

Alliance Asks Supreme Court To Reinstate \$2M Award

By Erin Fuchs

Law360, New York (December 1, 2010) -- Alliance 3PL Corp. has asked the U.S. Supreme Court to review the reversal of a \$2.2 million award in a contract fight with trucking company New Prime Inc., arguing that the appellate court's decision violated procedural rules.

In a petition docketed Monday, Alliance contended that the U.S. Court of Appeals for the Seventh Circuit violated federal rules by reversing a verdict on the grounds of insufficient evidence, when New Prime had not raised that issue in its pre-verdict motion for judgment as a matter of law.

"We don't mean any disrespect to the Seventh Circuit, but we think the way this procedurally came down is unfair," said Daniel P. Albers of Barnes & Thornburg LLP, who represents Alliance.

Alliance, which handles third-party logistics services for companies, sued Missouri-based New Prime in 2007.

The company claimed New Prime breached a contract that contained a back-solicitation clause that prohibited the defendant from directly soliciting traffic from any Alliance customer when it had learned of the opportunity through the plaintiff, according to the appellate court opinion.

A jury in the U.S. District Court for the Northern District of Illinois concluded that New Prime violated the back-solicitation clause by continuing its relationship with fats and oils producer Loders Croklaan USA and awarded Alliance some \$2.2 million in damages.

However, the Seventh Circuit ruled in August that New Prime's motion for judgment as a matter of law should have been granted, finding Alliance had not provided enough evidence to define the word "traffic" in the contract, the petition stated.

Alliance claimed in its Supreme Court petition that this reasoning violated Rule 50 of the Federal Rules of Civil Procedure because New Prime had not argued in its pre-verdict motion that Alliance failed to provide adequate evidence regarding the definition of traffic.

"One of Rule 50's main purposes is to ensure that a party has an opportunity to cure a potential deficiency in its proof," Alliance claimed.

"Although Prime filed a pre-verdict motion for JMOL, it never argued that Alliance submitted insufficient evidence regarding the definition of traffic," the petition added. "Thus, Alliance was never put on notice that there was a problem with its proof related to the definition of 'traffic.'"

The relationship between Alliance and New Prime dates back to 2000, when Alliance first connected New Prime with customers, the appellate ruling said.

Before it hired Alliance to handle its shipping in 2003, Loders dealt with motor carriers directly, and it worked with New Prime on several occasions between 1998 and 2003, according to the appeals court.

Alliance accused New Prime of breaching the contract by continuing to carry bulk goods for Loders after 2007, when its contract with New Prime ended.

In finding for New Prime in August, the appeals court pointed out that the parties had disagreed as to whether the word "traffic" in the contract referred to the existence of a shipper or the volume of transportation a shipper requires.

The appellate court decided to adopt New Prime's straightforward position that traffic referred to the existence of a shipper, in part because Alliance had failed to show any evidence that the parties had negotiated the meaning of traffic while forming the contract.

"Illinois understands non-compete clauses to cover no more than the reasonable import of their language and does not allow expansive readings of restrictive covenants, because more competition often serves the public interest in low prices," the Seventh Circuit said.

Jeffrey W. Sarles of Mayer Brown LLP, who represents New Prime, called Alliance's petition a "groundless attempt to transform a state-law contract ruling by the court of appeals into a federal issue."

New Prime is represented by Mayer Brown LLP.

Alliance is represented by Barnes & Thornburg LLP.

The case is Alliance 3PL Corp. v. New Prime Inc., case number 10-691, in the U.S. Supreme Court.