

## **Hot Recent Cases in Motor Carrier Law**

by *Steve Block* September 2003

### **ICCTA isn't impermissibly retroactive.**

***OOIDA v. Arctic Express, et al*, 2003 WL 21645754 (S.D. Ohio 2003)**

A number of owner operators, upset with their lessor, Arctic Express, about allegedly unrefunded escrow deposits (collected by Arctic for maintenance but not applied), sued the carrier in the U.S. District Court for the Southern District of Ohio. To show federal jurisdiction, they pointed to the Interstate Commerce Termination Act's creation of private rights of action, designed to free Uncle Sam from the burden of attending to every pissant dispute remotely involving a truck. Carrying the drivers' banner was the Owner-Operator Independent Drivers Association.

But at least some of the escrow payments had been collected before ICCTA took effect. Thus, thought the carrier, the ICCTA-created private right of action couldn't apply here. Unless a statute specifically says so (or there are other grounds for inferring it), federal statutes are not assumed to have retroactive effect. Arctic brought a motion seeking dismissal of OOIDA's claim on jurisdictional grounds.

In its opinion, the court goes through a little history lesson about how the Interstate Commerce Commission used to attend to such issues, and how we've seen some revamping in the past eight years of motor carrier regulatory functions. In days past, an aggrieved owner operator couldn't go to the mat with his lessor; he had to get the ICC to do it for him.

But the fact remains a driver always could indeed get recourse for circumstances like those in the Arctic case. All ICCTA did was let drivers step into the ring directly with their motor carriers. No new substantive rights were created. Thus, Arctic's jurisdictional dispute was form over substance, and its motion was properly denied.

### **...but the Motor Carrier Act still supplants the Fair Labor Standards Act for interstate drivers, no matter how much bread is involved.**

***Jones, et al v. Centurion Investment Associates*, 2003 WL 21463748 (N.D. Ill. 2003)**

Centurion Investment Associates is a wholesaler of bread selling product in various states. It employs truck drivers to haul bread, and the trays it's cooked on, between an Indiana bakery, warehouses and retail outlets in other states such as Illinois. Basically, the bread goes out; the trays go out and come back empty. Certain drivers never actually leave the Prairie State, as product is transported to warehouse stations all within Illinois.

Centurion drivers, feeling their employer had slighted them some overtime and back pay, sued Centurion under the Fair Labor and Standards Act ("FLSA"), 29 USCA § 201 *et seq.*

Centurion moved to dismiss the claim, brought in the Northern District of Illinois, on the ground that the Motor Carrier Act exempts drivers in interstate commerce from FLSA. The plaintiff employees countered by stating, palms up, they never left Illinois on the highway.

The court dismissed the claim, finding that the drivers' intrastate activity still amounted to interstate commerce under the principle of "practical continuity of movement." Even though the drivers' leg of a haul was purely intrastate, it was part and parcel of an essentially multi-state transportation scheme. The trays were crossing state lines before being loaded with new product and deposited into a warehouse. The drivers' labor therefore potentially impacted interstate commerce, and had to be treated as part of an overall scheme accordingly.

And yes, the trays count as "good in commerce" even though they weren't actually sold, despite the drivers' compelling argument that they were really the equivalent of transportation containers such as bottles or pallets (held in early ICC decisions not to be goods).

### **Artsy folks are business people too!**

***Martino v. Transgroup Express*, 2003 WL 21511922 (S.D.N.Y. 2003)**

This is a limitation of liability case with an artistic flare. Art dealer Martino booked shipment of a painting worth some three million bucks with forwarder Transcon, who contracted with carrier Transgroup to make the haul. The painting got banged up in transit, reducing its value by half a mill. Martino sued both forwarder and carrier.

Both defendants pointed to limitation of liability clauses in their documents. Martino had hired Transcon many times in the past, and had actually turned down the forwarder's offer of transit insurance. Martino's only argument was that no one told him (or his representatives) about the limited liability and, hey, I'm not really a businessman who should be held to know these things. The Southern District of New York wasn't impressed, finding that the language was sufficiently prominent in the bill of lading. Art dealers have as much obligation to read their contracts as anyone else.

