Transportation & Trade

Cozen O'Connor has assembled one of the most formidable transportation groups of any major U.S. law firm. The team includes more than 20 attorneys with decades of experience in maritime, aviation, logistics, intermodal and ground transport.

Our attorneys represent clients involved in every aspect of the transportation industry, including ocean carriers; cruise lines and ferry companies; air carriers and aviation companies; logistics providers; surface transporters; joint ventures, trade associations and equipment pools; financial institutions, investors and insurers; and many others.

We are recognized leaders in transportation regulations and competition law, commercial contracting, asset-backed financing, joint ventures and cooperative associations, litigation, and government affairs. Our attorneys provide counsel through a diverse range of transportation practices:

- Aviation Litigation
- Aviation Regulatory
- Cruise Industry
- Intermodal & Logistics
- Maritime Antitrust & Competition
- Maritime Corporate & Finance
- Maritime Litigation
- Maritime Regulatory
- Trade Regulations, Export Controls and Sanctions
- Unmanned Aircraft Systems (UAS)/ Drones

Members of Cozen O'Connor have testified as experts on maritime and aviation law in proceedings before foreign tribunals, served on U.S. delegations to negotiate and implement bilateral and international transportation and security agreements, contributed to industry-recognized legal publications, and received the highest rankings from *Chambers and Partners USA* and other sources.

Through our long and successful representation of major players in the global transport industry, Cozen O'Connor has developed a sophisticated understanding of the financial and operational realities that underlie every business decision. This degree of practical industry knowledge is rare among outside counsel, and it enables our attorneys to provide exceptionally useful, commercially astute advice.

Experience

Represented Alaska Airlines in its $1.9 billion acquisition of Hawaiian Airlines. This representation included preparing the airlines' joint applications to the U.S. Department of Transportation (DOT) for approval of the transfer of Hawaiian Airlines' various DOT licenses and authorizations, as well as negotiating an unprecedented DOT-required agreement involving specific air service, competition, and consumer protection-related provisions.

Secured a unanimous victory from the U.S. Court of Appeals for the D.C. Circuit on behalf of an ocean carrier, vacating a decision by the Federal Maritime Commission ("FMC") that the carrier had improperly charged detention and demurrage fees to a trucker under the U.S. Shipping Act. Our team forcefully argued that the FMC's decision was arbitrary and capricious in contravention of the FMC's own regulations, ignored important facts, and misapplied the so-called "incentive principle" created by the FMC. The D.C. Circuit agreed, finding the FMC's reasoning "illogical" and with a "myopic

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Related Practice Areas

- Aviation Litigation
- Aviation Regulatory
- Business
- Cruise Industry
- Government & Regulatory
- Infrastructure
- Intermodal & Logistics
- International
- Maritime Antitrust & Competition
- Maritime Corporate & Finance
- Maritime Litigation
- Maritime Regulatory
- Trade Regulation, Export Controls & Sanctions

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focus” on the incentive principle rather than the reasonableness of the charges in question.

Represented United Launch Alliance in the negotiation and drafting of a vessel construction agreement and related financing agreement for SpaceShip, a purpose-built U.S. Flag roll-on roll-off cargo vessel. SpaceShip is intended to transport ULA’s new Vulcan next generation rocket from ULA's manufacturing facility to launch sites in Florida and California.

Secured an important victory before the Federal Maritime Commission (“FMC”) on behalf of Hyundai Merchant Marine (“HMM”) in a case publicized in the New York Times alleging violations of the Shipping Act and breach of contract. Discovery revealed that not only had HMM acted in a reasonable manner and committed no violations of the Shipping Act, but that it had in fact granted very favorable terms to the complainant in the midst of the 2021-22 supply chain crisis. The judge cited this evidence three times in her decision denying all claims.

Represented a Marshall Islands company in the negotiation of a loan used to finance the acquisition of an equity position in a publicly traded entity listed on the Oslo Stock Exchange. The cross-border matter included issues involving the laws of the United States, Singapore, Germany, and the Marshall Islands.

Represented MineHub Technologies Inc., and its wholly-owned subsidiary MineHub (USA), Inc. in the acquisition of the assets of Waybridge Technologies Inc., which provides a suite of digital tools that targets fundamental inefficiencies in the raw materials supply chain, and the equity of its U.K. subsidiary, CMDTY UK LTD. This transaction drew on the experience of the firm's corporate, tax, intellectual property, labor and employment, employee benefits and executive compensation, and transportation and trade attorneys.

Represented an international ocean carrier in its acquisition of a tanker vessel in a transaction complicated by factors including the seller using the vessel immediately prior to closing to trade in sanctioned Russian gasoline while refusing to provide the OFAC-mandated attestation, mooring the vessel in another sanctioned country in the days leading to closing, and denying the client’s crew access to the vessel on the day of closing.

Secured an arbitration award of more than $40 million for a leading aircraft manufacturer in an International Chamber of Commerce ("ICC") arbitration in New York against an Argentine air carrier for its alleged failure to fully pay for two aircraft pursuant to a conditional sale contract. In an effort to derail the arbitration, the defendant filed a Concurso Preventivo (a type of preliminary insolvency) in Argentina. This effort was defeated with favorable jurisdictional rulings from both the ICC tribunal and the Argentine courts, and the arbitration hearings were conducted remotely at the height of the COVID-19 pandemic.

Advised one of the world’s largest containership charter owners incorporated in the Marshall Islands and listed on the New York Stock Exchange on Liberian law issues in connection with its $300 million aggregate offering of senior notes. In addition, advised the company on Liberian and Marshall Islands law issues in connection with an internal merger of Liberian intermediate holding company subsidiaries into the company, which was a precondition to the company’s $1.25 billion refinancing of certain of its outstanding senior secured debt.

