

Hot Recent Cases in Motor Carrier Law

by *Steve Block* January 2002

Which Insurer gets to Pay for Trucker's Personal Injury?

Smith v. Continental Western Ins. Co., et al, 169 F.Supp.2d 687 (E.D. Mich. 2001)

Owner operator Smith, who lived in Indiana, was injured when he got into a trucking accident in Michigan. He was in the Wolverine State while hauling pursuant to a short-term trip lease with Steel Transport, which apparently was allowed under a long-term lease he had with Alco Transportation Co. (notwithstanding control provisions of the leasing regs which usually don't allow such two-timing, an issue the court doesn't address). Steel was insured by Continental Western, and Alcoa by St. Paul Fire & Marine. Smith had bobtail and deadhead coverage written by Guaranty National. Lastly, Smith insured his two personal automobiles (not his rig) through Royal Globe in Indiana, but didn't seek coverage from Royal or name it as a party to the suit.

Smith sought "personal injury protection" ("PIP") coverage pursuant to Michigan's no-fault act from every insurer involved except Royal. All three insurers brought summary judgment motions. All three were granted.

After finding that Michigan's no-fault statute applies to the defendant insurers despite Smith's vehicles being registered in the Hoosier State (the insurers were certified in Michigan, which triggered coverage under Michigan law), the court found that the defendant insurers stood in line to pay PIP benefits behind Royal. No-fault insurance is purchased by an insured for him/her/itself; the defendant insurers had issued various species of third-party coverage. The court rejected Smith's argument that the automobiles Royal insured were not involved, because that is not requisite to coverage under Royal's policy as a matter of Michigan law. Smith may be out of luck, because he apparently blew a deadline for making a claim to Royal, which may explain why he sought coverage from the other three.

No Jurisdiction Over the Subject of Freight Charges

Transit Homes of America v. Homes of Legend, 2001 WL 1464160 (N.D. Ala 2001)

Motor Carrier Transit Homes thought shipper Homes of Legend had stiffed it for freight charges due and owing for the haul of trailer homes. The carrier looked up what it thought was a jurisdictional section of ICCTA's § 14101 (b)(2), which provides that an aggrieved carrier may sue "in an appropriate State court or United States district court. . ." for such things as delinquent freight charges. Transit Homes brought suit in the U.S. District Court for the Northern District of Alabama, and Homes of Legend moved to dismiss based on lack of subject matter jurisdiction.

The court sided with the shipper and kicked the case out of federal court. This was not a freight damage claim, so Carmack and its jurisdictional provisions didn't come into play. True, found the Northern District of Alabama, ICCTA doesn't have a problem with a

carrier suing in federal court. It's just that ICCTA doesn't create a right for you to get in there. In other words, you have to have an independent basis to assert federal jurisdiction – usually diversity or an international shipment. In this case, the shipment was domestic and the stake at issue was below the diversity jurisdictional minimum. Thus, Transit Homes must pursue its freight charges in state court. The decision doesn't address 28 USC §§1336 and 1337, which address federal jurisdiction over matters relating to surface hauls.

And While We're on the Subject, It's a Matter of Naming Proper Plaintiffs!

California Dump Truck Owners Association, et al v. Cummins Engine Company, Inc., et al, 2001 WL 1563913 (9th Cir. (Cal.) 2001)

Plaintiffs often would like their claims heard in their local state courts, especially when suits are aimed at out-of-state defendants. They get that home field advantage, with juries and even judges being, perhaps, more inclined to support the local team. Defendants can bounce a case from state court into federal court only if no two parties on either side of the “versus” reside or are incorporated in the same state. To keep nonresident defendants from removing an action to federal court based on diversity jurisdiction, a practice known as “fraudulent” or “egregious” joinder of plaintiffs has developed whereby a claimant buddies up as a co-plaintiff with someone off the street who happens to hail from the same state as one of the defendants.

Courts understandably frown upon such practice, and can respond with everything from granting federal subject matter jurisdiction to sanctions and attorney fee awards. Fraudulent joinder is when a named plaintiff stands absolutely no chance of establishing a cause of action against the defendant(s) in state court, and egregious joinder is when a dubiously named plaintiff's beef against the defendant(s) bears no nexus whatsoever to that of the other plaintiff(s).

