

Hot Recent Cases in Motor Carrier Law

by *Steve Block* May 2006

Carmack doesn't apply to brokers, at least for indemnity agreements in the Beaver State

Intransit, Inc. v. Excel North American Road Transport, Inc., et al , 2006 WL 572125 (D. Or. 2006)

Shipper Wal-Mart retained transportation broker Intransit to book interstate transit of its freight to Texas. Intransit engaged carrier Excel North American Road Transport for the task. The Intransit/Excel agreement provided that Excel would indemnify the broker for losses resulting from any carrier mess up.

Wal-Mart rejected a cargo that allegedly arrived late, and took a set-off of some 29 grand against fees it owed Intransit for unrelated shipments. Down came the dominoes: Excel ignored Intransit's opened palm asking for indemnity, prompting the broker to sue the carrier, which induced Excel to sue Wal-Mart for wrongful rejection. Wal-Mart closed the loop by cross claiming against Intransit for its defense costs. The whole mess was removed from Oregon state to federal court based on Wal-Mart's assertion that Carmack controlled the dispute. Wal-Mart later brought motions to determine jurisdictional issues.

The court ruled that Carmack didn't govern, and kicked the three-pronged action back into state court. While federal preemption governs cargo claims (including subrogation actions), that's not what really was going on here. This was a simple contract matter. Intransit, as a broker, was not Excel's shipper, and this court concluded nothing in Carmack's language or history suggests it was intended to apply to carriers' claims against shippers. Wal-Mart's claims were only for defense costs, and the concept that "even strangers to the bill of lading cannot escape the reach of Carmack" applies only to subrogation claims. Recognizing that other courts have held differently, the federal court dismissed the action for lack of jurisdiction.

. . . and similarly, a carrier can't take advantage of lower limited liability in forwarder's air waybills

St. Paul Fire & Marine Ins. Co., et al v. Schneider National Carriers , 2006 WL 522455 (SDNY 2006)

Shippers CDW Computer Centers and PC Wholesale booked interstate motor carrier transit with Schneider through forwarder AIT Worldwide Logistics. AIT issued the shippers four air waybills (its standard form) for the freight, each containing a \$100,000 limitation of liability and declared value notations totaling over 774 grand. Schneider and AIT operated pursuant to a "Transportation Contract" which included an aggregate \$750,000 limitation of liability. The freight was damaged to the tune of some 692 grand (post salvage) in an accident. AIT and its insurer paid the shippers that sum, and looked to Schneider for reimbursement.

Schneider refused to oblige AIT, claiming the broker hadn't been obligated to pay out more than \$200,000 per its own shipping documentation, and that if it had paid more, it

did so as a "volunteer." In essence, Schneider was trying to take advantage of AIT's shipping terms with its customers, even though the carrier hadn't seen AIT's bills prior to the loss.

The Southern District of New York didn't buy it. Using that same "stranger" to the contract analysis, the court concluded Schneider had no business trying to take advantage of a relationship it wasn't party to. A contractual analysis of AIT's air waybills showed that the carrier was neither an intended nor an incidental beneficiary. For a party to make a payment as a volunteer (for which indemnity might be unavailable), it must do so knowing there is no potential of liability (not the case here). Neither the air waybills nor the Transportation Contract limited the carrier's liability, and Schneider gets to pony up for the full loss.

The Interline Trust theory derails

In re Consolidated Freightways Corp. , 2006 WL 903230

This case is big news for carriers who accept freight booked by intermediaries or other originating carriers whose financial health is unstable or uncertain. The Ninth Circuit recently rejected a premise truckers and railroads may have at least subconsciously operated under for decades, i.e., that freight charges other transportation entities collect for subsequent remittance presumptively belong to the carrier that, well, later earns them. And why wouldn't they assume that? When a forwarder collects fees from its shippers to pay both the intermediary's fees (for various services) and freight charges for one or more carriers, no one rightfully thinks the latter portion belongs to the forwarder for a minute.

The notion is that an intermediary or originating carrier holds such freight charges for the benefit of subsequent carriers is known as the Interline Trust theory. While addressed in various contexts throughout the land for some time now, its truest value – as a defense to bankruptcy creditor claims – only recently was put to the test. Consolidated Freightways' bankruptcy, adjudicated in the Central District of California, was met by a host of creditor carriers claiming that funds the bankrupt held but intended to apply as payment for other carriers' services shouldn't be considered part of the estate. Rather, they should be considered the intended payees' property not appropriately dispensed to bankruptcy creditors as a whole. The Ninth Circuit blessed bankruptcy and district court judges' decisions rejecting the concept.

In doing so, the Court of Appeals refused to expand federal common law addressing what constitutes a bankrupt carrier's estate. Noting that the Supreme Court specifically disfavors such expansion, the court considered that state law adequately defines property interests such as those at issue, and the fact that someone goes belly up shouldn't change the equation. The fact that transportation is regulated and premised on national uniformity is of no moment, as no other interstate or federally-governed industry gets special treatment either. If Congress intended federal dominion to dictate an interline trust, then it could have so provided in the controlling statutes.

