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Former Sea Star Lines exec vows to keep fighting record antitrust sentence

 PaRR Confirmed

- Appeals court affirms five-year price-fixing sentence
 - Frank Peake will ask the First Circuit to rehear his appeal
 - Peake asserts that prosecutorial misconduct unfairly biased jury
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A former shipping executive whose record five-year price-fixing conviction was upheld by the US First Circuit Court of Appeals has pledged to seek further — and higher — review of his case.

On 14 October, the [First Circuit affirmed](#) the January 2013 conviction of Frank Peake, former chief operating officer and president of **Sea Star Lines**.

David Markus of Markus/Moss who represents Peake told *PaRR* that he will ask the First Circuit to rehear his client's appeal and, if necessary, ask the US Supreme Court to review Peake's conviction.

He noted that the three-judge panel “agreed with us that the prosecution crossed the line numerous times in the trial.”

A spokesperson for the US Department of Justice (DoJ) declined to comment on the matter.

A jury in US federal district court in Puerto Rico found Peake guilty in January 2013 of participating in a conspiracy to fix rates and surcharges for seaborne freight between the continental US and Puerto Rico. The trial judge [sentenced Peake to five years](#) in prison in December 2013.

Markus had [argued on appeal](#) that the DoJ's “unduly prejudicial and irrelevant arguments” — such as how the conspiracy allegedly made school lunches, **Burger King** Whoppers and paper clips at **Office Depot** cost islanders more — permeated the DoJ's case and warranted a new trial.

The First Circuit agreed that the prosecutor's remarks were improper, but US Circuit Judge Juan Torruella, writing for the three-judge panel, noted that the record clearly shows that trial judge responded appropriately to Peake's valid concern about whether they unfairly biased the jury.

Paul Calli of Calli Law, which represents white-collar defendants, told *PaRR* that this case “shows that prosecutorial misconduct continues to infect and obstruct the due administration of justice before and during trial.”

He said “a finger-wag followed by ‘nobody was hurt this time and let's not do that again’ not only does not deter the behavior, but — because prosecutors keep doing it over and over and over again — may well have the opposite effect.”

After the First Circuit issued its opinion, Markus told *PaRR* the fact that trial judge had to send the jury back two times after telling him it was hung makes it “a head-scratcher as to how [the appeals panel] found the

misconduct harmless."

But in the First Circuit opinion, Torruella called the case "one of the largest antitrust conspiracies in the history of the United States," and said that the government's case was "robust."

"The testimony of the co-conspirators and direct customers of the shipping companies established that there was a conspiracy to fix prices, that Peake knowingly participated, that the conspiracy had the effect of increasing shipping rates and surcharges, and that this affected interstate commerce," Torruella wrote.

The Peake case was part of a broader DoJ investigation of seaborne freight between the continental US and Puerto Rico. That investigation netted guilty pleas and more than USD 46m in criminal fines from Sea Star, **Horizon Lines** and **Crowley Liner Services**, the three largest water freight companies that ply goods between the US and Puerto Rico. In addition, executives from those companies who conspired with Peake pleaded guilty to charges related to the conspiracy.

The only other [related criminal case to go to trial](#) was against former Crowley pricing executive Thomas Farmer. In May, a Puerto Rican jury found Farmer not guilty of participating in the conspiracy.

The case is *US v Frank Peake*, US Circuit Court of Appeals for the First Circuit, case no.14-1088.

by Peter Geier in Washington DC