

Hot Recent Cases in Motor Carrier Law

by *Steve Block* January 2005

In Illinois, written notice of claim isn't needed if loss is actually known *Mitsui Sumitomo Ins. Co. v. Watkins Moro Lines, Inc.*, 2004 WL 2325421

Shipper Sharp shipped a supply of stock (say that one five times) in interstate transit with carrier Watkins. The carrier lost Sharp's stuff – projectors worth some 85 grand. Sharp gave Watkins verbal notice of the loss immediately, but didn't write a letter about it until 11 months later. After paying shipper Sharp's claim, cargo insurer Mitsui Sumimoto sued Watkins in subrogation.

On cross motions for summary judgment before the U.S. District Court for the Northern District of Illinois, Watkins asserted that Sharp had failed to provide timely notice. The carrier's bill of lading mandated that notice be given within nine months, a period of time sanctioned by Carmack. Certain Seventh Circuit case law (within which the Prairie State sits) suggests that written notice of claim is necessary. But precedents really didn't go that far. Rather, if a carrier is "fully aware" of the loss, the written notice formality isn't required. At least in this jurisdiction, actual notice is sufficient, and Watkins indisputably knew about the loss.

Watkins also sought a ruling limiting its liability, but a procedural error prompted to court to table the issue.

The feds prevail in another procedural challenge: Acts of DOT's Inspector General in executing search warrant are above board. *Airtrans v. Mead*, 389 F.3d 594 (6th Cir. 2004)

This issue has cropped up again. Last month we reported on a charge that enforcement officials from the office of DOT's Inspector General had acted a bit too brazenly in seizing a carrier's records (which happened to confirm how said carrier was routinely snubbing hours of service regs). The Fourth Circuit found that the totality of circumstances demonstrated the IG hadn't acted in bad faith, such that the fruits of a raid were admissible as trial evidence.

This time, the Sixth Circuit scrutinized a similar DOT IG raid, which was aimed at finding evidence of a cover-up of federal safety violations. Carrier Airtrans alleged that it was unable to operate after IG snatched its computers and records, causing it to suffer losses. Airtrans was tangled up in a billing dispute with two other players, which had led to a criminal investigation by the feds.

The result here was the same down as was it down in the Fourth Circuit, but based on a different rationale. DOT successfully asserted qualified immunity from private causes of action such as the one Airtrans was pursuing. Under the Motor Carrier Safety Act of

1984, DOT is authorized to ensure vehicle safety. To do so, it may enforce subpoenas of records and witnesses, as well as inspect motor carriers. The search at issue here was directed specifically at criminal activity, i.e., evidence demonstrating a cover up of hours of service violations. The search was confined accordingly, and the warrant for it was validly obtained.

FAAAA doesn't smoke New York law: carrier practices are limited in the Empire State

New York State Motor Truck Association, et al v. Pataki, 2004 WL 2937803 (SDNY 2004)

A number of trucking associations whose members haul cigarettes in New York brought suit in the U.S. District Court for the Southern District of New York asking the court to strike a New York statute. A newly enacted addition to the Empire State's Public Health Law provided that carriers could get in all kinds of trouble for delivering more than 800 cigarettes to a consignee who wasn't licensed to sell or warehouse them. This, the truckers urged, would create myriad administrative problems. The truckers believed provisions of the Federal Aviation Administration Authorization Act of 1994 ("FAAAA") trumped the state law under the U.S. Constitution's Supremacy Clause, as the FAAA prohibits state from enacting legislation relating to intrastate trucking (subject to certain exceptions primarily dealing with safety).

The court addressed the parties' cross motions for summary judgment, and first explored whether the state statute was facially constitutional (such that it couldn't be applied under any set of circumstances). The court examined other courts' treatment of FAAAA's preemption of state law, and found that the term "relating to" when describing intrastate trucking had been interpreted to mean "interfering with." In enacting FAAAA's trucking regulation provisions, Congress was most concerned about the impacts of state meddling in intrastate carriage on interstate commerce. Because the New York state law couldn't conceivably impede (or "interfere with") activity outside the Empire State, the court found it was not facially unconstitutional.

Next, the court considered whether the no-smokes-to-unauthorized-folks law was unconstitutional as an "applied claim," i.e., that it imposes unconstitutional restrictions specifically on truckers who have to jump hoops before hauling cigarettes. There was an imminent threat that the truckers already were operating under the threat of being charged. But to succeed, the truckers would have to show that the added burden wrought by New York's statute might ultimately hike up the cost of a pack of stogies. The truckers hadn't demonstrated this, so the matter was tabled pending further factual development.

The court also examined whether the state law violated federal equal protection concepts, given that the U.S. Postal Service wasn't subject to it and could deliver cigarettes willy nilly. The truckers also thought the 800 cigarette rule sounded arbitrary. The court wasn't so impressed with these arguments, finding the Post Office clearly outside the

scope of state regulation and, hey, truckers themselves were still free to deliver a few packs just like anyone else.

