LEGAL UPDATES

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Part III: Baltimore Key Bridge Collapse, Short and Long-term Eastern Port Impact

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The third installment in our Baltimore Key Bridge Collapse series (see Part I and Part II) examines the short- and long-term Eastern port impact, including the temporary increase in cargo volume and the Federal Maritime Commission (FMC) outlook on demurrage charges following the collapse.

Disruption to regular service at the Port of Baltimore caused shippers to adjust supply-chain operations. Many maritime transport companies have since invoked their respective force majeure clauses—provisions freeing parties from their contractual obligations due to events beyond their control—and diverted cargo to nearby ports. The rerouting of cargo currently in transit to alternate ports, where it will be made available for pick-up, has left many customers scrambling to organize further transport from the diverted Baltimore port to the final destination. Several maritime transport companies warned customers that they will not pay local storage expenses at those rerouted destinations, which may be give rise to future disputes.

In addition to the added cost of transporting rerouted cargo from their new ports to final terminals, the increase in rerouted cargo will affect nearby ports as well. Since the Baltimore Key Bridge collapse on March 26, all East Coast ports saw an influx of rerouted cargo intended for Baltimore. Yet this influx has not been uniform, with the Ports of New York and Norfolk seeing the largest increases. According to reports, rerouted containers in New York are sitting for 66% longer, while containers rerouted to Norfolk are waiting even longer. Others, such as the Port of Virginia, have enacted temporary measures, extending its terminal operating hours from 3 a.m. to 6 p.m. to ease the overcrowding burden.

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The U.S. Army Corp of Engineers is aiming to restore Port of Baltimore access to normal capacity by the end of May. In the short-term, shippers and the port authority appear to be coping well with the influx of rerouted containers. However, should the closure of the Baltimore Port continue, expect to see increased delays to compound over time leading to the exhaustion of free time and the imposition of demurrage and detention charges for customers.

Ocean Shipping Reform Act and the FMC's response to the collapse

Two years ago, the Ocean Shipping Reform Act of 2022 (OSRA) was signed into law, enabling the FMC to oversee and enforce demurrage and detention charges, while also shifting the burden of proof for the reasonableness of fees to ocean carriers instead of shippers. Under OSRA, demurrage and detention bills must clearly show how the fees are calculated and include contact information on how shippers can request to waive the fees. On February 26, 2024, the FMC published a Final Rule intended to add clarity to invoicing requirements and is set to go into effect May 28.

On April 5, 2024, the FMC issued an industry advisory, providing that all FMC statutes and regulations will remain in effect following the bridge collapse, emphasizing that all "[d]emurrage and detention fees must be reasonable." Moreover, the advisory noted that the "FMC regulations require demurrage and detention fees meet a reasonableness test of whether the charges serve as legitimate financial incentives to encourage cargo movement."

Links to our prior coverage of the Key Bridge collapse and its implications are below:

Read Part I: Navigating the Supply Chain Aftermath: Legal Implications of the Baltimore Bridge Collapse

Read Part II: Baltimore's Key Bridge Collapsed: What Happens Next?

What this means to you

OSRA requires ocean carriers to invoice within 30 days from when demurrage or detention is incurred. Since the Baltimore Key Bridge collapse occurred a month ago, invoices from ocean carriers will be arriving shortly. Time will tell if ocean carriers abide to the FMC's reasonableness standard, but if not, billed parties must act quickly—within 30 days of the invoice—to request mitigation, refund, or waiver.

Contact us

If you or your customer has a container on the M/V Dali and you need assistance with filing a claim and navigating the upcoming costs and liabilities, please reach out to Julie Maurer, Aaron Schepler, Joseph Baratta, or your Husch Blackwell transportation attorney.

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