



Can a Port “Borrow” a State’s Antitrust Immunity?

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Antitrust Law

Example:

Sherman Act (15 U.S.C. Sec. 1-7)

Source:

Black's Law Dictionary (11th ed.
2019)

A body of law designed to protect trade and commerce from restraints, monopolies, price-fixing, and price discrimination.

Practices That May Violate Federal Antitrust Laws

- Outlaws all contracts, combinations, and conspiracies that unreasonably restrain interstate and foreign trade.
- Outlaws any agreements between competitors to fix prices, rig bids, and allocate customers.
- Makes it a crime to monopolize any part of interstate commerce.

The Shipping Act Immunity 46 U.S.C. Sec. 40307

Antitrust laws “do not apply” to:

- Agreements on file with the Federal Maritime Commission (“FMC”)
 - Ocean common carrier agreements
 - Marine terminal operator agreements to discuss, fix or regulate rates or conditions of service or to engage in exclusive, preferential, or cooperative working arrangements (i.e., alliances) to the extent the agreement involves ocean transportation in the foreign commerce of the United States.
- Other agreements exempted by the FMC

Key Definitions For Shipping Act Immunity

MARINE TERMINAL OPERATOR:

A person engaged in the business of providing wharfage, dock, warehouse, or other terminal facilities in connection with a common carrier

COMMON CARRIER:

(i)

Holds itself out to the general public to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation;

(ii)

assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(iii)

uses, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country

An aerial view of a busy port. A large container ship, labeled "NTK LINE", is docked at a pier. The ship is covered in colorful containers. Numerous green and yellow cranes are visible, some on the pier and others on the ship. The water is a clear blue-green. In the background, there are green hills and a city skyline under a cloudy sky.

The FMC Cleans House

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State Law to the Rescue?

- State action is immune from federal antitrust laws. *Parker v. Brown*, 317 U.S. 341 (1943)
- When a state authorizes another entity to carry out its activities, it can cloak the authorized entity with the state's immunity. *Lafayette v. Louisiana Power & Light Co.*, 435 U.S. 389 (1978)



State Action and Ports

*Interface Group, Inc. v. Massachusetts
Port Authority, 816 F.2d 9 (1987)*

The Requirements

- State legislation must clearly and affirmatively authorize the particular conduct.
- The conduct must then stay within the bounds of the authorizing legislation.

An aerial photograph of a coastal town and harbor. The foreground shows a large marina filled with numerous sailboats and yachts docked at wooden piers. The town is built on a peninsula, with various buildings and structures. In the background, a large body of water stretches towards a range of snow-capped mountains under a clear sky.

Future State Immunity for Non- MTO Ports?

Questions?

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A professional headshot of Molly Henry, a woman with long dark hair, smiling, wearing a dark green sleeveless top. The background is a dark, neutral color.

Molly Henry

Shareholder

Molly Henry is an experienced civil litigator and appellate attorney. She co-leads the appellate practice group in Seattle.

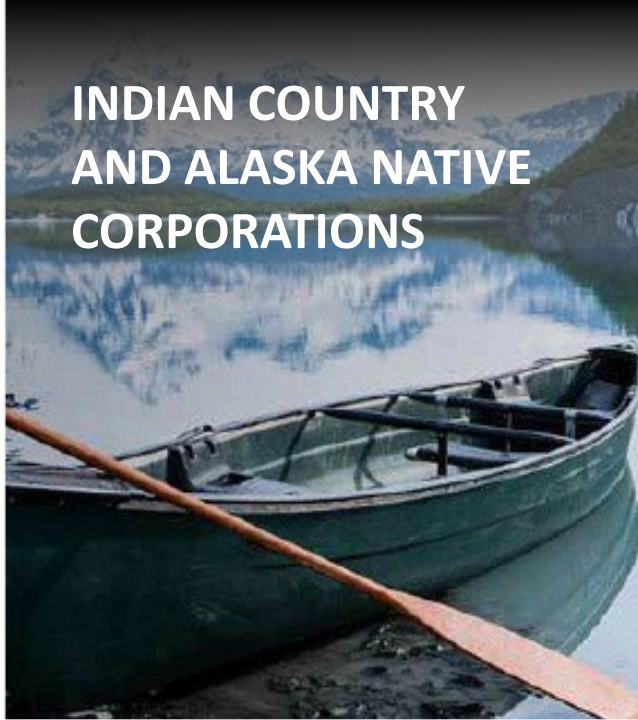
She regularly represents vessel owners, operators, and their underwriters in all aspects of maritime law, including casualty response and investigations, vessel attachments and arrests, commercial disputes, marine-related regulatory compliance such as environmental matters and admeasurement of vessels, personal injury claims, and cargo loss and damage claims.

She also represents ports and other marine service providers and contractors.

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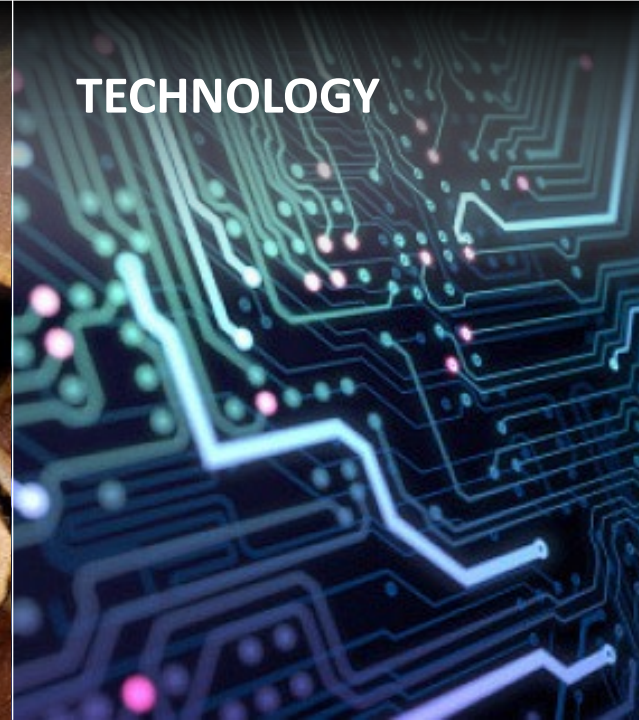
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