In this case, the California Dump Truck Owners Association (“CDTOA”) brought suit in California state court against a number of truck manufacturers incorporated in various states. All of CDTOA's members are based in the Golden State except one, Reliable Carriers, Inc. (“RCI”), which happened to hang its hat in the same state as one of the six named defendants. Of course, RCI was individually named as a plaintiff, ostensibly preventing the defendants from removing the action to federal court.

The matter went all the way to the Ninth Circuit before it was concluded that the defendants had not done enough to show either fraudulent or egregious joinder. Both theories present a pretty tough standard for defendants to meet. The mere *possibility* of a cause of action by the joined plaintiff will defeat a fraudulent joinder allegation, and the mere absence of currently available evidence doesn't mean the joined plaintiff has no possible chance of prevailing. The joinder was found not to be egregious because RCI's claim, like that of the rest of CDTOA, was related to allegedly faulty diesel engines. Thus, the matter stays in state court.

Shipper Goes for Broker and Loses

Professional Communications, Inc. v. Contract Freighters, Inc., et al, 2001 WL 1251640 (D. Md. 2001)

Shipper Professional Communications (“PCI”) hired Eagle USA Airfreight to ship a cargo of cell phones from Miami to Baltimore. Eagle retained Covenant Transport, a broker, to coordinate the shipment. PCI witnessed 63 undamaged crates being loaded into an Eagle truck, which transported them to a warehouse owned by HBI Priority Freight. Covenant arranged for interstate transport of the cargo with carrier Contract Freighters, which hauled 59 of the crates to Baltimore the next morning (Eagle transported the remaining four because they were of different size dimensions). A portion of the cargo arrived damaged; another portion didn’t arrive at all.

When PCI sued all concerned, Covenant and HBI wanted out. Both brought motions for summary judgment. Covenant urged that brokers are not liable under Carmack, and that Covenant neither breached a contractual duty to PCI nor was negligent. PCI agreed Covenant was a broker, but argued that Contract Freighters, a carrier, was Covenant’s agent. Under agency law principles, Covenant should be liable for its agent’s goof ups.

While case law gives a level of credence to this argument, the District of Maryland didn’t buy it. Contract Freighters was not Covenant’s agent because nothing demonstrated the requisite level of control by Covenant over the carrier or its driver. Similarly, any negligence on Contract Freighters’ part was not attributable to Covenant.

HBI, on the other hand, couldn’t pass summary judgment muster. A plaintiff bailor bears the initial burden of showing a specific lack of care or other negligence (which, under some circumstances, may be presumed) on the bailee warehouseman’s part. Here, PCI had evidence that the cargo was tendered to HBI in good order and condition, but that PCI got it back damaged and short. Statements by PCI reps were sufficient to create a triable issue of material fact, even though HBI demonstrated the seal it placed on the trailer wasn’t the same one that arrived (that doesn’t mean HBI didn’t cause the damage). A panoply of other arguments HBI presented also failed. HBI gets to stick around for another round.

Must a Motor Carrier Capitalize Its License Fees, or Can It Deduct Them All in One Year?

U.S. Freightways Corp. v. Commissioner of Internal Revenue, 270 F.3d 1137 (7th Cir. 2001)

Carriers have to pay various license fees, permit fees and, of course, insurance premiums to operate on the nation’s highways. Payment of these fees and premiums often provides authority or coverage spanning across more than one calendar year. A question arises as

to whether a carrier should be able to fully deduct the entire fee and premium payments – known as FLIP expenses – during one calendar year, even though it enjoys their benefit during the course of two calendar years. U.S. Freightways was concerned enough about the issue to take the matter to the Seventh Circuit, after the U.S. Tax Court found that the FLIP payments had to be capitalized and deducted over time.

The Tax Court had concluded that U.S. Freightways was an “accrual method tax payer,” i.e., it pays its tax obligations when accounts become due and owing (as opposed to when it actually gets paid). A vaguely defined tax reg colloquially known as “the one-year rule” allows for full tax deduction in the calendar year of payment if the benefit of the payment extends only twelve months from when it was paid (even if that twelve months breaks into the subsequent calendar year). The Tax Court apparently found that the one-year rule was not available to accrual method tax payers.

