

Hot Recent Cases in Motor Carrier Law

by *Steve Block* July 2003

An ocean carrier dodges a motor carrier's limitation of liability, or why truckers should do their own paperwork

Levi Strauss & Co. v. SeaLand, 2003 WL 21108311 (SDNY 2003)

Shipper Levi-Strauss imported a load of jeans from Honduras into the U.S. by ocean carrier SeaLand to Port Everglades, Florida. SeaLand hired motor carrier Quaker to haul the cargo to its ultimate destination in Little Rock. The ocean portion of the carriage was successful, but a thief posing as a Quaker employee disappeared with the load before it ever saw a highway.

In a series of cross motions for summary judgment before the Southern District of New York, the shipper and carriers argued damages and limitations of liability. Levi-Strauss wanted its lost profits in addition to the cargo's manufacturing costs of some 243 grand. While lost profits are available under the Carriage of Goods by Sea Act (governing the loss per SeaLand's bill of lading), the shipper failed to show it lost any sales as a result of the loss. Apparently, jeans orders could be filled from the shipper's other manufacturing sources.

SeaLand next argued that Levi-Strauss had failed to prove the jeans actually were loaded into the ripped-off containers. True, no one testified the containers were loaded (as would typically be done), but the court found scanned bar codes and manufacturing receipts sufficient for the purpose.

Next came Quakers' limitation of liability argument in response to SeaLand's motion for summary judgment regarding indemnity from the trucker. Quaker hadn't issued its own bill of lading. The motor carrier argued that SeaLand's bill of lading, which talks about carrier tariffs, should be interpreted as incorporating Quaker's tariff, which contained a limitation of liability clause. The court wasn't impressed, finding that no contractual language or verbal agreement between Quaker and anyone else jumped the hoops for limited liability. Quaker must pay back SeaLand the 240 thousand.

This Perfume's a Stinker for Limitation of Liability

Sassy Doll Creations v. Watkins Motor Lines, 2003 WL 21205058 (11th Cir. 2003)

Shipper Sassy Doll Creations hired carrier Watkins to haul a \$28,000 load of perfume from Florida to Texas. The cargo disappeared en route. Watkins wanted to limit its liability to the ten grand as provided in its tariff when a shipper doesn't request additional "coverage."

Watkins' bill of lading contained a box wherein Sassy could have inserted a declared value. The shipper left that box bare. The issue, first addressed by the Southern District of Florida and later by the Eleventh Circuit, was: did that box, in coordination with Watkins' tariff, provide Sassy adequate opportunity to choose between different levels of liability?

The tariff spoke in terms of the shipper acquiring "excess coverage." The bill of lading's unchecked box addressed "declared value," which was something of a different animal. Nowhere on the bill could Sassy have indicated its intent to obtain coverage for a higher sum. Moreover, the tariff didn't spell out where on shipping documentation a shipper could order up more "coverage." It doesn't matter that Sassy filled out the bill itself – doing so does not equate to "creating" the document with a form defect. The Court of Appeals blessed the district court's dismissal of Watkins' limitation of liability defense, but made clear it did so without meaning to narrow a shipper's constructive notice of tariff terms.

Mandatory motor carrier insurance: it's the trucker's, and not the insurer's, obligation

Illinois Central Railroad v. Dupont, et al, 326 F.3d 665 (5th Cir. 2003)

A trucker's contract driver drove his truck into an Illinois Central train, damaging the train. Ronald Dupont was driving for motor carrier Denmark, but was running his own truck. While Denmark had insurance coverage for its own rig, Dupont's truck wasn't covered. When Dupont and Denmark showed up at court with empty pockets, the Illinois Central wanted Denmark's insurer to pay up.

The railroad argued federally mandated insurance requirements require broad interpretation, such that the issuance by Denmark's insurer of an MCS-90 endorsement confirming adequate coverage should mean coverage for any Denmark vehicle. The Fifth Circuit, agreeing with the Middle District of Louisiana, didn't buy it. Just because the motor carrier was operating outside of its insurance coverage shouldn't mean it enjoys broader coverage than it paid for. Public policy would not be served in this instance because truckers would be incentivized not to disclose the full extent of their fleets (realizing coverage would be implied for unnamed trucks). Independent verification of the size of insureds' operations would be too much burden for insurers to bear. While insurers have taken it on the chin in numerous MCS-90 interpretative decisions, the regs "are directed at the motor carrier, not its insurer."

