

Hot Recent Cases in Motor Carrier Law

by Steve Block July 2002

“Core” does Not Mean “Exclusive” in Motor Carrier Contract

33 Fed.Appx. 186 (6th Cir. 2002)

Shipper North Star signed a contract with motor carrier C&M appointing the trucker a North Star “core carrier” in Michigan. Subsequently, C&M settled an undercharge claim against North Star by the shipper agreeing to use the carrier exclusively in the Wolverine State. The parties apparently executed a settlement agreement, which included a two-year statute of limitations for enforcement, regarding the exclusivity. The parties later disagreed on some pricing terms, and North Star started using other carriers in Michigan. C&M sued, claiming breach of the contract’s provisions making C&M a “core carrier.”

The Eastern District of Michigan found the term “core carrier” ambiguous, and let a jury decide whether the term meant “exclusive.” The jury said no. Apparently, C&M presented the settlement agreement as evidence only of its damages, so settlement provisions addressing exclusivity weren’t considered as part of the liability analysis. Even if they had been, ruled the Sixth Circuit in affirming the dismissal of C&M’s claim, the two year statute of limitations would render it ineffective.

An Insurance Broker Isn’t Liable for a Crooked Trucker’s Insurance Application Lies

Rapp v. Awany, et al, 2002 WL 1067312 v(D.N.J. 2002)

This case involved a tragic accident in which a trucker’s negligence killed two people on the highway. The trucker had lied in his application to an insurance broker, claiming that he only hauled cargo within New Jersey, and therefore wasn’t subject to federal requirements mandating \$750,000 in minimum insurance coverage for interstate carriers. Accordingly, he purchased only \$35,000 in coverage, the minimum New Jersey requires for in-state carriers. The accident took place in Pennsylvania shortly after the trucker, whose assets were minimal, purchased the inadequate coverage.

With no one else to sue, the plaintiffs’ estates sued the trucker’s insurance broker, alleging it failed to determine the trucker’s minimum insurance requirements before selling him insurance. Plaintiffs alleged the broker failed to force the insured trucker to read a motor carrier insurance “Buyer’s Guide” which would have explained applicable requirements. Moreover, the broker allegedly should have been alerted to the trucker’s interstate travel by records showing he hauled to John F. Kennedy Airport in New York.

The court found for the insurance broker and dismissed plaintiffs’ claims. No law requires brokers to force their insureds to read the Buyer’s Guide, and the broker did make it available to the trucker. An exception to the definition of interstate transportation provides that hauls between New Jersey and New York’s airports may be considered intrastate. While the court was appalled at New Jersey’s low insurance requirements (and

even expressed concern about the federal requirement), there was no basis to hold the broker liable for the trucker lying on his insurance application.

Stretching Insurance Coverage to the Rear Bumper: a Trailer Owner's Insurer Gets Tagged

Lynch v. Yob, 95 Ohio St.3d 441 (2002)

A tractor trailer rig was involved in an accident in the Buckeye State, tragically killing two people. Per federal requirements, the tractor's insurer filed an MCS-90 with the Federal Motor Carrier Safety Administration confirming coverage. But so did the insurer of the trailer. Neither the trailer nor its owner caused or contributed to the accident. When the tractor coverage proved insufficient, the estates of those killed in the accident sought coverage from the trailer's insurer. The matter wound its way up to Ohio's high court.

Yes, found the Ohio Supremes, the trailer's insurer must pony up. Citing precedents from various jurisdictions (and distinguishing compelling decisions from others), the court ruled that protection of the public is the paramount concern. Indeed, that protection is the whole rationale behind required MCS-90 filings. The trailer coverage "modif[ies] a policy to insure [sic] the availability of insurance for negligently injured members of the public." Thus, it applies by virtue of the trailer being attached to the negligently operated tractor.

The decision was issued over a very compelling dissent, which objects to coverage under a policy issued to an insured who is not liable, and expresses concern over the trailer insurer's right to seek reimbursement from its non-negligent insured of the insurance proceeds it pays to the plaintiffs.

