

Hot Recent Cases in Motor Carrier Law

by *Steve Block* September 2005

ICCTA doesn't get owner operator into federal court for personal injury claim *Crosby v. Landstar, et al, 2005 WL 1459484 (D. Del. 2005)*

Owner operator Crosby, under lease to carrier Landstar, was injured when Landstar trailer equipment failed. Crosby sued Landstar *pro se* in the U.S. District Court for the District of Delaware, alleging federal jurisdiction based on 49 USC § 14704 of the Interstate Commerce Commission Termination Act. That statute addresses carrier liability for injuries resulting from a carrier's violations of the Motor Carrier Act, 49 USC § § 13101 *et seq.*

The court granted Landstar's motion to dismiss, finding that ICCTA's provision was not a blanket extension of Carmack – and therefore federal – dominion over personal injury claims. Crosby had not alleged any violation by Landstar of the Motor Carrier Act, and the bases of his claims were “more like negligence claims.” Because Crosby was a First State citizen and Landstar a Delaware corporation, the case wasn't cognizable under the federal court's diversity jurisdiction either. The matter must be refiled in an appropriate state court.

A ticked-off federal court won't be bothered *Ducham v. Reebie Allied Moving and Storage, Inc., 372 F.Supp.2d 1076 (N.D. Ill. 2005)*

Here's one worth reading if for no reason other than to see just how wittily a federal judge can express his frustration at a carrier's abuse of its customer. Shipper Ducham hired carrier Reebie Allied Moving and Storage to haul his household goods. Having agreed to a \$16,635.45 freight tab, the carrier “hornswoggled” (there's a word you don't hear every day) Ducham by raising the bill three times to \$25,564.67 after the shipper had tendered the freight. Equating Reebie's actions to “highway robbery” (“Bad pun intended,” nyuck nyuck), the court addressed the carrier's “Petition for Removal” (itself the subject of another jab – the court noted sardonically that Illinois had abandoned the term “petition” in 1988).

But back to the case's topic of interest. Ducham sued alleging breach of contract, fraud, Illinois consumer protection violations, and other state law theories of recovery. Despite Carmack implications and defenses provided by federal law, Reebie's removal of the action from state court was improper. Just because federal law governs a case's subject matter doesn't mean the plaintiff is deprived of the right to pick his tribunal (absent specific statutory provisions to the contrary). True, Carmack may apply to a portion of this claim (though not all). But that alone doesn't give a federal court primary jurisdiction. A Prairie State court will get to decide this one applying federal law where appropriate.

Broker or carrier? More analysis of Carmack applicability.
Hewlett-Packard Co., et al v. Brother's Trucking Enterprises, Inc., et al, 373
F.Supp.2d 1349 (S.D. Fla 2005)

Shipper Compaq, through a forwarder, engaged Salem Logistics to arrange transit of a cargo of electronics products from Los Angeles to Miami. Salem, in turn, booked the freight with carrier Brother's Trucking. But what was Salem? It sure thought and wanted to be a Carmack liability-immune transportation broker. Everyone knew it wouldn't be using its own trucks, and it issued no bill of lading. But it did boast to its clientele (including the shipper a hand) how much control it exercised over trucks moving its freight, guaranteeing up-to-date equipment. When a Brother's driver left his truck attended, Compaq's cargo disappeared, and Salem's status became an issue.

Salem felt it wasn't liable, having selected a reasonable carrier for the haul and otherwise not being at fault for the loss. In addressing Salem's motion for summary judgment, the Southern District of Florida focused squarely on how Salem presented itself to the world. Because enough was there for a jury to conclude Salem qualified as a motor carrier in its customers' eyes, the court denied Salem's motion.

Even if Salem were a broker, it still could be held liable on common carrier negligence principles. While Salem disavowed breach of any actionable duty to its shipper, the court disagreed based "on the general facts of the case." Salem apparently failed to follow its shipper's instructions regarding tracking, communications systems and insurance. Thus, a reasonable fact finder could conclude Salem was negligent, and therefore liable even as a broker.