More to come on this one. Take a look at it for a good review of the FAAAA's impact on intrastate trucking regulation.

Sign of the times: Dallas tows the line, Texas style
***VRC, LLC v. City of Dallas*, 2004 WL 2958385 (N.D. Tex. 2004)**

Here's just a slightly different angle on a common theme we've seen in trucking cases over the past couple years. Trucker VRC, one of the tow variety, believed the FAAAA preempted local ordinances which require the posting of certain signs before nonconsensual tows could be effected. What safety issue or other exception to FAAAA applied here? VRC also urged that the towing in question was consensual because there actually were signs in the lots in question; they just said something to the effect that "by parking your rod here, you consent to VRC hauling it away." Moreover, Dallas' representative had testified in another matter that posting such "park at your own peril" signs was sufficient to make towage consensual.

The U.S. District Court for the Northern District of Texas disagreed, and found no federal preemption. Apparently, hauling away parked cars is a risky business in the Lone Star State, with gunfights ensuing typically enough to become part of the legal analysis. The court ruled on that basis that sign posting did implicate a safety concern subject to state regulation. Wait a minute, isn't it motor carrier safety that was excepted under FAAAA?

The court was similarly unimpressed by the implied consent argument, finding that the warning signs weren't prominently enough displayed for all parkers to see them. Dallas wasn't bound by its official's earlier statement under an equitable estoppel theory because that equitable doctrine doesn't apply to government units, and, per the court, "justice, honesty and fair dealing" wouldn't be promoted by it anyway.

Motor carrier tax refund claims must be heard in state court
***May Trucking Co. v. Oregon Department of Transportation*, 388 F.3d 1261 (2004)**

Forty eight states and ten Canadian provinces sought to simplify motor carrier fuel tax collections by entering into the International Fuel Tax Agreement ("IFTA"). The arrangement is fairly simple; it just provides that a trucker's home state may collect all fuel taxes imposed by any state the trucker operates in. IFTA relieves interstate carriers from having to deal with each taxing state and province individually.

IFTA and the Tax Injunction Act, 28 USC § 1341, provide that any beef a carrier has with taxing authorities should be pursued in the state courts of the jurisdiction at issue if those courts can provide an adequate, or "plain, speedy, and efficient," remedy. Oregon-based carrier May Trucking believed the Beaver State's auditing procedures were off

kilter. It also took umbrage at taxation of fuel burned while May's trucks were idling, given that that IFTA specifically applied only to fuel consumed for "propulsion."

May filed suit against Oregon in the U.S. District Court for the District of Oregon, which dismissed for lack of federal subject matter jurisdiction. On appeal, the Ninth Circuit agreed and affirmed the dismissal.

Congress made clear in IFTA and the Tax Injunction Act its concern about states protecting their own tax revenues through their own laws and court systems. The fact that IFTA is multi-jurisdictional, while arguably a basis for federal jurisdiction, isn't enough to trump Congress' stated intentions. The U.S. Supreme Court has even opined that state protection of tax revenues should be broadly considered for jurisdictional purposes.

May unsuccessfully argued that Oregon courts couldn't provide an adequate remedy for tax issues that inherently involved other states. But Oregon is only one state where May could seek recourse. Just because it's located in the Beaver State doesn't mean the carrier can't sue elsewhere. Even though constitutional issues touching on federal law might be implicated, this is primarily a statutorily imposed, state-law issue which can be addressed in as many states as necessary. There is no risk of needlessly repetitious litigation, as each state tax issue would be different.

Lastly, it made no sense that Oregon courts wouldn't provide an adequate remedy because Oregon law was at issue. State courts cut down state agencies' actions all the time.

This case provides nice little summaries of IFTA, for those curious about the legal underpinnings of fuel tax collection, and of federal jurisdiction (or its absence) over governance of interstate business transactions.

Vision loss isn't an ADA-protected disability
***Johnson v. RoadwayExpress*, 2004 WL 2958470 (EDNY 2004)**

Johnson was employed by carrier Roadway as a line haul driver operating trucks up to 80,000 pounds. Johnson had a stroke, which impaired his vision such that he failed the DOT physical for that class of driver. However, he could operate trucks in different classes (such as dump trucks), and continued to do so for another employer.

When Roadway terminated Johnson, the driver sued, claiming he was "disabled" as defined by the Americans with Disabilities Act. The U.S. District Court for the Western District of New York disagreed. To be disabled under the ADA, an employee must demonstrate he is unable to perform a class, or "broad range," of jobs. Johnson couldn't do so, as he was actually employed as a driver as he stood there in the courtroom. Driving within a particular trucking class is a "specific" job, which isn't ADA protected. Moreover, Roadway had no available clerical or dockworker jobs for Johnson to assume, and it was questionable whether Johnson would be qualified for them anyway.