FLSA Doesn't Protect Loaders

Vaughn v. Watkins Motor Lines, Inc., 2002 WL 1068022 (6th Cir. 2002)

Carrier Watkins canned four African-American employees – whose job descriptions included loading and unloading cargo from trailers – because they wouldn't work required overtime schedules. The employees sued for wrongful termination, claiming that Watkins' overtime requirements violated the Fair Labor Standards Act 29 USC § § 207, *et seq* ("FLSA"), because Watkins did not pay at least "time and a half" wages for time worked over 40 hours per week. They also alleged their firing was the result of race discrimination. The matter went to the Sixth Circuit.

The Motor Carrier Act provides that the FLSA is inapplicable to motor carrier employees whose tasks are designed to promote safety. Loaders are clearly covered by this provision. At issue was whether the plaintiffs could be considered "loaders" as contemplated by the statutes. To be loaders, they would have to exercise a high degree of

independent judgment, and Watkins' management personnel admittedly supervised the plaintiffs closely.

The court found for Watkins. The fact that plaintiffs actually designed and implemented load plans was more compelling than management's ability to direct personnel. A Fourth Circuit case had analyzed a virtually identical workplace arrangement and reached the same conclusion. Moreover, there was insufficient evidence confirming that plaintiffs' firing was racially motivated.

A Well-Written Opinion Explaining the Well-Pleaded Complaint Rule and Carmack
Newens v. Orna Services, Inc. 2002 WL 1310734 (N.D. Cal 2002)

For a short, pithy opinion setting forth the ice cold truth about Carmack and how you get a cargo claim into federal court, take a look at this decision from the Northern District of California. The plaintiff hired a trucker to haul her stuff from New York to California. The stuff somehow and somewhere disappeared.

Plaintiff sued the carrier in California state court, and the carrier removed it to the Northern District of California. The federal court *sua sponte* issued an order to show cause why the case shouldn't be remanded back to state court. Addressing federal jurisdiction and Carmack's pre-emption of state law claims, the court noted that "federal jurisdiction exists only when a federal question is presented on the face of plaintiff's properly pleaded complaint" (the well-pleaded complaint rule). Preemptive statutes are pleaded usually as a defense, and therefore aren't in the complaint. Thus was created the "complete preemption doctrine" as a corollary to the well-pleaded complaint rule. Complete preemption applies when "the pre-emptive force of a statute is so extraordinary that it converts an ordinary state common-law complaint into one stating a federal claim. . ."

After going through that analysis, the court dodges the \$64,000 question: Is Carmack a preemptive statute (i.e., does it *completely* preempt state law)? Instead the court notes conflicting federal decisions and the absence of a Ninth Circuit position, but finds enough in the complaint to confer federal jurisdiction. Carmack clearly does preempt state law causes of action and remedies, so certain of plaintiff's claims were dismissed. Significantly, the court allowed plaintiff to proceed with claims alleging negligent storage, as these fall under the expanded definition of transportation services provided by 49 USC § 13102(19).

States May Tow the Safety Regulation Line
City of Columbus v. OURS Garage and Wrecker Service, 122 S.Ct. 2226 (2002)

Here's one from the Big Nine in Washington, D.C., closing the loop on at least part of the debate regarding state regulation of tow trucks. An Ohio towing company was upset with the City of Columbus for regulating its consensual towing services (local authorities

clearly can regulate nonconsensual towing as a matter of federal statute). The towing company claimed such regulation violates ICCTA and the FAAAA, which give the feds exclusive domain over “motor carriers of property.” Some of Columbus’ regulatory efforts, at least arguably, are safety related. States may regulate trucking safety concerns, also as a matter of federal statute. The question boiled down to whether a state may allow its municipalities to enforce safety regs.

On cert revering the Sixth Circuit, the Supreme Court answered that question “yes.” While statutory language suggests that Congress was ceding regulatory authority regarding safety only to the states, that language “was not sufficiently clear and manifest indication of its intent to preempt local safety laws, and did not bar [Ohio] from delegating to municipalities and other local units the state’s authority to establish safety regulations . . .” A question remains as to whether Columbus’ regs were indeed safety related, forcing the matter down the hill for further determination by the trial court.