

CARGO UPDATE NEWSLETTER

OTI's – YOU ARE WHAT YOU DO . . . NOT WHAT YOU SAY

An Ocean Transportation Intermediary is either an ocean freight forwarder or a non-vessel operating common carrier (NVOCC). Both are required to be licensed by the Federal Maritime Commission (FMC) and many companies hold both licenses. Problems arise when there is a cargo loss and the cargo interest and/or its insurer looks to the forwarder or NVOCC for reimbursement. Despite what the entity claims to be, courts almost uniformly look to what the entity actually does to determine its liability if any. The significant difference for liability purposes is that the ocean freight forwarder typically is not liable for cargo loss but rather only for its own negligence, for example, in selecting the carrier. The NVOCC, on the other hand, is considered a common carrier with resulting carrier liability for cargo loss. The following are some of the common differences between ocean freight forwarders and NVOCC's:

Ocean Freight Forwarder-

- Dispatches shipments from the U.S. via common carriers
- Books or otherwise arranges space for shipments on behalf of shippers
- Prepares and processes documentation, usu., forwarder receipts
- Does not issue bills of lading
- Receives its compensation from commissions paid by ocean carrier
- Is not billed by the ocean carrier for ocean freight
- Does not bill its customer for ocean freight
- Is not listed as the shipper on ocean bills of lading
- On intermodal shipments, ocean carrier, not forwarder, usually hires trucker(s)
- Does not hold itself out as a carrier
- Not liable for cargo loss or damage

N.V.O.C.C.-

- Common carrier
- Holds itself out to public to provide ocean transportation
- Does not own or operate ocean vessels
- Issues its own house bills of lading
- Is the carrier as to its customer, and the shipper as to the ocean carrier
- Listed as the Shipper by ocean carrier on master bills of lading
- Does not receive commission from ocean carrier
- Pays the freight charges
- Usually hires inland trucker(s) and pays the freight charge
- Bills its customer for ocean and inland freight charges plus profit
- Is liable as a carrier for cargo loss and damage

To avoid potential problems OTI's should be mindful of how they promote their services to the public and particularly what services they are actually providing. Blurring the line could result in unanticipated liability and damages to your company and/or your insurer. Remember, *Esse Quam Videri*- to be- not to seem to be.

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