

**BEFORE THE
FEDERAL MARITIME COMMISSION**

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**COMMENTS OF OCEAN WORLD LINES, INC.
IN RESPONSE TO THE:**

FEDERAL MARITIME COMMISSION

**PETITION OF NATIONAL CUSTOMS BROKERS AND
FORWARDERS ASSOCIATION OF AMERICA, INC
FOR EXEMPTION
P5-03**

**PETITION OF BAX GLOBAL INC.
FOR RULEMAKING
P8-03**

**PETITION OF C.H. ROBINSON WORLDWIDE, INC.
FOR EXEMPTION
P9-03**

October 10, 2003

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I. INTRODUCTORY STATEMENT

Ocean World Lines, Inc. (“OWL”) submits these comments in response to the *Petition of National Customs Brokers and Forwarders Association of America, Inc for Exemption*, the *Petition of Bax Global Inc. for Rulemaking*, and the *Petition of C.H. Robinson Worldwide, Inc. for Exemption*.

These Petitions, in addition to the petitions filed by UPS and OWL, must provide the Commission with a sense of the importance and the urgency of the issues put before it. Each petition differs dramatically in substance and approach but each addresses a similar theme: the commercial world in which we all operate has changed dramatically since 1998 and the time has come for the Commission to take steps to ensure that its regulatory regime remains compatible with the world within which we must operate. The Commission is facing a seminal point in its history. This Agency has always played a vital role in regulating the foreign ocean borne commerce of the United States. In order to retain its historic vitality it must take steps to ensure that its regulatory regime evolves in a manner consistent with the revolutionary changes that have swept the industry. The petitions put before the Commission provide the Commission with some tools with which it can keep pace with commercial developments without fear of neglecting its statutory obligations.

OWL respectfully requests that the Commission cast a thorough and critical eye on the nature and substance of VOCC comments received in opposition to those petitions. The NVOCC petitions before the Commission are all rooted in the commercial self-interest of the petitioners. VOCC opposition will also be rooted in commercial self-interest. This is a self-evident proposition and OWL restates the point merely to make it clear that all petitions and comments must be viewed through the same critical lens.

II. PETITION OF NATIONAL CUSTOMS BROKERS AND FORWARDERS ASSOCIATION OF AMERICAS INC. FOR A LIMITED EXEMPTION FROM CERTAIN TARIFF REQUIREMENTS OF THE SHIPPING ACT OF 1984, P5-03

OWL supports the request of the NCBFAA to exempt NVOCCs from the tariff filing requirements of the 1984 Act. If the Commission were to take this action it would comport with the tariff exemption provided by the Surface Transportation Board to NVOCCs/freight forwarders operating in the noncontiguous domestic waterborne commerce of the United States. *See Exemption of Freight Forwarders in the Noncontiguous Domestic Trade From Rate Reasonableness and Tariff Filing Requirements, STB Ex Parte No. 598 (February 21, 1997).*

In granting the exemption the STB noted that the noncontiguous domestic trade freight forwarder industry is highly competitive and the elimination of tariff filing would eliminate an unnecessary financial burden. Furthermore, to “the extent that the exemption affects the rates and services offered to the public, we expect that the reduced burden will result in lower rates and additional competition.” These are exactly the same issues addressed by the NCBFAA in its petition.

Water Carriers, as VOCCs are known at the STB, are still obligated to file their tariffs but are allowed to shield their rates through confidential service contracts. Further, partly as a result of this exemption, these trades are marked by fierce commercial competition between Water Carriers, between NVOCCs, and between Water Carriers and NVOCCs for market share. This competition results in a broader range of service offerings by all parties and shippers are accorded the benefit of more competitive rates.

It should also be pointed out that the STB determined that its authority to act was broad enough to grant the exemption despite the statutory language in the I.C.C. Termination Act requiring that Water Carriers and NVOCC maintain and file tariffs.

Consequently, to the extent the Commission determines that its exemption authority is as broad as that under which the STB operates, OWL supports the NCBFAA Petition.

III. PETITION OF BAX GLOBAL INC. FOR RULEMAKING, P8-03

OWL agrees with BAX that an industry-wide rulemaking serves as a better regulatory vehicle than unitary exemptions made on a case-by-case basis. OWL also agrees that for purposes of an industry-wide rulemaking the establishment of concise, objective criteria for determining which NVOCC qualifies for authorization to enter into confidential service contracts. OWL would qualify for service contract authority under the criteria proposed by BAX. Nevertheless, OWL has some concern with regard to the criteria relied on by BAX in its petition.

BAX suggests the following criteria:

1. A substantial U.S. related transportation presence, with \$100 million annual transportation related gross revenue by itself or affiliated companies;
2. Publicly-held (either directly or through a parent) or is a third party logistics company that is related to an ocean common carrier serving the U.S. trade; and
3. Holds itself out to be a multi-modal logistics maritime transportation provider and historically compliant with U.S.

OWL does not believe that either the size of the NVOCC's asset base or its revenues should be outcome determinative criteria. OWL continues to assert that an NVOCC's ability to secure guaranteed space on vessels should be the primary consideration.

If the Commission were to treat the size of an OTI's asset base or revenues as its primary criteria there would be incongruous and deleterious results. It would not eliminate the transparent/opaque rate dichotomy that exists under the current regulatory scheme. Rather, it would shift the dichotomy dramatically. Utilization of the proposed asset or revenue size criteria would enable large OTIs and all VOCCs to shield their rate offerings while smaller OTIs would remain disenfranchised.

