

California dray hauler scores win against Ocean carrier CMA CGM



After more than three years of fighting against one of the world's largest container ship operators, a Los Angeles-area port drayage company may finally be on its way to recovering close to \$600,000 in transportation bills owed by the ocean carrier.

The bills, charged to CMA CGM by Compton, California-based [REDACTED] Transportation, had accumulated over a period of almost two years, January 2014 and November 2015, for services provided by the drayage company for moving containers from the Los-Angeles-Long Beach port complex to CMA CGM's customers and for providing storage.

When [REDACTED] Transportation sued for its money in late 2015, however, the Marseille, France-based liner operator filed a counterclaim alleging [REDACTED] owed CMA CGM \$1.2 million in demurrage charges, effectively cancelling what [REDACTED] was suing for. But a California district court subsequently threw out CMA CGM's counter-claim, finding that it would have been illegal under its contract with [REDACTED]. In an [unpublished decision](#) filed on July 2 by the U.S. Court of Appeals for the 9th Circuit, the higher court agreed.

"As the district court pointed out, CMA did deviate when it attempted to require payment of those charges by [REDACTED]," the appeals court noted. "CMA...sought to apply the terms of a general contract between itself and [REDACTED] for the purpose of shifting to [REDACTED] the detention-charge obligations of the consignees/shippers. As the district court held, CMA could not legally do so. And, of course, the federal courts will not condone illegal actions, pursuant to a contract or otherwise."

"With the mergers and alliances in the ocean carrier industry, the container ship companies have massive bargaining power, and with that power they're writing contracts with more onerous terms," Paul Marron, principal of Marron Lawyers, told FreightWaves. "But this time they tried to go too far."

Paul Arenas, a partner at Marron's firm, pointed out that ocean carriers will sometimes try to lock out drayage companies from their terminals unless demurrage fees are paid that may technically be the responsibility of the beneficial cargo owner, not the trucking company. Many trucking companies will buckle under the pressure because they need their trucks earning revenue, Arenas said.

"Drayage companies will pay just because arbitration under the UIIA [Uniform Intermodal Interchange and Facilities Access Agreement] is so onerous," Arenas said. "In this case, the company didn't lock out [REDACTED] because CMA CGM needed them to help keep their terminal yard moving. [REDACTED] tried to do them a favor by storing containers for them, and CMA turned around and sued for not returning the containers on time."