

CMA CGM, as carrier, to provide maritime cargo shipping and freight services (the “Service Contract”; a true and accurate copy of which is attached to the proof of claim). CMA CGM provided freight services for the Debtor by transporting cargo—namely furniture products and personal property—from ports in Asia to ports in the continental U.S. CMA CGM continued to provide services to the Debtor post-petition, and the Debtor owes to CMA CGM unpaid post-petition debts.

3. On May 30, 2023, CMA CGM filed with the Debtors’ claims agent its proof of claim against and supporting documentation, asserting (i) an administrative expense claim in the amount of \$278,820.00 (the “Administrative Claim”); and (ii) a general unsecured claim of \$71,323.00. (Bankr. N.D. Miss. No. 22-13422, Claim No. 10149.)

4. The vast majority of the Administrative Claim is for demurrage charges incurred by the Debtor between December 30, 2022 and May 16, 2023.² For context, contractual demurrage charges arise when the merchant fails to retrieve timely its cargo from a port or a rail hub, and CMA CGM provides storage for the cargo. The Service Contract, as well as relevant bills of lading and tariffs, provided for demurrage, and detention, charges while CMA CGM stored the Debtor’s cargo in CMA CGM’s containers prior to the Debtor’s retrieval of that cargo, which delays prohibited CMA CGM from re-deploying those containers in the ordinary course of its own operations.

5. Section 14 of the Service Contract details the applicable *per diem* charges for demurrage and detention, as follows:

14. FREE TIME

² Of the total Administrative Claim, all but \$280.00 is derived from demurrage charges; \$280.00 stems from equipment detention charges, per Invoice No. NAIB0964676, which is attached to the proof of claim.

A. The terms "Free Time", "Detention", "Demurrage", "Storage" and "Per Diem" shall have the meaning as defined in Carrier's governing tariff(s). Detention and demurrage free time and per diem charges for shipments made under this Contract shall be applied as per Carrier's governing tariff(s), unless otherwise stated in Term 101 of the Appendices attached hereto. In either case, detention per diem charges will be invoiced as follows:

B. Carrier will first bill any detention charges to the shipper and/or consignee shown on the Bill of Lading for direct payment. Notwithstanding the foregoing, and without waiving its right to collect from the shipper or consignee, Carrier reserves the right to instead collect detention charges relating to Merchant Haulage Moves from the motor carrier directly.

In all cases, the shipper and consignee shown on the Bill of Lading are jointly and severally responsible for detention per diem charges.

C. If the shipment is a Carrier Haulage Move under Drop and Pick conditions, shipper and/or the consignee on the Bill of Lading shall be responsible for notifying Carrier and its designated agent or motor carrier that the Equipment is empty and ready to be picked up.

Carrier notifications must be sent in writing via email to ssc.usemptsplit@cma-cgm.com.

In the first instance, the Merchant shall be billed per diem charges when the Equipment is not returned within free time. Notwithstanding the foregoing, and without waiving its right to collect from the Merchant, Carrier reserves the right to instead collect detention charges relating to Drop and Pick moves from the motor carrier directly.

D. Where demurrage is charged and/or collected by Carrier, the foregoing provisions in Sections 14(B.) and 14(C.) applicable to detention shall likewise apply to demurrage.

6. On November 12, 2024, the Liquidating Trustee filed the Claim Objection as to the Administrative Claim, asserting only the following grounds for objection:

- Expense not actual or necessary and/or no use by or benefit conferred upon estates
- Claim not allowable in whole or in part under § 503(b)(1) as administrative expense

4. The Claim asserts an administrative claim in the amount of \$278,820.00.

5. On the foregoing bases, the amounts of the Claim asserted as administrative expenses should be disallowed as an administrative expense.

(ECF No. 1170, at 2.)

7. On January 28, 2025, the Court entered the *Agreed Order Extending Deadline to Respond to Objection to Administrative Claim*, by which the Court set February 28, 2025 as the deadline by which CMA CGM must respond to the Claim Objection. (ECF No. 1287.)

DISCUSSION

8. As explained below, CMA CGM's Administrative Claim meets the requirements

for administrative expense priority, pursuant to 11 U.S.C. § 503(b)(1). Accordingly, the Claim Objection should be overruled.

9. Section 503(b)(1)(A) provides administrative expense status for “the actual, necessary costs and expenses of preserving the estate . . .” 11 U.S.C. § 503(b)(1)(A); *see generally In re Hilburn*, 62 B.R. 597, 600 (Bankr. N.D. Miss. 1986) (“The terms ‘actual and necessary’ have been interpreted to mean those ‘expenditures of the trustee for the cost of operating a business, for storage of property, for rent, for taxes and other costs incidental to [the] protection and conservation ... [of the estate].’ 3 Collier on Bankruptcy, 503– 15 (15th Ed.1985) (emph. added). Further, it is stated that the payment of rent ‘if necessary, is recognized as an allowable expense of preservation of the estate incident to the proper administration of the debtor’s assets.’ *Id.* at 503– 16.”).

10. Under § 503(b), the two key elements are that the debt: (i) arose from the creditor’s transaction with the post-petition debtor-in-possession; and (ii) must be beneficial to the debtor-in-possession and the operations of its business. *See Toma Steel Supply, Inc. v. TransAmerican Natural Gas Corp. (In re TransaAmerican Natural Gas Corp.)*, 978 F.2d 1409, 1416 (5th Cir.1992) (finding that a “*prima facie* case under § 503(b)(1) may be established by evidence that (1) the claim arises from a transaction with the debtor-in-possession; and (2) the goods or services supplied enhanced the ability of the debtor-in-possession’s business to function”).