OTIs currently operate on a level regulatory playing field with other NVOCCs while operating at a competitive disadvantage in their relationship with VOCCs because of the NVOCCs' inability to shield its rate offerings. The BAX proposal would level the regulatory playing field between VOCCs and the largest OTIs but would create a significant regulatory imbalance in terms of competition between large, medium, and small OTIs for freight.

OWL, like BAX, enjoys considerable commercial advantages because of its size and range of product offerings. OWL does not believe that it requires a regulatory advantage to compete for business with smaller OTIs. Any OTI prepared to secure guaranteed space on vessels and prepared to accept any additional financial responsibility requirements established by the Commission should be authorized to enter into service contracts. Alternatively, the criteria suggested in the C.H. Robinson Petition, discussed below, by offering a broad range of criteria, would not automatically disenfranchise small to medium OTIs who desire service contract rights.

The requirement that OTIs or their parent companies be publicly held (unless they are the subsidiary of a foreign-flag VOCC) is without merit. OWL cannot understand how anyone in 2003 can state that "a large publicly-traded corporation is not likely to engage in fraudulent activities" with a straight face. *BAX Petition* at 15. The scandals that have engulfed publicly-held companies in recent years cannot be sloughed off merely by suggesting that publicly-held

corporations “are not always paragons of virtue”. *Id.* The logical inconsistency here is glaring. This criterion stands in contrast to that proposed by C.H. Robinson which looks towards the substance and economic vitality of an OTI without undue reliance on the OTI’s choice of corporate structure as an indicator of the OTI’s probity..

Further, under this criterion the following privately held companies, each of which have significant export and import operations would not qualify for service contract rights if they decided to set up a logistics subsidiary:

1. Cargill (50,828 million in revenue in 2002);
2. Koch Industries (40,000 million in revenue in 2002);
3. Mars, Inc. (17,500 million in revenue in 2002); and
4. Bechtel (13,400 million in revenue in 2002).¹

The publicly-held criterion suggested by BAX does not withstand scrutiny. Again, OWL suggests that the criteria suggested by C.H. Robinson would serve as a more appropriate set of guidelines if the Commission chooses to initiate an industry-wide rulemaking.

Lastly, OWL finds BAX’s statement that its “requirements will help to mitigate the danger of a disguised foreign terrorist organization or a supporter from becoming involved in service contracts in the U.S. foreign trades” to be inexplicable. *BAX Petition* at 16.

The issue of cargo and carrier security is one of great importance to the nation and to our industry but its critical importance is not germane to the issue at hand. The very real threat to our nation’s security should not be used to advance the agenda of any party to this proceeding.

Critical issues concerning cargo security, container integrity, and an awareness of the overall integrity of the supply chain are diminished by assertions containing the wholly unsupportable implication that terrorists might somehow be deterred from acting if their cargo

¹ Information derived from Forbes.Com list of largest private companies. See www.forbes.com

moves pursuant to an NVOCC/shipper tariff rate. These types of the cuff assertions also diminish the substantive arguments put before the Commission by UPS, the NCBFAA, and C.H. Robinson. The security of our supply chain is not a football that can be kicked around to suit our commercial interests.

IV. PETITION OF C.H. ROBINSON WORLDWIDE, INC. FOR EXEMPTION, P9-03

As with the UPS Petition, OWL supports the intent and purpose underlying the C.H. Robinson petition. Further, OWL appreciates the fact that although the C.H. Robinson Petition only seeks an exemption for itself it clearly sets out the expectation that similar relief will be afforded to all similarly situated OTIs based on objective criteria.

OWL believes that the criteria suggested by the C.H. Robinson Petition: value-added services; history of financial stability; long-term liability picture; capital investment record; and regulatory history of the petitioner provide sufficient balance so that it will not automatically exclude small to medium sized OTIs. The criteria suggested by C.H. Robinson ask the Commission to look not just at an OTI's size but at the scope and efficiency of its operations. This is a balanced and reasonable approach that, rather than disenfranchising smaller or medium NVOCCs, will serve as an incentive to maintain high standards of commercial and financial efficiency.

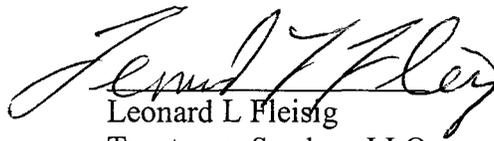
OWL's only suggestion to the Commission with regard to the C.H. Robinson Petition is identical to the suggestion it made with regard to the UPS Petition. Specifically, the Commission should not act on any one petition for exemption until such time as it has promulgated industry-wide guidelines and provided an opportunity for all qualifying OTIs to submit their own exemption requests.

V. CONCLUSIONS

OWL thanks the Commission for the opportunity to submit these Comments. OWL respectfully requests that it consider first the tariff filing exemption petition of the NCBFAA. If the Commission determines not to grant that Petition, OWL suggests that it initiates a rulemaking of the sort proposed by BAX utilizing the criteria enunciated by C.H. Robinson. Alternatively, if the Commission determines that the relief sought by the Petitions of the NCBFAA, BAX, and C.H. Robinson is beyond the scope of its statutory grant of authority that it initiate a rulemaking along the lines suggested by OWL.

In any event, once all comments are submitted to the Commission, OWL suggests that the proceedings be consolidated in the interest of administrative efficiency.

Respectfully submitted



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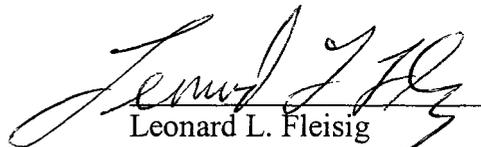
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