

## Fight over late container fees goes to Supreme Court

By [Rob McKay](#) | July 9, 2010

A legal stoush with implications for transport operators having shipping container demurrage costs passed on to them has reached the NSW Supreme Court.

China Shipping has appealed the NSW Consumer, Trader & Tenancy Tribunal's April decision in the DV Kelly v China Shipping (Australia) Agency case.

The case involves furniture importer DV Kelly, which returned containers 72 days after the free period had expired and was charged \$8,514 for the delay.

The tribunal ruled the detention charges were penalties and therefore unenforceable.

The case, which has international ramifications, could be subject to a class action – a move the Victorian Transport Association has urged – and it is understood that a litigation-funding firm has been approached tentatively.

China Shipping appealed to the NSW District Court in May but sought to have the case heard in the NSW Supreme Court last month as that forum has greater expertise in the issues raised.

Container shipping lines K Line and NYK have also been drawn into the case, which might not be heard before the end of the year.

Container demurrage charges are the penalty of choice globally of shipping lines anxious to force containers back into the supply chain, though critics charge that they are also a source of serious revenue for the lines.

The lines dispute this, saying "no delay, no fee" is the optimum outcome.

Sources were in no doubt that they would bring immense and expensive legal resources to bear on the case, given that an Australian precedent would threaten the demurrage system internationally.

The VTA says that, as the link least able to ward them off, transport operators are often lumped with fees passed on by shippers and freight forwarders even though the operators may be subject to congestion and other problems around ports.

The charges were the catalyst for the VTA setting up two empty container park working groups with peak body Shipping Australia in March.

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