Successfully moved to dismiss claims by National Air Cargo Group (“NACG”) for breach of contract, tortious interference, unfair competition, and prima facie tort against our client, Maersk Line A/S and its corporate parent, A.P. Moller Maersk A/S (APMM) (*National Air Cargo Group, Inc. v. Maersk Line Limited, et al.* 2019 U.S. Dist. LEXIS 166871, 2019 WL 4735426). The dispute stemmed from a Slot Exchange Agreement that Maersk Line A/S entered into with one of NACG’s competitors, which

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Industry Sectors

- Aviation
- Maritime

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NACG claimed violated an exclusivity provision in a subcontract it had executed with a corporate affiliate of APMM for the transportation of military cargo (which had been at the center of a separate dispute). NACG sought $90 million in compensatory damages and $100 million in punitive damages. In granting the motion to dismiss, the court adopted our arguments verbatim, holding that Maersk Line A/S was a separate entity which was not a party to the subcontract, that Maersk Line A/S's entry into the Slot Exchange Agreement could not possibly be deemed a breach of the subcontract by the affiliated entity, that a cause of action for tortious interference did not exist as a matter of law, and that the remaining claims were likewise meritless.

Won summary judgment resulting in the dismissal of an $8 million claim against our clients, Hess Corporation ("Hess") and Hess Energy Marketing, LLC (*Summit Transport, Inc. v. Hess Energy Marketing, et al.*, 2019 WL 430863 (DNJ 2019)). The plaintiff was a New Jersey fuel oil delivery company which alleged that an oral joint venture existed between Hess and it which entitled the plaintiff to a portion of the proceeds when Hess sold its energy marketing business.

Obtained a $29 million international arbitration award on behalf of a Dutch dredging and marine construction company. The dispute arose when a foreign alumina manufacturer began to curtail the quantities of bauxite it accepted from the client, in breach of a mining contract between the parties. When attempts to negotiate a resolution were unsuccessful, we filed a demand with the International Chamber of Commerce and overcame multiple defenses raised by our opponent to secure the sizable award.

The Government Accountability Office ("GAO") sustained a protest brought by Cozen O'Connor challenging technical restrictions in a U.S. Forest Service solicitation for aerial firefighting services. The procurement, structured as a "call when needed" basic ordering agreement, restricted offers to aircraft with a maximum tank size of 5,000 gallons. The restriction would have disqualified Global SuperTanker's converted 747 aircraft, which has a tank capacity of 19,200 gallons. In sustaining the protest, GAO adopted the arguments advanced by Cozen O'Connor that the tank size restriction was unduly restrictive, detrimental to competition, and was not reasonably necessary to meet the Forest Service's needs to fight wildfires. In addition to awarding costs incurred in pursuit of the protest, GAO's decision establishes a clear limit on agency discretion to impose technical restrictions in solicitations. *Global SuperTanker Services, LLC*, B-414987 *et al.*, 2017 CPD ¶ 345 (Comp. Gen. Nov. 6, 2017).

Secured dismissal of multidistrict litigation centering on allegations that our ocean common carrier client, and several other defendants, fixed prices for transporting vehicles. In granting our motion, the court held that the federal Shipping Act precludes private federal antitrust lawsuits and preempts state law antitrust, consumer protection, and unjust enrichment claims centering on conduct prohibited by the Act. This decision was affirmed by the U.S. Court of Appeals for the Third Circuit.

Secured dismissal of a complaint filed with the Federal Maritime Commission against our client, a leading ocean transportation and logistics company, by a trucking firm with which the client had terminated its business relationship. The complaint alleged violations of several provisions of the Shipping Act of 1984, and we moved to dismiss it for lack of jurisdiction and failure to state a claim on which relief could be granted. In its response, the complainant was forced to abandon a number of its Shipping Act claims as being devoid of merit, and the administrative law judge dismissed the remaining claims on both theories advanced in our motion.

Acted as special U.S. maritime counsel to a bank in connection with a new Senior Secured Term and Revolving Credit Facilities Agreement for $1 billion, including preparing mortgages on the U.S. flag vessels owned by U.S. vessel trusts where the borrow was the beneficial owner; negotiating tripartite

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agreements among agent and trustee, U.S. vessel trust owners, and U.S.-bases bareboat charterers; and obtaining other U.S. security.

Represented Alaska Airlines in connection with its selection by the U.S. Department of Transportation as one of only eight U.S. airlines authorized to introduce scheduled air service to Havana, Cuba.

Represented Alaska Airlines in connection with its $4 billion acquisition of Virgin America, including advising the airline on issues relating to the regulatory review of the transaction and the integration of the airlines' operations.

Secured an unprecedented exception to the Federal Aviation Administration’s ban on U.S. aircraft flying into Iraq, which required demonstrating to the FAA and the Transportation Security Administration that our client, international relief organization Samaritan’s Purse, had in place the training, procedures, plans, and reliable intelligence needed to safely operate the proposed flights, for which a dedicated operating manual was drafted. This exception permits Samaritan’s Purse to use its own aircraft to deliver essential provisions to the victims of the humanitarian crisis stemming from the battle for Mosul.

Represented a pilot and flight instructor in connection with a five-year suspension of his medical license imposed by the FAA, based on an erroneous finding that a minor head injury affected his ability to safely pilot an airplane. Using extensive medical testimony, we persuaded the Federal Air Surgeon that the client should be cleared to fly, effective immediately.

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