Owner Operator lease agreements are arbitration-exempt employment contracts, at least in the Sunshine State

Gagnon v. Service Contracting, Inc., 2003 WL 21306225 (M.D. Fla. 2003)

Driver Gagnon and a number of other owner operators under contract to carrier Service Contracting sued their carrier employer alleging violations of the Federal Motor Carrier

Truth-in-Leasing regs. That's right, their "carrier employer," which is exactly what the Middle District of Florida found Service Contracting to be by virtue of its owner operator agreements.

Service Contracting tried to exercise the agreements' arbitration clauses. The drivers pointed to provisions of the Federal Arbitration Act ("FAA") exempting from arbitrability contracts of workers "engaged in foreign or interstate commerce." Service Contracting cited various precedents holding owner operators to be the statutory employees of carriers for purposes of safety regs and liability to the public, but preserving the drivers' independent contractor relationship with carriers for other purposes.

This court didn't distinguish those decisions, but simply pointed to the carrier's control over drivers as the decisive point. The court extended the statutory employee concept to the FAA's exemption, and refused to enforce the arbitration clause.

Missing shipment's contents may be verified by shipper's packing lists. Hello?

AIG Uruguay Compania de Surogos v. AAA Cooper Transportation, 2003 WL 21403461 (11th Cir. 2003)

Motorola shipped a cargo of cell phones worth 126 grand with carrier AAA. The phones were shrink wrapped on pallets, but weren't in a container. Somewhere between Miami and Dothan, Alabama, the cargo disappeared. Motorola's insurer paid the shipper's claim, then sued AAA in subrogation.

True, the cargo was encased in sealed packaging, which triggers requirements for heightened proof of the lost property. It wouldn't be fair to hold carriers responsible for cargo whose condition it can't verify at time of tender. The bill of lading will not be *prima facie* evidence of the cargo's good order under these circumstances – that just wouldn't be fair. The cargo was wrapped in clear plastic, but AAA still couldn't really check out its condition. Thus, "direct evidence" of the cargo's condition and count at time of tender is required.

But Motorola had provided that direct evidence by way of its packing lists. They contained serial numbers scanned right into the shipper's inventory system at the time of loading. While no individual could testify from memory about this particular shipment, the packing list will do. Requiring more would be impractical in this era.

Apparently, Motorola's description of the cargo included an inaccuracy on which AAA tried to base a limitation of liability argument. The bill of lading made no mention of limited liability, but the National Motor Freight Classification system would have provided a higher freight charge had the cargo been properly described. AAA wanted limited liability as a "punitive measure," because it would have provided heightened security had it known what it was really hauling. The court found that the misdescription

might have entitled AAA to more compensation (had that argument not been waived), but it didn't equate to limited liability. Punitive limited liability isn't on the books, AAA.

The Eleventh Circuit affirmed the Southern District of Florida's determination of full liability.

A carrier can't talk its way out of paying drivers' health benefits

Chicago Truck Drivers, Helpers and Warehouse Workers (Independent) Health Maintenance Program Fund v. Dudak Trucking Co., Inc., 2003 WL 21372470 (N.D. Ill. 2003)

Dudak, owner of Dudak Trucking, signed an agreement with representatives of the company's union agreeing to make regular payments toward owner operator health benefits. Dudak Trucking failed to do so, and the union sued.

The employer defended by saying Dudak was duped into signing the agreement. That's right, Dudak Trucking alleged that Dudak himself was an owner operator, and that the union defrauded him by explaining he had to sign the agreement for him to keep his own union-sponsored health benefits. The employer claimed it didn't know it actually would have to pay for its drivers' health benefits.

Uh huh, said the Northern District of Illinois (pretty much). In rejecting Dudak Trucking's fraud in the execution defense, the court went through the defense's specific elements. Dudak was a sophisticated businessman who could not reasonably have relied on union representations of the dubious sort alleged. Summary judgment in favor of the union was granted.