Pushing a shipper over the brink: Carmack doesn't preempt emotional distress damages
Schwarz v. National Van Lines, Inc., 375 F.Supp.2d 690 (N.D. Ill 2005)

This case should get the attention of household goods shippers and their insurers. Shipper Schwarz, an elderly widow, engaged carrier National Van Lines to move her stuff from Illinois to Oregon. The load disappeared, Ms. Schwarz went ballistic (in a big, medically certifiable way), and National apparently was callous to say the least. Evidence suggested National had jerked poor Ms. Schwarz around when she pursued her claim, broke promises to her, and didn't do much to follow up on an interline carrier whose background was somewhat suspect.

When National moved for summary judgment seeking to dismiss Ms. Schwarz' common law claims based on intentional and/or negligent infliction of emotional distress, it probably thought its case was slam dunk. But the Northern District of Illinois felt differently. While Carmack generally preempts state and common law theories of liability, its effects is not "all-inclusive." Specifically, Carmack doesn't supplant "claims

involving a separate and independently actionable harm to the shipper distinct from such damage [to freight].”

The court basically concludes National’s behavior with this shipper was sufficiently egregious that Ms. Schwarz could’ve sued the carrier even if she wasn’t a shipper. National owed its shipper a duty of care as provided by tort law, one which could have been heightened by the power differential in the parties’ relationship. A jury could conclude that duty was breached, and award appropriate damages. National’s motion was denied.

One is left to wonder why the asserted egregiousness of National’s tortious conduct was determinative as to whether the alleged tort was separately actionable. Had National been only a little rude in response to Ms. Schwarz’ cargo claim, would that transgression be separately actionable?

Shipper and his lienholder can’t be impleaded
***Mayflower Transit, LLC v. Cambridge*, 2005 WL 1868792**

Carrier Mayflower somehow got in the middle of a mess created by a shipper whose household-goods cargo had been attached by the shipper’s lien-asserting, property-attaching landlord. Mayflower received a copy of the landlord’s writ of attachment, put the shipper’s freight in storage, interpleaded its shipper and the landlord, and hoped to let those two fight it out in court.

The court goes through an interesting analysis of interpleader process in the carrier context before concluding that Mayflower couldn’t unload this burden by suing its shipper and the landlord. Interpleader is only appropriate when the defendant “stakeholders” have defined interests in the property. The sheriff never perfected the writ of attachment by actually serving Mayflower with it (only a copy was sent), and the shipper’s landlord disavowed actual interest in the property. Thus, the landlord wasn’t a proper party to the action, leaving only one stakeholder defendant. Consequently, the interpleader action, which requires at least two potential stakeholders, was dismissed.

Nonetheless, this case suggests that interpleader might often be a viable and economically appropriate approach to situations where freight is the subject of attachment actions.

Insurance coverage for a snookered driver returning from his sister’s house?
***Minter v. Great American Ins. Co.*, 2005 WL 2010056 (5th Cir. 2005)**

This coverage case shows just how complex issues peculiar to truck leases in the insurance context can be. Driver Largent was employed by JTM, which was under exclusive lease to carrier Hammer Trucking. Because of his personal circumstances, JTM let Largent keep his truck for transportation to and from home. One night he was

directed to return his truck to Hammer's maintenance yard. He went to his sister's house to arrange a ride back from the yard, got drunk somewhere along the way, and was involved in a serious accident.

Great American was JTM's secondary insurer after a \$1m primary layer covered by St. Paul. The Great American policy contained a "permissive use" provision intended to limit coverage to specifically authorized trucking activities. Great American felt that the trip to Largent's sister's house was not a permissive use, and it certainly wasn't permitted while the driver was tanked.

The Fifth Circuit partially reversed a district court's summary judgment dismissing JTM's coverage action. It found there were questions of fact as to whether a driver who'd generally been allowed to use his truck for personal transportation, and who'd been seeking a necessary ride home when he made the detour to his sister's, was undertaking an unpermitted use of his truck. Whether or not the driver's intoxication was sufficiently significant in the use analysis also is a question of fact. Thus, summary judgment was inappropriate.

The court also found that principles governing Great American's MCS-90 filing did not dictate the outcome. St. Paul was JTM's primary insurer. The virtually automatic coverage an MCS-90 filing conveys only applies upon demonstration that the second layer of coverage has kicked in (St. Paul had previously settled with the claimant). Therefore, the parties must try this one out.