

Hot Recent Cases in Motor Carrier Law

by *Steve Block* November 2003

Federal law governs interstate trucking injuries, even in the unloading phase

Smart v. American Welding & Tank Co., 826 A.2d 570 (NH 2003)

A truck had transported a cargo of propane tanks from Georgia to New Hampshire. An employee of the consignee, located in the Granite State, helped offload the cargo. Apparently, a tank hadn't been secured properly. It unexpectedly rolled forwards, knocking Mr. Smart from the flatbed. Tragically, he died from his injuries. His estate sued both shipper and carrier.

The shipper asserted that federal law relieved it from any liability for improper loading once the carrier accepted the load. A state trial court ruled that New Hampshire law governed the rights of Mr. Smart's claims because the accident happened after the truck's arrival, and determined that New Hampshire hadn't adopted the federal rule. Instead, the trial court ruled that carriers are not liable for shippers' mistakes, even if they accept the cargo, and shippers stay on the hook.

The case wound its way to New Hampshire's Supreme Court, where the ruling was reversed. Analyzing the federal concept that carriers are responsible only for visible packing defects (the "*Savage* rule," after a precedent so ruling), the court found no reason to end the federal rule's applicability until after cargo had been safely offloaded. Questions of fact remain as to whether the packing problem was discernible, so the matter goes back down the hill to determine whether the shipper and/or the carrier are liable.

A driver must jump administrative hoops before bringing an ADA claim in court

Harris v. P.A.M. Transport, 339 F.3d (8th Cir. 2003)

Prospective driver Harris began a driving course with training outfit MTC for carrier P.A.M. He had gotten a new set of kidneys, and had to take medicine to keep them working. That medication caused problems a P.A.M. examiner concluded were disqualifiers for a commercial truck driver (per DOT regs). An MTC doc disagreed. Nonetheless, P.A.M. refused to hire Harris on that basis, and Harris still got MTC's bills.

Harris sued in an Arkansas federal court under the Americans with Disabilities Act, and the matter went to the Eighth Circuit. The Court of Appeals, agreeing with the district court, threw Mr. Harris out of the federal court system. He'd not been through administrative proceedings at DOT, which is far more able to scrutinize its own medical standards than would be a court. The fact that MTC and P.A.M.'s doctors disagreed was irrelevant. Harris cannot prove an essential ADA element, i.e., that he was qualified to work as a driver, because P.A.M.'s refusal to hire him was based on established DOT standards and was not of the carrier's "own devising."

You snooze, you lose: A pumped up shipper is bounced out of court

Kvaerner E&C Metals v. Yellow Freight Systems, pending in the U.S. District Court for the Northern District of California, Cause No. C02-1202 BZ

Shipper Kvaerner hired Yellow to move a cargo of pumps, which arrived damaged. A few weeks later Kvaerner sent Yellow a “notice of freight claim” which didn’t include the repair costs. A few more weeks later, Kvaerner got a repair invoice for some 65 grand, and prepared a spreadsheet explaining them. Yellow asked for the damages to be presented on a Yellow claim form. Kvaerner’s project manager found the forms tricky and confusing, but claims he filled them out and Fed Ex’ed them to Yellow. The project manager quit Kvaerner, didn’t keep a copy of what he’d sent Yellow (right, buddy), and Yellow denied ever receiving the claims forms.

Nine months passed, the matter went to federal court in California, and Yellow argued that timely notice of claim hadn’t been provided (within the nine months allowed by Carmack and Yellow’s shipping documentation). Kvaerner pointed to liberalized 9th Circuit law regarding “substantial compliance” with notice requirements. Even if the Fed Ex wasn’t sent or received, urged the shipper, Yellow had enough information to process the claim.

Surprisingly, the court disagreed and dismissed the action. Without the numbers, Yellow could not have settled the freight claim. Thus, this court (at least) believes some specification of the claim’s size is essential even on the west coast. Delay occasioned by Yellow’s tricky forms was no excuse (c’mon, Kvaerner, this was a big claim).