11. In this instance, CMA CGM’s Administrative Claim meets these two requirements. First, CMA CGM’s Administrative Claim arose from the post-petition provision of services pursuant to the Service Contract. Of note, the parties amended the Service Contract over three months *after* the petition date in April 2023. Also, CMA CGM’s various invoices attached to the Administrative Claim demonstrate that CMA CGM provided post-petition services and, in turn,

incurred post-petition charges, such as the following excerpt from Invoice No. NAIB0963482:

(C) Equipment demurrage Import CARRIER

Container Number: FSCU7146001		Size/Type: 40HC		3 Free Working Days		Total billable days: 118 Calendar Days		Last Free Date: 04 JAN 2023	
Tariff Type: General Tariff		Container Availability Date: 29-DEC-22							
Start Event Data: 30-DEC-22 - Gate in Full - MEMPHIS, TN - BNSF- MEMPHIS-4814 LAMAR AVE, MEMPHIS, TN, 38118									
Stop Event Data: 02-MAY-23 - Gate out Full - MEMPHIS, TN - BNSF- MEMPHIS-4814 LAMAR AVE, MEMPHIS, TN, 38118									
From Date	To Date	Days	Type	Rate	Inv. Currency	Inv. Amount			
05-JAN-23	07-JAN-23	3	Calendar	160.00	USD	480.00			
08-JAN-23	10-JAN-23	3	Calendar	210.00	USD	630.00			
11-JAN-23	02-MAY-23	112	Calendar	260.00	USD	29,120.00			
Currency Charge Totals									
USD						30,230.00			
Total								30,230.00	

This excerpt is the template for the various invoices attached to the Administrative Claim, and, with respect to the post-petition amounts, states the relevant date ranges—January 2023 into May 2023—the related *per diem* rates, the number of days of demurrage, and the total amount charged, as well as the container number.

12. As to the second element—a benefit to the debtor’s estate—“[i]t is well established that providing storage for property of the estate constitutes ‘preserving the estate’ within the meaning of § 503(b)(1)(A) and that post-petition storage costs therefore may be granted administrative expense priority.” *In re Aerospace Techs., Inc.*, 199 B.R. 331, 340-41 (Bankr. M.D.N.C. 1996) (granting administrative expense to creditors of chapter 7 estate where shippers stored debtor’s personal property at terminal post-petition); *see also In re Zaisan, Inc.*, 80 B.R. 832, 838 (Bankr. S.D. Tex. 1987) (authorizing administrative expense claim for storage post-petition charges); *see also In re Texas Pellets Inc.*, No. 16-90126, 2017 WL 6508974 (Bankr. E.D. Tex. Dec. 19, 2017) (stating that “significant stand-by hours incurred by [creditor] were, in fact and law, actual and necessary because of the Debtors’ demands that trucks be *available* to them on a round-the-clock basis”).

13. In a 2001 decision, the U.S. District Court for the Northern District of Mississippi affirmed on appeal this Court’s order approving administrative expense priority for demurrage

charges incurred by a creditor that stored furniture components. *See In re River Oaks Furniture, Inc.*, 269 B.R. 733 (N.D. Miss. 2001). In *River Oaks*, the creditor asserted an administrative claim of approximately \$84,000, of which \$8,821.29 stemmed from demurrage charges because the debtor-in-possession refused to accept delivery of custom-made furniture components, and the creditor stored that furniture. *River Oaks*, 269 B.R. at 735, n.3. The District Court overruled the objection to the administrative claim and found a benefit to the estate, even where the debtor-in-possession did not accept the goods. “[T]he court finds that the service [the creditor] supplied to [the debtor]—the ability to place an order for custom-sized furniture components in order to obtain a substantial amount of business with Heilig Meyers—enhanced [the debtor’s] ability to function as a going concern.” *Id.*, at 737. Here, the Debtor received a benefit because it accepted cargo and goods shipped and stored by CMA CGM, and the Debtor later sold cargo in its ordinary course of business. In the language of *River Oaks*, “the goods or services [CMA CGM] supplied to [the Debtor] must have enhanced the ability of [the Debtor] to function as going concern.” *Id.* CMA CGM enhanced the Debtor’s going concern operations by storing items ordered by the Debtor that it later sold in its core business function. Thus, CMA CGM’s demurrage charges are entitled to administrative expense priority under § 503(b)(1).

CONCLUSION

14. CMA CGM reserves all its rights, claims, defenses, and remedies under applicable law and contract, including, without limitation, all amounts due and owing to CMA CGM, at any priority, including, without limitation, any demurrage, detention charges, costs, fees, expenses, and other amounts.

WHEREFORE, CMA CGM (America) LLC respectfully requests that the Court overrule and deny the Trustee’s Claim Objection, authorize and approve CMA CGM (America) LLC’s administrative expense claim, direct that the Trustee pay to CMA CGM (America) LLC the sum of \$278,820.00, and grant such other relief that the Court deems proper.

DATED: February 28, 2025

CMA CGM (AMERICA) LLC

s/Garner Vance

Jeffrey R. Blackwood (MS Bar No. 10613)

Garner Vance (MS Bar # 106706)

Bradley Arant Boult Cummings, LLP

One Jackson Place

188 E. Capitol Street, Suite 1000

Jackson, MS 39201

Telephone: (601) 948-8000

Fax: (601) 948-3000

jblackwood@bradley.com

gvance@bradley.com

Counsel for CMA CGM (America) LLC

CERTIFICATE OF SERVICE

I hereby certify that I have filed a true and correct copy of the above and foregoing document via the Court's ECF filing system which sends notification of such filing to all counsel of record.

THIS, the 28th day of February 2025.

s/Garner Vance _____
Garner Vance