

Shipping Co. Must Pay \$49M For Copycat Container Designs

By **Matthew Santoni**

Law360 (October 5, 2018, 7:55 PM EDT) -- A Texas state court has awarded SandBox Logistics LLC more than \$49.2 million and all the shipping containers manufactured by a rival company after finding its CEO violated a nondisclosure agreement and created copycat containers, but the rival company has pledged to appeal.

After a jury trial in July, the Harris County District Court's final judgment on Tuesday ordered Arrows Up Inc., Arrows Up LLC and CEO John Allegretti to pay SandBox \$21.7 million in profit disgorgement and \$27.5 million in punitive damages for stealing the design of containers used to ship sand for hydraulically fracturing oil and gas wells. The court also ordered all the containers that Arrows Up manufactured, sold or leased to be turned over to SandBox.

"The court declares that the frac sand shipping containers Arrows Up has manufactured, sold or leased since signing the settlement agreement and release are 'related inventions' as defined by Section 4 of the mutual confidentiality and non-disclosure agreement and are owned solely and exclusively by plaintiff SandBox," the final judgment entered Tuesday says.

In an announcement Thursday, Arrows Up declared its intention to appeal the judgment and seek a stay of the award and the transfer of the containers.

"The lower court judgment is not enforceable until the appeals process is complete and it does not address the pivotal issue of contract enforceability," said Kevin Shuba, CEO of Arrows Up's managing affiliate OmniTRAX, in a statement. "We remain convinced that the contract as written is an unenforceable restraint of trade and will seek relief in the Texas Court of Appeals."

The judgment, which also includes more than \$800,000 in prejudgment interest, declared that several features of the frac sand shipping containers made by Arrows Up were in fact the creation of SandBox.

However, since Arrows Up objected to the amount awarded and which Arrows Up entity was responsible, Judge Steven Kirkland said that if the fraud case and the punitive damages are set aside, Arrows Up would still pay SandBox \$21.7 million in disgorgement and Allegretti would be responsible for repaying \$15.6 million in SandBox's lost profits, plus interest.

Under the alternative scenario, Arrows Up and Allegretti would pay SandBox \$1 million for breach of contract, \$2.6 million in attorneys' fees for the trial, \$200,000 if the case goes to the Court of Appeals, and \$35,000 if it's appealed to the Texas Supreme Court plus \$150,000 if the Supreme Court requests briefs and \$50,000 if there are oral arguments.

Attorneys for either side did not respond to requests for comment Friday.

SandBox is represented by Matthew P. Whitley, Leslie H. Tronche, Seepan Parseghian, Michael E. Richardson and Allison Standish Miller of Beck Redden LLP.

Arrows Up is represented by Allen H. Rustay, Stephen M. Loftin, Stewart Hoffer and Nicholas Zugaro of Hicks Thomas LLP, and Allyson Ho of Gibson Dunn & Crutcher LLP.

The case is Sandbox Logistics v. Arrows Up Inc. et al., case number 2016-03483, in the District Court of Harris County.

--Editing by Adam LoBelia.

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