

**FEDERAL MARITIME COMMISSION**

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**DOCKET NO. 06-08**

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**IN THE MATTER OF THE LAWFULNESS OF UNLICENSED PERSONS  
ACTING AS AGENTS FOR LICENSED  
OCEAN TRANSPORTATION INTERMEDIARIES**

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**COMMENTS  
OF  
LANDSTAR EXPRESS AMERICA, INC.  
AND  
LANDSTAR LOGISTICS, INC.**

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Landstar Express America, Inc. ("LEA") and Landstar Logistics, Inc. ("Landstar Logistics") hereby provide their comments on the petition filed in the above-referenced docket by Team Ocean Services, Inc. ("Team Ocean"). In that Petition, Team Ocean requests that the Commission issue a declaratory order affirming that licensed ocean transportation intermediaries ("OTI") may employ unlicensed persons to act as their agents in providing OTI services.

LEA and Landstar Logistics are non-vessel-operating common carriers ("NVOCCs") licensed by the Commission. Both companies are subsidiaries of Landstar System, Inc., a non-asset based provider of transportation capacity and logistics services to a broad range of customers worldwide. (Landstar System, Inc., together with all of its subsidiaries, including LEA and Landstar Logistics, are hereinafter referred to as "Landstar.") Landstar provides transportation services for a wide range of general commodities through a network of independent sales agents and third party capacity providers. Landstar's independent sales agents are responsible for locating freight, making that freight available to Landstar's capacity providers and coordinating the transportation of the freight with customers and capacity providers. Landstar's third

party capacity providers consist of independent contractors who provide truck capacity to Landstar under exclusive lease arrangements (the "Business Capacity Owner Independent Contractors"), unrelated trucking companies who provide truck capacity to Landstar under non-exclusive contractual arrangements (the "Truck Brokerage Carriers"), air cargo carriers, ocean cargo carriers, railroads and unrelated bus providers. As of December 31, 2005, Landstar's network included over 1,000 independent sales agent locations, 8,728 trucks provided by Business Capacity Owner Independent Contractors, over 22,000 Truck Brokerage Carriers, and third party rail, air, ocean and other asset-based transportation capacity providers. Landstar had consolidated revenue in excess of \$2.5 billion in fiscal year 2005.

LEA and Landstar Logistics operate within the global logistics segment of Landstar's business. In addition to ocean transportation services, this segment arranges intermodal moves, performs contract logistics, and engages in truck brokerage and air freight operations. LEA and Landstar Logistics desired to extend Landstar's successful business model of operating through agents and third part capacity providers (i.e., vessel-operating ocean carriers) to ocean operations by employing independent, exclusive agents to provide NVOCC services on their behalf. Because of regulatory uncertainty<sup>1</sup>, LEA and Landstar Logistics requested a legal opinion from the Commission's General Counsel in January 2006 as to whether this method of operating would be lawful. The General Counsel opined that, based on the agency relationships LEA and Landstar Logistics intended to create,<sup>2</sup> "it appears that any ocean

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<sup>1</sup> This uncertainty has been created primarily by a footnote in the Commission's decision in *Rose International, Inc. v. Overseas Moving Network International, Ltd.*, 29 S.R.R. 119 (2001). This footnote states:

... Section 19 of the Shipping Act now requires all persons in the United States offering ocean transportation intermediary ("OTI") services, **including those persons operating as agents**, to be licensed. See also, 46 C.F.R. §515.3 (emphasis added).

*Id.* at 168, n. 43.

<sup>2</sup> She summarized these intended agency relationships as follows:

In this matter, it appears that a principal/agent relationship will be established based upon the express authority [LEA] and/or [Landstar] Logistics will give to their agents to provide ocean transportation services on their behalf. Further, the agents will be contractually bound to conduct

transportation services provided on behalf of [LEA] and/or [Landstar] Logistics would be done through an agency relationship and, therefore, the agents providing such services would not be required to obtain their own ocean transportation intermediary (“OTI”) license.”

LEA and Landstar Logistics believe the General Counsel’s opinion that *bona fide* agents of licensed NVOCCs are not required to be licensed is correct as a matter of law under the Shipping Act of 1984 and the Commission’s regulations and urges the Commission to adopt this approach in responding to the Team Ocean petition. A *bona fide* agency relationship is characterized by a number of factors. As summarized in a well-respected legal treatise:

Agency is the fiduciary relationship that arises when one person (a “principal”) manifests assent to another person (an “agent”) that the agent shall act on the principal’s behalf and subject to the principal’s control, and the agent manifests assent or otherwise consents so to act.

Restatement (Third) of Agency, §1.01 (2006). Creation of a *bona fide* agency relationship, therefore, requires (a) consent of both the principal and the agent; (b) that the agent shall act on behalf of the principal; and (c) the agent remains subject to the control of the principal for those specific activities. LEA and Landstar Logistics believe these should be the minimum requirements to permit unlicensed persons to act as agents of licensed NVOCCs. Although agents for LEA’s and Landstar Logistics’ NVOCC services are exclusive, *bona fide* agency relationships can and do exist without the element of exclusivity. LEA and Landstar Logistics submit that imposing an exclusivity requirement on NVOCC agents would impose unnecessary restrictions on the competitive, efficient and economic ocean transportation marketplace that is the policy of the Shipping Act of 1984 to provide and promote. 46 App. U.S.C. § 1701.

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business on behalf of the principal within parameters set forth by [LEA] and/or [Landstar] Logistics and will remain under the control of the principal, which further demonstrates the creation of a legitimate principal/agent relationship.

