



SB 814 – Continuing Anti-Trust Immunity for Certain Ports in Oregon

Oregon ports have enjoyed narrow antitrust immunity under the Shipping Act of 1937 – that granted them the ability to discuss what rates and expenses they would charge to ocean carriers providing service at their ports. Under the Shipping Act, ports who wish to act collectively may file a discussion agreement with the Federal Maritime Commission ("FMC"). Once the agreement is approved by the FMC, the ports are immune from any claims arising from federal antitrust laws. A recent staff-led FMC initiative has called into question whether some Oregon ports providing cargo service still enjoy this immunity. Specifically, the FMC has been making technical determinations that some of the Northwest Marine Terminal Association ("NWMTA") member ports are not serving "common carriers" – defined as a commercial enterprise that moves passengers or goods for a fee – and will deem these ports as ineligible for antitrust immunity under the Shipping Act.

SOLUTION: SB 814 extends the state’s antitrust protection to Oregon’s public ports so that they can continue to meet with other NWMTA members to share business best practices, discuss rates and charges for their services. Passage of legislation at the state level protects ports no matter the outcome of the FMC process.

BACKGROUND: The Northwest Marine Terminal Association serves as a forum for cargo ports that has existed since 1937. Its purpose is to allow the member ports to meet and discuss issues such as best practices and rates at each port and to recommend price changes (in dockage and wharfage, for example), depending on the market. The ability to discuss rates and expenses among the members is an important tool that benefits the cargo ports in Oregon and Washington. The ports still compete against each other for business, but the ability to meet and discuss issues levels the playing field between tax-supported port districts and the international shipping carriers who already enjoy antitrust immunity.

The FMC’s decision to no longer grant antitrust immunity to specific ports will mean that our ports will lose a valuable forum and tool to compete for business and cargo in their communities. Additionally, NWMTA will not be able to function as it was intended, thereby impacting even ports that still enjoy immunity through FMC. **Oregon ports facing this prospect are The International Port of Coos Bay, the Port of Astoria and the Port of Columbia County.** This critically undermines a ports’ ability to maintain publicly funded infrastructure, such as docks, and terminals potentially resulting in a burden to taxpayers. Carriers enjoy antitrust immunity; our public ports need it too.

ORS 777.065 states that: “The Legislative Assembly recognizes that assistance and encouragement of enhanced world trade opportunities are an important function of the state, and that development of new and expanded overseas markets for commodities exported from the ports of this state has great potential for diversifying and improving the economic base of the state. **Therefore, development and improvements of port facilities [...] is declared to be a state economic goal of high priority.**” This bill simply permits Oregon member ports to continue participating in the NWMTA in the same manner they have for decades, regardless of what the FMC decides.

For more information please contact: Mark Landauer, mark@mjlconsulting.com or 503-896-2338