Blanked: A shipper’s failure to declare value results in limited carrier liability

J.C. Research v. Global Overland Delivery, pending in the Court of Appeal of the State of California, Sixth Appellate District, H024119

Shipper JCR produced software and sold it around the country. It usually shipped its freight by air booked by air freight forwarder Global. Per practice, Global sent JCR bills of lading containing blank spaces for the shipper to declare value. Otherwise, said the document, liability would be limited to peanuts.

In this case, JCR’s product assembler CMT tendered a load to motor carrier Covenant Transport (why this one went by road isn’t clear), booked by Global. The cargo was stolen, and JCR was out 176 grand. Everyone went to Golden State court.

Global and Covenant moved to enforce limitation of liability. JCR’s first response was that CMT wasn’t authorized to enter into contractual arrangements with Global, Covenant or anyone else on behalf of JCR. That didn’t work because JCR’s complaint itself alleged CMT was JCR’s agent.

JCR also urged that Global's representative had told JCR that it was insured. Nope, said the court. Even if that were enforceable, nothing suggests the cargo was fully "insured."

JCR argued that it didn't have a reasonable opportunity to choose full liability over limited liability. After taking a refreshing look at modern-day Carmack, the court found that the bill's blank space asking for declared value, made known to JCR through repetitious shipments, was all that was needed. Liability was limited.

A carrier is likely to prevail in business dispute

Hoover Transportation Services v. Frye, 2003 WL 22128759 (6th Cir. 2003)

This one doesn't much deal with transportation law, but it presents an interesting analysis of business relationships in the trucking context. Carrier Hoover struck a deal with one Mr. Frye whereby he would serve as an independent agent for Hoover in Charlotte, North Carolina. Somehow, things fell apart, and Frye allegedly started booking loads for another carrier. Hoover sued, alleging breach of contract, breach of a non-comp clause, misappropriation of trade secrets, unfair competition, and a host of other theories. It then got a preliminary injunction pending trial, preventing Frye from doing business with the other carrier.

To get a preliminary injunction, a plaintiff has to show it likely will prevail on the merits. That determination is within the trial judge's discretion – a pretty tough standard to beat on appeal. Frye tried anyway, taking the matter from the Southern District of Ohio to the Sixth Circuit.

The Sixth Circuit found that, true, Frye probably wouldn't be liable under the non-comp clause (it just wasn't worded well). Courts have ruled that contract rates, driver information, and shipper information within the trucking industry are trade secrets. Frye was spilling the beans, pretty much by his own admission. But nothing in the record suggested Hoover took steps to keep this info under wraps.

That's where Frye's luck ran out. Frye apparently had been telling the Tar Heel State's shipping world some fibs about Hoover and its business practices. On that basis, the court ruled that the trial judge was within his discretion in deciding Hoover probably would prevail. The preliminary injunction was upheld.

Logo Liability takes another shot

Mercer Transportation Co. v. Greentree Transportation Co., 341 F.3d 1192 (10th Cir. 2003)

A shipper booked cargo through broker Mercer with carrier McClellan, which was operating with carrier Greentree's logo nailed to its doors. A one-vehicle accident damaged the cargo. Mercer paid the shipper one hundred fifty thousand (presumably for business reasons), and went after Greentree for indemnity.

The theory: logo liability, based on *Rodriguez v. Ager*, 705 F.2d 1229 (10th Cir. 1983)(yep, it's been that long). After reviewing *Rodriguez*' history, the court rejected logo liability. The principle applies only to personal injuries. Carriers are not logo liable for cargo damage.

Instead, you pretty much have to stick with Carmack, which relieved shippers of having to discover and chase down a carrier who actually had the freight when it was damaged. There was no privity between Mercer and Greentree, so the latter isn't liable.