Truckers and railroads, watch who books your freight!!

Federal statutes governing motor carriage don't block local surety bond requirement

Worldwide Moving & Storage, Inc. v. District of Columbia , 2006 WL 954458 (D.C. Cir. 2006)

This case traces the efforts of the hapless Melvin Yates, principal of motor carriers M.Y. Enterprises (MYE) and, later, Worldwide Moving & Storage (Worldwide). Yates first got into trouble when DC-based MYE failed to fulfill contract obligations in five hauls. He pleaded guilty to five misdemeanor counts resulting from that activity. Based on his "misleading customers" in violation of DC's Consumer Protection statute, a local court required Yates to post a \$100,000 surety bond for the benefit of anyone he might later screw over.

Unable to land a bond, MYE filed bankruptcy, and Yates formed and started operating Worldwide, but still with no bond. The DC court started contempt proceedings, and Yates filed personal bankruptcy. Worldwide then went to federal court seeking to enjoin the DC court from enforcing its surety bond requirement on a federally licensed interstate motor carrier (claiming that federal statutes governing interstate truckers preempt potentially conflicting state law). The Court of Appeals for the DC Circuit affirmed the district court's dismissal based on lack of standing., after which a DC local court found Yates in contempt and barred him from operating a moving company in the district altogether.

The U.S. Supreme Court has held that the federal judiciary should not enjoin pending state proceedings except in extraordinary circumstances. The DC superior court proceedings were not so extraordinary. Here in particular, local interests were particularly high – a point that should always be considered. Moreover, the local court was fully empowered to adjudicate Worldwide's preemption issue. Add to that the fact that federal statutes Worldwide cited, such as Carmack and other provisions of the Interstate Commerce Commission Termination Act, have no bearing on issues before the DC local court. Worldwide might have to operate under new ownership, if it does so at all.

NMFC members have no cause of action against classification poachers

Fulfillment Services, Inc. v. United Parcel Service, Inc. , 2006 WL 1061892 (D. Ariz. 2006)

The National Motor Freight Classification 100 series is a collectively-made schedule of freight terms that NMFC-member carriers adhere to with statute-blessed (49 USC § 13703) antitrust immunity subject to conditions governing operations. NMFC members alleged that United Parcel Service (UPS) had been quoting NMFC rates to its shippers without being a member, thereby violating antitrust laws.

UPS, an NMFC participant until 1956, apparently continued referring its shippers to the NMFC classification for class ratings of their freight to determine if it qualified for Hundredweight Service Rates until July 2004. The plaintiffs, hoping to obtain class action certification, felt UPS was unjustly enriched by its utilization of the NMFC

classification, and sought damages measured either by the freight charges UPS collected or, alternatively, the difference between NMFC-generated rates and UPS' last legally applicable rates.

If UPS undertook these alleged practices, it might very well have violated antitrust and motor carrier federal law. The question, however, was whether NMFC members get a private cause of action under § 13703(F) pursuant to § 14704(a)(2), the latter statute being designed for that purpose, to recover for such no-no's. The District of Arizona concluded they do not. Those statutes contemplated mandatory tariff filing as a premise for protecting the shipping public. Tariff filing has gone the way of the dinosaur in favor of a deregulated shipping environment wherein parties take up their transportation business quarrels like most other contract disputes. Thus, the statute's current purpose would not be served (indeed, it would be undermined), by a private cause of action here.

The Motor Carrier Act will continue to provide a private cause of action where it's designed to do so. This just isn't one of those cases.

Jury not free to award recovery amount other than uncontested freight value

Accu-Spec Electronic Services v. Central Transport International, et al , 2006 WL 995735 (W.D. Pa. 2006)

Shipper Accu-Spec sued carrier Central Transport and freight forwarder Logistics Plus when its cargo of expensive x-ray equipment arrived damaged. The shipper presented evidence that the freight's repair costs and other specified incidentals were \$45,371.02. Accu-Spec asked for another \$2,150.82 in costs it incurred to fly a representative of the machine's manufacturer for inspection, for a total of \$47,521.84. Liability appears to have been clear from the get-go.

For reasons not clear in the opinion, a jury awarded the plaintiff shipper \$21,000 from both the forwarder and carrier based on the freight damage and incidentals. The jury awarded specifically nothing for the representative's inspection expenses (apparently concluding that claim was unreasonable). Accu-Spec brought a motion to enter judgment as a matter of law in the amount of \$45,371.02 or, alternatively, a new trial.

In granting the motion, the Western District of Pennsylvania found that \$44,391.02 in special damages were substantiated by uncontroverted evidence of the exact costs of the freight's repair and incidentals. The jury had no option but to award at least that amount. The rep's costs and other portions of the claim were within the jury's discretion (it could find them unreasonable), and need not have been awarded. The motion to enter judgment in the substantiated amount was granted. Making its position clear, the court also granted the motion for new trial in the event an appeals court reversed the modified award.