The Court of Appeals disagreed and reversed the Tax Court on this and several other pertinent issues. Recognizing the issue is convoluted and difficult to analyze given hazy tax regs (as well as the deference which courts must give those regs), the Seventh Circuit ruled the IRS was reading interpretative case law too dogmatically in ruling that an accrual tax payer could never enjoy the benefit of the one-year rule. The “ordinariness” and “clockwork regularity” of the FLIP payments compelled a determination that they could be written off as soon as they’re paid.

Kyodo Won’t be Shanghai’ed: A Foreign Forum Selection Clause Isn’t Enforceable Under Carmack

Kyodo U.S.A. v. Cosco N. Am., pending in the U.S. District Court for the Central District of California, CV 01-00499 LGB (Manx)

Shipper Kyodo gave clear instructions to Chinese ocean carrier Cosco that its cargo of pork had to be kept at 32 degrees at all times from Ensenada, Mexico to Long Beach, California (by truck) and then on to Kobe, Japan (by ship). During the land-based leg of the haul, temperature settings plunged to 18 degrees, ruining the cargo. Kyodo sued Cosco, which had issued a through bill of lading, in the U.S. District Court for the Central District of California, notwithstanding the bill of lading’s foreign forum selection clause mandating jurisdiction in Shanghai. Cosco moved to dismiss based on jurisdiction.

True, such jurisdictional clauses are enforceable under the U.S. Carriage of Goods Act (COGSA) per a 1995 Supreme Court decision. But, the court found, COGSA doesn’t control here. Because a trucker Cosco engaged screwed up, Carmack kicks in with its provisions that a shipper can select a U.S. forum. Other courts have held differently, and proposed amendments to COGSA would extend the ocean cargo liability regime’s dominion to losses on the highway, but this court concluded that COGSA addresses only salty cargo damage.

An express intention of Carmack is “to relieve shippers of the burden of searching out a particular negligent carrier,” and the statute applies to cargo on its way out of the United

States. Other decisions have held ocean carriers liable under Carmack, even though they never moved the cargo on a road; and no separate motor carrier bill of lading is required to sever the jurisdictional analysis. The court actually concludes that Carmack “prohibits” forum selection clauses in ruling that the lawsuit stays stateside.

Limitation of Liability: A Federal Court Gets it Right!

EFS National Bank v. Averitt Express, Inc. v. Motor Cargo, pending in the U.S. District Court for the Western District of Tennessee, No. 00-CV-3201-V

Addressing a vitally important issue which courts get wrong with alarming regularity, the Western District of Tennessee recently hit the nail on the head by granting the dispositive motions of two carriers regarding limitation of liability.

Shipper EFS filled out a bill of lading issued by carrier Averitt, leaving blank the section calling for declared cargo value. The bill of lading didn’t contain a limited liability clause, but it incorporated Averitt’s Rules Tariff, which did. Averitt engaged carrier Motor Cargo to make the haul. The cargo apparently was lost.

True, neither Averitt nor Motor Cargo showed EFS a tariff or any semblance of written rules, conditions terms, etc. prior to the shipment. Nor, however, did EFS ask to see one. True also, *Toledo Ticket Co. v. Roadway Express*, 133 F.3d 439 (6th Cir. 1998) and other cases (erroneously) say a carrier must offer its shipper two alternative freight rates – one with full liability – in order to limit its liability, and that incorporating a tariff in bill of lading language doesn’t do the trick.

But this court refused to follow those cases, citing ICCTA’s legislative history whereby Congress evinced its intent to “return to the pre-TIRRA situation where shippers were responsible for determining the conditions imposed on the transportation of a shipment” and that “Congress intended to make it the shipper’s responsibility to ask for a copy of the relevant rate classification rules from the carrier.” Noting that *Toledo Ticket* addressed a pre-ICCTA carriage, and that some other decisions have enforced similar bill of lading provisions (one court having found that a carrier need not “protect shippers from themselves”), the court found both carriers had limited their liability.

On another issue, the court refused to let Averitt out altogether on the ground that Motor Cargo caused the loss, as ICCTA still holds the issuer of a bill of lading primarily liable to the shipper.