

Hot Recent Cases in Motor Carrier Law

by *Steve Block* September 2004

101 Transactions: A course of dealing leads to limited liability

Atlantic Mutual Ins. Co. v. Yasutomi Warehousing and Distribution, Inc., 2004 WL 1557277 (C.D. Cal. 2004)

Shipper Unirex Corp. shipped five containers of freight from Hong Kong to Vernon, California. The cargo crossed the Pacific to the Port of Long Beach; and four cans were trucked on to Vernon. Time apparently was short for the fifth container, so it was stored overnight in carrier Yasutomi's warehouse. Of course, it was stolen before a delivery run could be scheduled.

Yasutomi had hauled Unirex' stuff for quite some time, having issued 101 identical bills of lading denoting the same 50¢ per pound limitation of liability. In fact, four of the five bills of lading for this particularly booking contained that term. Yasutomi's only headache was that it hadn't issued a bill for the lost load. Unirex' insurer sued in subrogation, and the carrier sought to limit its liability based on the parties' prior course of dealing.

Carmack controlled the inland leg of this international transport, even though the surface haul was entirely intrastate. In such cases, a prior course of dealing will serve to place a shipper on notice of shipping terms, such that the absent documentation isn't fatal. Unirex' purchase of cargo insurance confirmed that Unirex knew its carrier's liability was limited. On partial summary judgment, the court held Yasutomi must pay no more than four bits per pound.

Leased operators aren't carrier's employees for purposes of workers comp in Tennessee

Honsa v. Tombigbee Transport Corp., et al, 2004 WL 1562363 (Tenn 2004)

Transway Corp. provided Tennessee-based carrier Tombigbee with "leased operator" drivers pursuant to their "service agreement." The term of the service agreement had expired, but Transway kept sending leased operators, who kept driving for Tombigbee. A few got hurt on the job.

The injured drivers sued Tombigbee seeking workers compensation benefits. The carrier defended the claims asserting that the drivers weren't Tombigbee employees. The service agreement specifically classified leased operators as Transway employees, and required Transway to procure workers comp coverage (apparently it didn't do so). The claimants pointed to the service agreement's expiration date.

Tennessee has a statute providing that leased operators aren't employees of the carrier, and that they must work pursuant to a contract. The fact that the service agreement had expired was irrelevant; Transway and Tombigbee had effectively entered into a new, unwritten contract with the same terms when they continued performing (as Volunteer State law mandates). Thus, the drivers must look to Transway for coverage.

Limitation of liability: A less-than-happy LTL forwarder

Bullocks Express Transportation, Inc. v. XL Specialty Ins. Co., 2004 WL 1748934 (D. Utah 2004)

Shipper 3COM booked transit of five containers of palm pilots with surface forwarder Skyway Freight Systems from Salt Lake City, Utah to various delivery points. Skyway had an "LTL Contract Agreement" with carrier Bullocks Express, pursuant to which Skyway placed the transit. Thieves lifted the palm pilots from Bullocks.

The LTL Agreement limited Bullock's liability to peanuts unless freight were lost as a result of theft. But Bullocks' bill of lading, which also contained a limitation of liability provision, didn't treat loss by theft differently than any other variety of loss. Skyway declared a cargo value of "0" on that bill of lading.

In response to the subrogated claim of 3COM's subrogated insurer, the carrier moved the U.S. District Court for the District of Utah for summary judgment, seeking to limit its liability. Bullocks claimed the LTL Agreement didn't apply because, hey, this wasn't LTL freight. The court found material issues of fact on that issue, mainly because it was unclear whether the parties *intended* the Agreement to control notwithstanding its title (the contract wasn't specifically limited to LTL hauls).

But what about Carmack? Even though the parties may have specifically contracted to impose full liability on the carrier in the event of theft, the court found that federal law preempted that term. The court reasoned that the bill of lading's released value and incorporation of the NMFC (of which both Bullocks and Skyway are members) brought this transaction within Carmack's dominion. Hmmm.

The court also rejected the shipper's position that Carmack's "terminal area" loss exemption precluded Carmack applicability, ruling that "terminal" doesn't mean a carrier's yard. Bullocks' liability is limited.

More from the Beehive State: a carrier can't force OOIDA drivers into arbitration

OOIDA v. C.R. England, Inc., 2004 WL 1586771 (D. Utah 2004)

OOIDA, on behalf of a number of its owner operator members, brought suit against carrier C.R. England, alleging violations of federal truth in leasing provisions. The drivers' leases contained broad arbitration clauses. England moved to stay the litigation and compel arbitration.

OOIDA opposed the motion, urging that their claims are exempt from arbitration under the Federal Arbitration Act, which excludes claims of individuals who work “in interstate commerce.” The court agreed and denied England’s motion. True, the FAA’s interstate commerce exception has been held inapplicable to personal injury claims when the drivers are a carrier employer’s “statutory employees.” But these were not tort claims, and the drivers’ status as employees or independent contractors was not at issue here. Utah’s state arbitration statute was inapplicable because the drivers were not pursuing state-law claims

Moreover, these claims would be prohibitively expensive to run through arbitration. The court suspected England was trying to take advantage of this, as it hadn’t submitted to arbitration any of its 2,591 previous driver claims to arbitration. The court also found England’s arbitration clause unconscionable, as it was so “one-sided” as to procedural issues as to be “effective only *against* the drivers.” Lastly, the court found the owner operators need not first go through FMCSA administrative proceedings, as the truth in leasing regs provide a private right of action.

Tariff isn’t good enough to afford shippers fair opportunity to opt for full carrier liability

Emerson Electric Supply Company v. Estes Express Lines Corp., 2004 WL 1558525 (W.D. Penn 2004)

Emerson shipped a cargo of electronic equipment with carrier Estes Express from Texas to Pennsylvania. The players didn’t discuss released value, limitation of liability, or tariffs. Nothing. Estes Express’ “generic” bill of lading asked for a declared value, but Emerson, which was a sophisticated shipper, left the space blank. The bill of lading also incorporated Estes Express’ tariff, which was readily available on line.

The tariff included those goodies needed for carrier limitation of liability, i.e., notice that a declared value must be supplied. Emerson didn’t check out the tariff. Of course, the freight arrived damaged.

When litigation ensued, Estes Express moved for partial summary judgment regarding limitation of liability. The Western District of Pennsylvania analyzed the fair opportunity doctrine in the context of Carmack’s designs and purposes. Going through a detailed, if somewhat convoluted, history of common and statutory cargo law, the court concluded that incorporation of a carrier’s tariff containing limitation of liability terms typically does trick, and normally would here. The problem was that Estes Express’ tariff didn’t offer two separate rates, one of which would be for full liability. Thus, it didn’t suffice to limit the carrier’s liability in any event.

OOIDA may be on the hook for claims under its health insurance plan

Walker v. Inter-Americas Insurance Corporation, Inc., 2004 WL 1620790 (N.D. Tex 2004)

This recent case addresses mostly procedural issues in the context of a trucking company's claims for coverage against a health insurer, but it could have far-reaching effects on the Owner-Operator Independent Drivers Association. The OOIDA Member Medical Benefits Plan provides affordable health coverage to drivers by pooling their contributions and paying out eligible medical claims. Inter-Americas Insurance Corporation runs the program pursuant to its "Administration Agreement" with OOIDA.

Here, the Northern District of Texas explored who was the principal and who the agent between OOIDA and the insurer. It ruled OOIDA is the principal, meaning the association could ultimately be liable under insurance coverage principals. OOIDA wasn't a party, so the case's precedential effect isn't certain, but the stakes are potentially huge.