



OTI MONTHLY RISK MANAGEMENT ALERT

March 2007

This Month's Alerts:

OTI CUSTOMS ISSUES. NVOCC CUSTODIAL BONDS. At least one surety company has been suggesting that NVOCCs no longer assume the cost and risk of obtaining type 2 Custodial bonds. The reason: the ocean carriers have assumed this responsibility on their bonds to the inland port for NVOCC traffic. During the period when Automated Manifest System regulations were initially being implemented cargo accumulated at the piers due to confusion as to who could obtain and process Type 2 custodial bonds. Certain NVOCCs, if they have negotiated their own favorable inland rates, may have a commercial basis for purchasing ocean transportation to the pier only, and then providing its own inter-modal housebill to the inland port. These NVOCCs may want to continue to utilize their own Type 2 custodial bond, and then utilize either bonded or non-bonded carriers for the inland move. NVOCCs continuing to obtain Type 2 Custodial bonds might be a risk worth considering.

OTI CUSTOMS ISSUES continued. THE PROPERTY BROKER SOLUTION. Insurance companies are using a recent court case as the basis for requiring Customs brokers, which they insure, to obtain Property Broker authority from the Federal Motor Carrier Safety Administration. These Customs brokers generally arrange motor carrier deliveries as part of services offered, and mark up inland freight. Customs brokers which do not have Property Broker authority, and who do not properly implement this authority by clearly describing and documenting their agent role under these circumstances, have potential exposure as carriers in cargo loss and damage claims as well as in personal injury cases. The Carmack Amendment exposes all carriers in the transportation chain. As a consequence, at least one insurance company is requiring Property Broker status before insuring Customs brokers which arrange inland freight in the United States.

OTI BEST PRACTICES. THE CREDIT APPLICATION. Courts have consistently held that carriers may create enforceable general liens in credit applications where a shipper party knowingly executes such an agreement. This would contractually allow a carrier to hold

This Month's Alerts: (continued) cargo for antecedent debt related to cargo already delivered. Many ocean carriers already utilize this language. NVOCCs may use similar language.

FMC ISSUES. OCEAN CARRIER B/L DEFINITION OF MERCHANT AND DEMURRAGE. Certain ocean carriers include broad sweeping definitions of "merchant" in carriers' bill of lading terms and conditions, which sometimes result in Customs brokers, and other peripheral persons to a bill of lading transaction being included in various claims, including those for demurrage, ocean freight and other charges. Sometimes, the claims stem from nothing else than being identified as a "Notify Party", a designation not uncommon for Customs brokers on the bill of lading. We believe that the FMC staff is reviewing this broad language approach pursuant to its authority under 46 USC § 10 (d) (1) which requires that carrier practices be "just and reasonable" in connection with the "receiving, handling, storing, or delivering" of property. We also believe that this is currently a topic of concern being reviewed by the National Customs Brokers and Forwarders Association of America.

KEY PHONE NOS. , E-MAIL ADDRESSES, and WEBSITES FOR YOUR RECORDS (updated monthly):

Federal Maritime Commission: www.fmc.gov It contains pertinent regulations, office locations, OTI lists, up to-date matters on the FMC docket, as well as other useful information.

Bureau of Industry and Security: www.bxa.doc.gov The U.S. Department of Commerce, Bureau of Industry and Security (BIS) web site provides access to a number of services including: regulatory guidance and access, seminars/training, and policy announcements.

Export Administration Regulations:
<http://www.bis.doc.gov/policiesandregulations/index.htm#ear>
This is a link to U.S. Dept. of Commerce export regulations.

Office of Foreign Asset Control:
<http://www.ustreas.gov/offices/enforcement/ofac/> The Office of Foreign Assets Control of the U.S. Dept. of the Treasury administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers based on U.S. foreign policy and national security goals.

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