

Hot Recent Cases in Motor Carrier Law

by *Steve Block* March 2005

Logo Liability Theory is No-Go

Carolina Casualty Ins. Co. v. E.C. Trucking, 396 F.3d (7th Cir. 2005)

We used to hear a lot about logo liability a few years back, but it seems the concept has fallen a bit by the wayside. This cryptic stepchild of federal motor carrier insurance requirements basically upends typical presumptions and underlying premises of insurance relationships. It essentially extends bodily injury and property damage coverage to operations – and operators – insurers might have no reason to suspect they’re vouching for.

The typical scenario in which logo liability issues arise goes something like this. Motor carrier procures mandatory MCS-90 insurance coverage, advising its insurer of the trucks and drivers it wants to be subject to that coverage. Insurer calculates premium accordingly. Motor carrier proceeds, per its usual practice, to lease a series of owner operators who will operate under the authority of, and make hauls at the direction of, the insured motor carrier. The lessors typically post their lessee’s logo on the side of their cabs. Then, operating a truck bearing the insured motor carrier’s logo on a job or folly outside anything contemplated by the motor carrier or its insurer, the owner operator is involved in an accident. Lo and behold, a court extends as a matter of law the insurer’s coverage to un contemplated circumstances (for which the risk has not been calculated and no premium has been paid). The insurer goes ballistic and, in some cases, stops writing trucking coverage.

The Seventh Circuit recently considered logo liability in the context of an accident that resulted in a claimant’s tragic death. A truck owned by EC Trucking and leased by Ryder was at fault. EC Trucking owned a subsidiary, Keller Trucking, which also was under contract with Ryder. On the day in question, Ryder, insured by Old Republic, had assigned driver Nance to make a run in a Keller truck. Keller held its own interstate authority (and therefore its own logo placards), but EC didn’t. Because of mechanical problems, Nance used an EC tractor, which bore Ryder’s logo, for the haul. Ryder hadn’t given its permission for him to make that switch.

The Seventh Circuit reviewed and affirmed the Northern District of Indiana’s conclusion (interestingly, issued pursuant to the court’s own *sua sponte* motion for summary judgment) that EC’s insurer was on the hook for full coverage. A loan receipt the claimant had received from Keller didn’t alter that.

However, Old Republic’s policy to Ryder provided no coverage. Without reviewing logo liability principles enunciated in earlier case law, the court concluded that “permissive use is a prerequisite for coverage under the Old Republic policy,” which Ryder hadn’t given here. The concept of implied permission could not override an express restriction. Accordingly, the court found no logo liability. True, there was other coverage here

(EC's) for the claimant to tap into. Query whether the court would have felt the same way had there been no available coverage, given statutory concern about protecting the public.

**Interpretation of statutory language saves OOIDA a bundle in attorney fee award
OOIDA v. New Prime, Inc., pending in the U.S. Court of Appeals for the Eighth
Circuit under No. 04-1788, Appellate Order dated February 24, 2005**

Owner operators represented by the Owner-Operator and Independent Drivers Association brought suit against carrier New Prime and its subsidiary leasing agent alleging that the carrier's standard leasing agreement, which requires owner operators to pony up reserve funds and security deposits, violated Truth in Leasing provisions codified in 49 CFR § 376. The District Court for the Western District of Missouri, affirmed by the Eighth Circuit, ruled that the leases at issue predated the Interstate Commerce Commission Termination Act on whose private right of action provisions the claimants based their action. Accordingly, the court dismissed OOIDA's claim.

New Prime then sought to recover its attorneys' fees (some 560 grand) incurred in the defense of OOIDA's action. ICCTA's 49 USC § 14704(e) appears pretty unambiguous on the subject, providing: "The district court shall award a reasonable attorney's fee under this section. The district court shall tax and collect that fee as part of the costs of the action."

The Eighth Circuit reversed the district court's hefty attorney fee award to New Prime. Reviewing the statute's legislative history in the context of ICCTA's other stated intents, the court concluded that 14704(e) was ambiguous because it didn't say *defendants* could collect their hired guns' fees. The context is the statute's title, which is "Rights and remedies of persons injured by carriers or brokers," suggesting fee awards were only intended for the "injured" parties. American law generally disfavors attorney fee awards, and concern about exposure might dissuade other players from pursuing claims for relatively small sums. No attorneys' fees to New Prime.

**A course of dealing can limit liability in the Bay State
Rational Software Corp. v. Sterling Corp., 393 F.3d 276 (1st Cir. 2005)**

Shipper Rational Software hired carrier Sterling to haul a heavy computer disk between two points in Massachusetts. Rational had shipped with Sterling numerous times before, on each occasion receiving a bill of lading which limited Sterling's liability to 60 cents a pound. Sterling's rules tariff, incorporated into the bill of lading, contained the same provision. On at least three prior occasions, Rational's shipping representative actually had initialed the limitation of liability term.

On this occasion, Sterling failed to issue a bill of lading at time of tender. Yes, the carrier's workers dropped the freight which, unbeknownst even to its owner, was worth a

quarter million bucks. Sterling then issued a bill of lading (better late than never!) indicating damaged freight. When the shipper made a claim, Sterling graciously offered about 900 dollars in full satisfaction of Rational's claim.

Affirming the District of Massachusetts' decision, the First Circuit ruled that governing Bay State law supported the carrier's assertion of limited liability. The parties' uncontroverted prior course of dealing effectively put Rational on notice of all shipping terms including limitation of liability. Even though the bill of lading was issued after the fact (and, per Rational, a day late and quarter mill short), Rational always knew what the form contained. It even admittedly knew that freight charges were calculated based on limited liability. Because course of dealing has been held to control other such issues, and other states have reached the same conclusion in the intrastate transportation arena, Sterling got off for peanuts.

**The Second Circuit smokes summary judgment award to a cigarette shipper
Security Ins. Co. of Hartford v. Old Dominion Freight Line, 391 F.3d 77 (2nd Cir.
2004)**

Shipper RJ Reynolds consigned a load of cigarettes to carrier Old Dominion Freight Line for transit from North Carolina to Canada. RJR tendered the freight to Old Dominion in sealed containers, and the carrier issued a bill of lading denoting "Shipper Load and Count." The freight made it to Canada, but was stolen from a customs warehouse there. RJR's insurer sued Old Dominion in subrogation.

The Southern District of New York granted RJR's summary judgment motion. As a matter of law, the district court found, the freight had been tendered in good order and condition as confirmed by RJR's operations records and the absence of controverting evidence from Old Dominion. The theft was undisputed. Damages were confirmed by the volume, which even the carrier confirmed by weight measurements. One, two three!

But to the insurer's great chagrin, the Second Circuit reversed. Questions of material fact about good order and condition remained. A bill of lading issued for freight presented in sealed containers isn't *prima facie* evidence of good order and condition. The "Shipper Load and Count" language permits the inference that Old Dominion had no opportunity to inspect, and a page was missing from RJR's invoice, which would have confirmed certain portions of the cargo's weight. The description of RJR's operational procedures was "entirely general" (i.e., not referring to what was done in this instance), such that its reliability and accuracy could be questioned. Lastly, some of the stolen freight was recovered, giving the parties an opportunity to procure and offer evidence as to the cigarettes' condition at time of tender.

In other words, there were too many questions about which evidence and testimony might create differing opinions in the minds of reasonable jurors. Thus, the summary judgment award to RJR's insurer went up in smoke.