

## **Hot Recent Cases in Motor Carrier Law**

by *Steve Block* January 2003

### **A carrier gripes about getting a satisfactory rating**

***Ezzell Trucking v. Federal Motor Carrier Safety Administration, 309 F.3d 24 (CADC 2002)***

The Federal Motor Carrier Safety Administration audited Ezzell and found the carrier had violated a couple of drug testing guidelines. This resulted in Ezzell receiving a “conditional” safety rating. Ezzell got the feds to reconsider their findings, and one of the two citations was nixed. This was enough to get Ezzell’s rating bumped up to “satisfactory.”

Sound like a good day’s work by Ezzell? Well, the carrier still wasn’t happy. It appealed the FMCSA’s refusal to reverse the remaining drug testing violation to the Court of Appeals.

The court wasn’t sympathetic, and dismissed Ezzell’s appeal on the ground it had suffered no injury for which it could seek redress. Ezzell argued that a drug testing violation, even if the carrier had a satisfactory rating, might still jack up its insurance premiums. The finding could also be used as evidence in a pending civil proceeding against Ezzell. Lastly, the carrier was worried about its rep in the industry.

But, the court ruled, the issue is one of constitutional (Article III) standing to seek recourse. If you can’t point to specific harm from the agency who made the citation, you can’t sue that agency (even if you don’t like how an agency reached its conclusion).

### **A shipper can’t paint its way out of limitation of liability**

***Mudd-Lyman Sales and Service Corp. v. United Parcel Service, 2002 WL 31687683 (N.D. Ill. 2002)***

In Atlanta, hardware distributor Mudd-Lyman sold a huge volume of spray paint products at a trade show to Ace Hardware stores across the nation. It overnighted by UPS the original purchase orders from the stores to its home office in Minneapolis. No, Mudd-Lyman didn’t keep copies of the purchase orders and, yes, UPS lost them. The shipper claimed it lost profits of some sixty grand by the lost sales.

When Mudd-Lyman asked the carrier to pay up, UPS replied that it was limiting its liability to \$100.00. The shipper had booked the shipment in its own computer system, through UPS’ software, which provided for the limitation of liability in the “agreement” to which most folks just click “I accept” before entering shipping information.

The parties cross moved for summary judgment before the District Court for the Northern District of Illinois. The court rejected the shipper's argument that this matter wasn't controlled by federal law, such that the court lacked jurisdiction. True, the claim wasn't subject to Carmack (the court doesn't get into why). But federal law governing the "price route or service" of a motor carrier comes into play, which was enough for jurisdiction.

Mudd-Lyman urged that its claim was subject to Georgia state law, and argued choice of law theories. But choice of law principles only apply when the question is which of two or more states' law should apply, and not when the issue is federal versus state law. Federal decisions have consistently held that limitation of liability issues in interstate commerce are indeed a questions of federal law. Thus, the court can hear the matter. Finding the terms and conditions Mudd-Lyman clicked on enforceable, the court ruled the shipper gets a C-Note from UPS and no more.

**Convicted felons need not apply for tow truck licenses in Dallas**  
***Cole v. City of Dallas*, 2002 WL 31761784 (5<sup>th</sup> Cir. 2002)**

Cole, a bad boy with a number of criminal narcotics convictions, wanted to work as a tow truck operator in Dallas. City authorities rejected his application for a license, pointing to a municipal regulation that renders drug offenders ineligible to run tow trucks.

Cole sued Dallas, and brought the matter all the way to the Fifth Circuit. Cole argued that the city reg was preempted by 49 USC § 14501(c), which says that states and local governments cannot regulate motor carriers. At issue was whether the municipal reg falls under an exception, provided by 49 USC § 14501(c)(2)(A), for local administration of safety rules and regulations, which are allowed.

It's not clear from the opinion exactly how Cole urged his point. The court "declined" to get into an "extended discussion" of a Texas case that apparently held regs of the sort at issue are not safety oriented. The court pointed to the purpose and intend of federal domain, which is primarily economic. Dallas's reg clearly wasn't economic, and that was enough for the court to uphold the denial of Cole's application. Any other approach would "elasticize Congress' economic goal by narrowly interpreting 'safety regulatory authority of a State with respect to motor vehicles.'"

