

UT Law CLE Presentation

Rachel de Cordova & Eric Lee

September 2018

Holland & Knight

PHELPS DUNBAR
LLP

Copyright © 2018 Holland & Knight LLP. All Rights Reserved

Rachel de Cordova



Rachel de Cordova advises, defends and pursues remedies in complex commercial disputes for energy and maritime clients in the Gulf Region. She also represents the London insurance market in catastrophic personal injury matters. Her other practice areas include product liability and toxic torts, breach of fiduciary duty and trade secret misappropriation, maritime, and energy litigation. She also regularly advises her clients regarding indemnity, defense and additional insured provisions to comply with Texas state law.

As part of her energy and maritime practice, Ms. de Cordova handles the defense and investigation of claims resulting from oilfield and maritime catastrophic incidents under the Oil Pollution Act of 1990. For example, she handled all the major refinery and vessel detention claims in the EAGLE OTOME oil spill case. She also defends vessel owners and operators from claims arising under the Jones Act, the Longshore and Harbor Workers' Compensation Act and the Outer Continental Shelf Lands Act.

Ms. de Cordova previously served as outside national maritime counsel for one of the country's largest oil refiners and marketers where she handled all maritime related litigation, as well as regulatory matters before government bodies overseeing pilot and port tariffs, the Federal Energy Regulatory Commission and the Federal Maritime Commission.

Rachel de Cordova

Partner

Phelps Dunbar LLP

Houston, Texas

T 713-225-7272

rachel.decordova@phelps.com

Practice

- Admiralty
- Energy
- Products Liability
- Torts and Toxic Torts
- Breach of Fiduciary Duty
- Trade Secret Misappropriation

Education

- University of Texas School of Law, J.D. with honors
- New York University, B.F.A., Trustee Scholar

Bar Admission

- Texas
- U.S. Court of Appeals for the Fifth Circuit
- U.S. District Court, Eastern District of Texas
- U.S. District Court, Western District of Texas
- U.S. Supreme Court
- U.S. District Court, Northern District of Texas

Holland & Knight

PHELPS DUNBAR
LLP

Eric Lee



Eric Lee is a supply chain, logistics, and transportation attorney in Washington, D.C. He has a practice that encompasses a broad range of complex international and domestic regulatory, commercial, and corporate matters, principally in the transportation, trade, and energy sectors, including the associated businesses for each sector and end-to-end across all nodes and modes (maritime, aviation, rail, and motor). Mr. Lee assists clients with direct, 3PL and 4PL transportation, logistics, distribution, and supply chain projects and transactions, including service contracts, operating agreements, corporate and asset acquisitions, asset reallocation and transfers, and related corporate and commercial transactions. He also assists clients with international operations and business ventures, negotiating and drafting frontline office agreements, planning and implementing corporate structures, multiple jurisdiction compliance, related finance and creditor matters, and other issues commensurate with these industries.

Mr. Lee has experience as both a government in-house counsel and as a private sector in-house counsel. As an attorney-advisor, Mr. Lee was assigned as counsel to a Commissioner at the U.S. Federal Maritime Commission (FMC) and worked as a member of the FMC's Office of the General Counsel, where he gained meaningful experience reviewing and responding to both congressional and public inquiries, working on agency legal briefs, and assisting his former agency colleagues as one of their in-house attorneys. In the private sector, Mr. Lee was an in-house counsel to a multinational group providing transportation, logistics, and related supply chain services throughout the world via its vessels, terminals, providers, and alliances.

Eric Lee

Partner
Holland & Knight LLP
Washington, D.C.
T 202.469.5180
eric.lee@hklaw.com

Practice

- Maritime
- Cruise Lines and Yachts
- Mergers and Acquisitions
- Project Finance
- International and Cross Border Transactions

Education

- Georgetown University Law Center, LL.M., Taxation
- Tulane University Law School, LL.M., Admiralty
- University of South Carolina School of Law, J.D.
- The Citadel, B.S.

Bar Admission

- Alabama
- District of Columbia
- South Carolina

Holland & Knight

PHELPS DUNBAR
LLP

4

FMC Jurisdiction & the Shipping Act of 1984 (Amended 1998)

- » The Shipping Act of 1984 governs the international shipment of good by water and is administered by FMC.
- » FMC has jurisdiction to regulate activities of Marine Terminal Operators (MTO) under the Shipping Act.
- » Whether your client (or the person they are doing business with) is an MTO is a threshold question, i.e., no MTO then no FMC jurisdiction.

Holland & Knight

PHELPS DUNBAR
LLP

4

FMC Jurisdiction & the Shipping Act of 1984 (Amended 1998)

» What is an MTO?

- MTOs provide wharfage, dock, warehouse, or other marine terminal facilities to common carriers moving cargo in the ocean-borne, foreign commerce of the United States. 46 U.S.C. §40102(14).
- Are wharfage, dock, warehouse, or other marine terminal facilities being provided? This question is usually easy to answer.
- More difficult inquiry is whether the services are being provided to common carriers in the ocean-borne, foreign commerce of the United States
 - Do ocean-borne vessels call at the facility or do we have foreign origin cargo, i.e., if no to both, then inquiry is at an end.
 - If ocean-borne vessels call or we have foreign origin cargo, then the next question is whether there's a common carrier providing the carriage.

FMC Jurisdiction & the Shipping Act of 1984 (Amended 1998)

» Defining "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." 46 U.S.C. §40102(6).
- As it relates to cargo, we are essentially looking at liner service with published schedules that "hold themselves out [to] the general public to provide transportation by water between the United States and a foreign country for compensation published in tariffs. Contract carriers do not hold themselves out to the general public to provide regular service but perform services for particular shippers under individual contracts." *Dock Express Contractors, Inc.*, B-227865 (Nov. 13, 1987) (internal citations omitted).

Find the full text of this and thousands of other resources from leading experts in dozens of legal practice areas in the [UT Law CLE eLibrary \(utcle.org/elibrary\)](https://utcle.org/elibrary)

Title search: FMC Primer: The Shipping Act and Regulatory Matters

Also available as part of the eCourse

[2018 Admiralty and Maritime Law eConference](#)

First appeared as part of the conference materials for the
27th Annual Admiralty and Maritime Law Conference session
"FMC Primer: The Shipping Act and Regulatory Matters"