

Hot Recent Cases in Motor Carrier Law

by *Steve Block* May 2005

An incorporated bill of lading limits a carrier's liability, but to how much? *American Home Assurance Co. v. CSX Lines, Inc. v. Wall Street Systems*, 2005 WL 735041 (SDNY 2005)

Pfizer, insured by American Home, booked transit of a cargo of drugs from Puerto Rico to Memphis. The freight was housed in 2,156 boxes, which were bundled onto 44 skids, which was placed into one container. CSX, a water carrier, apparently had a standard bill of lading which included limitation of liability provisions and a Himalaya Clause extending CSX's rights and defenses to other service providers (i.e., truckers). The parties' carriage was effected pursuant to a contract which incorporated the bill of lading, but said nothing about limitation of liability. Trouble was, CSX never actually issued its bill of lading for this haul.

The freight was stolen while in trucker Wall Street's possession, obligating American Home to pay Pfizer well into seven figures. The subrogated insurer sued CSX, which brought Wall Street into the fray. Both carriers sought to limit their liability under the bill of lading by way of motions for summary judgment.

American Home urged that the bill of lading's limitation of liability provisions weren't binding because, hey, no bill of lading was ever issued. The court didn't buy it. The governing contract didn't say a bill of lading actually had to be issued for each load, and the parties' course of dealing showed both understood that CSX's standard documentation would apply. Moreover, Pfizer must've understood CSX's (and therefore Wall Street's) liability was limited; otherwise it wouldn't have gone out and purchased cargo insurance.

Unfortunately, it wasn't quite so clear to what extent the carriers' assets were covered. Under the incorporated terms, liability maxed out at 1,000 bucks per, well, something. It wasn't clear what. The insurer argued that each of the 2,156 boxes was a "unit" for limitation purposes (which would yield a limitation amount well above the lost freight's actual value), but the court didn't buy that either. The parties couldn't possibly have contemplated a limitation of liability amount that high in light of the freight rates CSX charged.

So what's a "unit"? A skid or a container? The court can't answer that on summary judgment (pointing to case and water-transit statutory law that goes both ways). If this matter goes any further, the award will be no more than \$44,000, a small fraction of the loss.

Freight charge dispute doesn't get you into federal court.

***Central Transport International v. Sterling Seating, Inc.*, 356 F.Supp.2d 786 (E.D. Mich. 2005)**

Interstate carrier Central Transport sued shipper Sterling Seating in Michigan state court to recover unpaid freight charges, and Sterling removed the action to federal court. The Eastern District of Michigan ordered the shipper to show cause why federal jurisdiction derived from a claim like this.

Two reasons, said Sterling. First, the Interstate Commerce Commission Termination Act ("ICCTA") provides for federal preemption over state regulation of interstate trucking. If a Wolverine state court adjudicated this matter, a state essentially would be governing matters reserved to federal governance. Second, Central Transport's freight charges were taken from a "tariff," which precedents provide are subject exclusively to federal law.

Wrong on both counts, replied the court. While ICCTA provides for federal jurisdiction over a wide variety of interstate trucking regulatory issues, collection of freight charges isn't one of them. Congress could have said so if it meant otherwise. Moreover, the carrier's "tariff" wasn't "filed" (which probably renders the term "tariff" a misnomer in relevant regard). This wasn't household goods or noncontiguous domestic transit freight (for which tariff-based freight charges are mandated), so common carriage principles didn't apply. Back to state court we go!

A jurisdiction and Carmack double wammy.

***Coughlin v. United Van Lines*, two separate opinions currently available at 2005 WL 704305 and 742710 (C.D. Cal.)**

Here's a pair of decisions from a single dispute that address motor carrier issues in a format approaching a law school exam. Interstate household goods shipper Coughlin's stuff allegedly arrived damaged. Ms. Coughlin also wasn't happy about having to pay carrier United Van Lines freight charges. She sued United in California state court, and the carrier removed the claim to the U.S. District Court for the Central District of California.

The shipper sought to have the case remanded, but this time Carmack dominion kicked in providing federal jurisdiction. The court also ruled that United's "tariff" was subject to federal jurisdiction. This is confusing and probably erroneous. Household goods tariffs aren't "filed," which might otherwise be a basis for federal jurisdiction for these kinds of freight charge disputes (just ask Sterling Seating). In any event, the district court kept the case.

In response to United's motion for summary judgment, the court correctly applied Carmack's preemption of Coughlin's negligence and breach of contract claims (both of which sound in state and common law). The case was dismissed, although the shipper and her now-educated counsel presumably can re-file with proper allegations.

Restrictions in UPS' tariff are better than gold.

***Soomekh v. United Parcel Service, Inc.*, 7 Misc.3d 1002(A), 2005 WL 729523 (NY Dist.Ct. 2005)**

Mr. Soomekh's friend walked into one of those outlets that process UPS shipments, and booked transit of a box of gold coins worth about three grand from California to New York. One of countless UPS "Authorized Shipping Outlets," the independent vender apparently gave or made available to the shipper UPS' "tariff" (had enough of that word yet?), which prohibited shipment of coins of "unusual value." Mr. Soomekh, the consignee, claimed his coins never arrived. He sued UPS.

Apparently representing himself, Mr. Soomekh opposed UPS' motion for summary judgment. He claimed these weren't *really* coins because they weren't "Trading Coins." Rather they were just memorial coins. Hmmm.

More persuasively, Mr. Soomekh urged that the clerk didn't refuse the shipment after inspecting it. Lastly, UPS' aggrieved customer claimed that the outlet was UPS' agent (or "relation" in the his own word), such that the carrier should be responsible for its error.

UPS urged that only shippers (and not consignees) could bring freight claim lawsuits. The court disagreed, finding that governing Carmack principles allow consignees to take carriers to the mat. But that's where Mr. Soomekh's legal successes ended. UPS' tariff is binding, and coins of "unusual value" such as memorial coins were precluded as acceptable freight.

Logo liability is dead on Wall Street.

***Ross v. Wall Street Systems and Gulf Ins. Co.*, 400 F.3d 478 (6th Cir. 2005)**

Owner operator Conway was under lease to carrier Wall Street. Complying with federal law, Wall Street procured insurance coverage (confirmed by a MCS-90 filed with the Federal Motor Carrier Safety Administration). Wall Street terminated its lease with Conway by sending the required written notice, but Conway hadn't gotten around to returning Wall Street's placards. The insurance coverage, provided by Gulf, was still active because the 35-day post-withdrawal time period had not yet expired. The Conway truck was involved in an accident that injured Ross.

Ross sued Wall Street and Gulf, citing logo liability theories expressed in some older precedents. These basically say a carrier is on the hook for its lessors' accidents unless and until the carriers' placards, i.e., its logo, are actually removed. The court found logo liability no longer valid law, and ruled that Wall Streets' letter to Conway sufficient to end the lease (no exhaustive effort to retrieve the placards was necessary). Moreover, the fact that Gulfs' policy was still in force for certain purposes didn't create any greater rights on behalf of a claimant who had no rights against the insured in the first place. Ross can go only after Conway.