**An insurer can't wiggle out of liability after filing an MCS-90, even for an intra-state haul**  
***The Travelers Indemnity Co. v. Western Amer. Spec. Transportation Serv., et al*, 2002 WL 31831606 (W.D. La. 2002)**

Owner operator Barnett and his truck were under lease to carrier Western American Trade Services, which maintained federally mandated bodily injury and property damage liability insurance of \$5,000,000. Insurer Nobel carried the first million, insurer

Travelers carried the excess four million. The insurers filed an MCS-90 endorsement with FMCSA.

Barnett was involved in a serious accident during an intra-state haul in Louisiana, causing serious personal injuries. Liability was established. Nobel ponied up its million, but Travelers balked. This was an intra-state haul, Travelers urged, and federal insurance requirements don't kick in unless interstate commerce is involved.

The court didn't buy it. Barnett's truck was under lease for the purpose of making interstate hauls. It was for this stated purpose that insurance was procured in the first place. Moreover, the lease's "essential character" was for interstate commerce. The fact that the haul in question happened to be intra-state didn't alter the insurance coverage's premise. Given that the intent of federal insurance requirements must be "liberally interpreted," the court found Travelers' MCS-90 filing sufficient to impose coverage even for a purely intra-state haul. Travelers' gets to pay the loss.

**A bus passenger's lost luggage is found and lost lawsuit is affirmed  
*Fuller v. Laidlaw, Inc. and Greyhound Lines, Inc.*, LC No. 00-033672-CZ, pending in  
the Court of Appeals of the State of Michigan**

Greyhound lost, then later found, bus passenger Fuller's luggage. Fuller claimed the suitcase was damaged. Greyhound asked Fuller to bring the suitcase in for inspection. Fuller refused, saying Greyhound already had a chance to do so. Fuller sued, alleging strict liability for the damage, as well as intentional infliction of emotional distress. We'll pause now so you can apply your handkerchief to your eyes. . .

The appeals court affirmed the trial court's award to Fuller of \$250.00, the limited liability amount stated in Greyhound's ticket documentation, and dismissal of the rest of Fuller's claim. It's a short opinion. Fuller offered no factual or legal explanation as to why Carmack and its limitation of liability provisions shouldn't apply. As to the emotional distress claim, maybe Greyhound could have acted a bit more promptly and compassionately. But, in the court's colorful words, the record didn't show that Greyhound's actions were "so outrageous that the alleged conduct would compel a person to exclaim, 'Outrageous!'" Accordingly, the court also affirmed dismissal of that portion of Fuller's claim.

***Orient Overseas Container Line v. John T. Clark & Sons of Boston*, 2002 WL  
31409442 (D. Mass. 2002)**

A cargo of frozen fish was stored by a warehouseman in New Bedford, Massachusetts, then made its way by truck to Boston, Massachusetts, then by barge to New Jersey, and finally by steamship to France. The cargo arrived not quite as cold as the doctor ordered, and the French consignee rejected it. The whole mess went to the District of Massachusetts, with jurisdiction sounding in admiralty.

The steamship line settled out. Do the salty based principles of admiralty jurisdiction still control, such that the federal court can still hear it? Yes. The court exercised its supplemental jurisdiction, as the carriage was a through move at least one portion of which was under admiralty domain. The trucker's motion to dismiss on that basis was denied.

Summary judgment against the warehouseman was denied. Warehousemen bear a duty to "exercise ordinary and reasonable care in the protection of the bailed goods." The court reviewed the warehouseman's standard procedures at length, but basically concluded that whether they are sufficient is a question of fact not properly decided on summary judgment. Similarly, the trucker's potential liability is a question of fact turning on the point at which it received the cargo and genset readings denoting the cargo's temperature. It's off to trial we go, but admiralty keeps the matter before this court.