### **Is a subcontracting carrier liable under Carmack?**

***Rankin v. Allstate Ins. Co.*, 336 F.3d 8 (1<sup>st</sup> Cir. 2003)**

Household goods shipper Rankin hired Right on Time Moving & Storage (ROTMS) to move his stuff from California to Maine. ROTM subbed the job out to SI Trucking. Some of the cargo was damaged, some was lost, and Rankin was left very unhappy. He settled with ROTMS for a portion of his claim, but his beef with SI and insurer Allstate wound its way to the First Circuit Court of Appeals, after the District of Maine granted defendants' motion for summary judgment. SI had defaulted early in the game.

The insurance dispute centered on prompt evocation of an arbitration clause and undue delay under Maine law – points the court found created an issue of fact not properly decided on summary judgment. Dismissal of the claim against Allstate was reversed and remanded.

Rankin’s claim against SI also was sent back down the hill. The District of Maine found that Rankin hadn’t alleged a separate cause of action against SI beyond what was alleged against (and settled with) ROTMS. Despite the default, the district court refused to award damages against SI. The appeals court ruled that, true, both carriers’ liability is coextensive, such that Rankin wouldn’t be able to recover from both an amount cumulatively above his loss. But the ROTMS settlement wasn’t for the cargo’s full value, and didn’t release SI either. SI could be held liable for the difference. Of course, the amount of damages itself is another question of fact needing more attention.

**Is a motor carrier liable when its sub runs someone over?**

***Serna v. Pettey Leach Trucking*, 2003 WL 21758397 (2<sup>nd</sup> Dist. Cal. 2003)**

Shipper Harrison Poultry hired carrier Pettey Leach Trucking (“PLT”) to haul a load of poultry (a regulation-exempt, agricultural commodity) from Georgia to California. PLT issued a bill of lading naming itself as carrier, and subbed the load to Sky Transportation. The Sky driver negligently collided with a motorcyclist, killing him. The widow and estate sued Sky and recovered a million bucks, and sought further recovery from PLT.

Should a carrier that subs a load – in other words a surface freight forwarder – be vicariously liable for third-party bodily injury and property damage caused by the actual wrongdoer? Apparently yes, at least in the Golden State. The court first dismissed the commodity exemption as determinative. It’s the cargo that’s exempt, not the truck, even though the exemption took the truck outside of FMCSA’s economic dominion. Importantly, the exemption has no bearing on safety regulation, which is at issue when someone gets hurt on the road.

After running through a series of California state cases, the appeals court reversed the trial court’s contrary ruling. When engaged in an aspect of a regulated activity which potentially impacts public safety, vicarious liability for the misdeeds of subcontractors is appropriate. Responsibility becomes nondelegable, per the California court. But is this subcontractor discussion really apt? Aren’t forwarders actually customers of the carriers they engage, entitled to rely on the credentials, insurance and contractual promises carriers make, just like anyone else?

**Is an American broker liable when a Mexican carrier gets robbed?**

***George Weintraub & Sons v. E.T.A. Transportation*, 2003 WL 22023907 (S.D.N.Y. 2003)**

This broker liability case is noteworthy and fun for its Mexican twist and use of old-timey words and phrases. Otherwise, it’s nothing new. Shipper George Weintraub &

Sons ordered some men's apparel products from a Mexican supplier. The supplier hired freight forwarder Schaefer to arrange transport. Schaefer went through U.S. broker E.T.A., but it's not quite clear how or why. E.T.A. booked the load with a Mexican motor carrier.

The load was stolen south of the border, and Weintraub wanted E.T.A. to pay up. Basically, the clothier had no case. There was no relationship, indeed barely any communication, between E.T.A. and Weintraub. E.T.A. issued no bill of lading, never took possession of the cargo, and was not a carrier that could have subbed the load to the actual carrier. Weintraub's claims against E.T.A. were dismissed.