coverage equal to or beyond the bond coverage required now by the Shipping Act. The amount of coverage should be commensurate with the value declared by the customer for the services offered by the joint NSA service. These are parties freely negotiating the terms of the NSAs. During those negotiations they are free to negotiate how financial responsibility is to be addressed and in what amount is necessary to protect all the parties' interests.

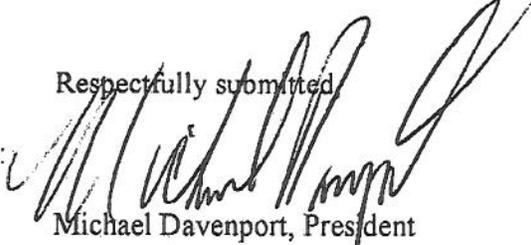
Again, these are new issues and because liability issues can be foreseen, ITSA cannot at this time assess its risks until such time that the FMC and the industry have clarified the nature and scope of the jointly-offered NSAs.

Conclusions

ITSA welcomes further information with respect to the jointly-offered NSAs and reserves its comments when the FMC and the industry have had an opportunity to consider the above issues and evaluate all comments submitted in response to the NOI.

Respectfully submitted,

By:


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