

July 6, 2005

**Via E-Mail**

The Honorable Steven R. Blust  
Chairman  
Federal Maritime Commission  
800 N. Capitol Street, N.W.  
Washington, D.C. 20573

The Honorable Rebecca F. Dye  
Federal Maritime Commission  
800 N. Capitol Street, N.W.  
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The Honorable Harold J. Creel  
Federal Maritime Commission  
800 N. Capitol Street, N.W.  
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The Honorable A. Paul Anderson  
Federal Maritime Commission  
800 N. Capitol Street, N.W.  
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The Honorable Joseph E. Brennan  
Federal Maritime Commission  
800 N. Capitol Street, N.W.  
Washington, D.C. 20573

Dear Commissioners:

As you know, the Fourth Circuit recently issued its much anticipated opinion in *United States v. Gosselin*. In our view, the decision correctly confirms that agreements between NVOCCs were never intended by Congress to receive antitrust immunity under the Shipping Act, as amended, even though the reasoning supporting this conclusion may not be as precise as we had desired.

Based on the *Gosselin* ruling, we have conferred with the petitioners in the DC Circuit case and with others in the industry and we are all united in the belief that the Commission is now in the position to take action to remove the limitations prohibiting multiple NVOCCs and shippers' associations with NVOCC members from participating in NSAs. Those limitations were imposed to address the Commission's concern that section 7(a)(2) of the Shipping Act, in conjunction with the lower court ruling in *Gosselin*, could be construed to confer antitrust immunity upon the parties to an NSA. Thus, the Commission sought to address the possibility that multiple NVOCCs could use NSAs for anticompetitive purposes, without effective oversight by a government agency. The decision by the Fourth Circuit in *Gosselin* eliminates the basis for the Commission's concern.

The companies and organizations represented below strongly believe that time is of the essence in this matter. As we discussed, the pending legal challenge has raised questions and uncertainty in the industry regarding NSAs, leading some entities to postpone their use of NSAs, which translates into lost business opportunities. We think it is preferable that the FMC, rather than industry, be the party to initiate the action to address the limitations imposed by the Commission in the NSA Rule. Accordingly, we request that the FMC initiate a proceeding, without further delay, in the form of a notice of proposed rulemaking in order to remove the limitations in the NSA Rule.

**Federal Maritime Commission**

**July 6, 2005**

**Page 2 of 2**

We very much appreciate your consideration of this important matter and are committed to working with you and the Office of the General Counsel to clarify the NSA rule in light of the *Gosselin* ruling.

Respectfully submitted,

BAX Global, Inc.  
BDP International, Inc.  
C.H. Robinson Worldwide, Inc.  
FedEx Trade Networks Transport & Brokerage, Inc.  
The National Industrial Transportation League  
North Atlantic Alliance Association Inc.  
Transportation Intermediaries Association  
United Parcel Service, Inc.

cc: Amy W. Larson, Esq.  
General Counsel  
Federal Maritime Commission