Historically, international ocean transportation services have always, of necessity, been conducted through agents. International transportation requires a presence in a multitude of ports, cities and inland points that no single company can provide through its own offices or employees. Port agents, vessel agents, booking agents, receiving agents, origin agents, delivery agents and true agents under a multitude of other names (e.g., stevedores, warehouseman, drayage companies, railroads, etc.) perform the essential tasks of ocean transportation on a daily basis.<sup>3</sup> This is no less true for NVOCCs than for vessel operating common carriers. Not until May 1, 1999, however, when licensing requirements were first imposed on NVOCCs as a result of the Ocean Shipping Reform Act of 1998, did licensing issues for NVOCCs and their agents even arise.

In its rulemaking to implement NVOCC licensing requirements, the Commission directly addressed the question of licensing for NVOCC agents in determining that U.S. based agents for foreign, unlicensed, NVOCCs would have to be licensed. The Commission codified this approach in its regulations at 46 C.F.R. § 515.3 ("Only persons licensed under this part may furnish or contract to furnish ocean transportation intermediary services in the United States on behalf of an unlicensed ocean transportation intermediary.") No such requirement was imposed on agents for licensed NVOCCs in the United States.

The Commission recognized in this rulemaking that licensed NVOCCs in the United States could continue to legally provide OTI services through unlicensed agents. This is made clear in the following discussion of a proposed regulation for NVOCCs that it decided not to adopt:

The first sentence of Section 515.31(e) prohibits licensees from entering in any arrangement or agreement with an unlicensed person that confers any fee, compensation or other benefit upon that unlicensed person. [A number of commenters] opposed this

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<sup>3</sup> The Commission is well aware of this. Indeed, one of the "NVOCC Services" specifically defined in its OTI regulations is: "Entering into arrangements with origin or destination agents." 46 C.F.R. § 515.2(l)(8).

section as it applies to NVOCCs. . . . They argue that this section, read literally, would allow licensees only to do business with other licensees, thus preventing a licensee from entering arrangements with warehouses, truckers, consolidators, container lessors, and others who are unlicensed but necessary to an NVOCC's operations.

This regulation was originally intended to address the issue of compensation and fee sharing as it relates to freight forwarders... While the Commission believes that this would not adversely affect NVOCCs from entering arrangements with those unlicensed persons providing trucking services and the like, it agrees that the rule is unnecessary as it applies to NVOCCs because they do not collect carrier compensation or forwarding fees and thus are not subject to the limitations placed on freight forwarders regarding such payments.

...Therefore, proposed Section 515.31(e) will be removed as it applies to NVOCCs ....

Docket No. 98-28, Licensing, Financial Responsibility Requirements, and General Duties for Ocean Transportation Intermediaries, Final Rule and Interim Final Rule (February 26, 1999), at 19. This discussion, and the elimination of this proposed regulation as applied to NVOCCs, appears to have been an assurance by the Commission that agents for licensed NVOCCs would not be subject to licensing requirements. This conclusion, of course, is buttressed by the fact that the only reference in the Commission's regulations to licensing requirements for NVOCC agents is unequivocally directed only to agents for unlicensed, foreign based NVOCCs. 46 C.F.R. § 515.3. If the Commission had wished to impose licensing requirements on agents for U.S. based, licensed NVOCCs, it was clearly capable of doing so, but it did not. In sum, during this rulemaking, the Commission directly addressed the question of licensing for both agents of unlicensed, foreign-based NVOCCs and of licensed NVOCCs in the United States and deliberately adopted a regulation requiring the former to be licensed, but not the latter.

There is no public policy or regulatory justification for requiring persons acting as *bona fide* agents for licensed NVOCCs to be licensed. Unlike foreign-based NVOCCs, licensed NVOCCs in the United States have been judged by the Commission to have

the experience and character to become licensees. There is, therefore, no need to provide additional safeguards for the public by requiring their *bona fide* agents - - who will be subject to the licensee's control - - to be licensed as well. Moreover, the very nature of a *bona fide* agency relationship is that the agent acts for, and on behalf of the principal. In other words, the agent's actions are legally the actions of the principal. Thus, when a *bona fide* agent acts contrary to the law or causes damage to a customer, the licensed NVOCC principal will have to answer for the agent's actions. 46 C.F.R. § 515.4(b)(2); see also, *Malpractices – Brazil / United States Trade*, 15 FMC 55 84 (1971); *Unapproved Section 15 Agreements – Spanish / Portuguese Trade*, 8 FMC 596, 609 (1905). Not only will this licensed NVOCC principal be amenable to the Commission's jurisdiction, it will have financial responsibility in place as required by the Commission's regulations to protect the public.

Finally, there is no reason to justify a requirement that all agents of licensed NVOCCs be licensed because there may be abuses committed by persons who claim to be "agents," but are, in reality, providing OTI services for their own account. This problem, to the extent it exists, should be dealt with as an enforcement matter, not by imposing unnecessary restrictions on ordinary and necessary business activities of licensed NVOCCs and their *bona fide* agents. Neither the Commission nor the courts have experienced a great deal of difficulty in distinguishing between true agency relationships and other forms of business relationships that do not meet this standard. To impose a licensing regime on *bona fide* agents who act in the name and subject to the control of licensed NVOCCs would run directly counter to the stated policy of the Shipping Act to create a regulatory process "with a minimum of government intervention and regulatory cost." 40 App. U.S.C. §1701(1).

For the reasons set forth above, LEA and Landstar Logistics submit that the Commission should respond to the Team Ocean Petition by clearly affirming that

licensed NVOCCs in the United States may use *bona fide*, unlicensed agents to conduct OTI activities on their behalf.

Respectfully submitted,



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