

Hot Recent Cases in Motor Carrier Law

by *Steve Block* November 2004

Are transportation brokers liable for motor carrier accidents? Maybe in the Old Line State.

Schramm v. Foster, et al v. Foster, et al, 2004 WL 1882629 (D. Md. 2004)

Shipper Jasper hired transportation broker C.H. Robinson to arrange transport of a cargo of soy milk from Missouri to New Jersey. Robinson issued a guarantee to Jasper for the freight's safe delivery (taking financial responsibility if the actual carrier didn't pay up), and placed the transit with motor carrier Groff Brothers. While in Maryland, Groff's driver Foster ran a red light and crashed into a pickup truck, severely injuring Tyler Schramm. Schramm sued Robinson, alleging the Robinson was liable under Maryland state law and some novel applications of the Motor Carrier Act.

Hearing cross motions for summary judgment, the District of Maryland rejected a series of arguments Schramm urged under motor carrier law governing transportation brokers, as well as Robinson's specific actions and representations in this haul. The court found that a broker's role in surface transportation doesn't result in *respondeat superior* liability for the acts of motor carriers' drivers, mainly because drivers aren't brokers' employees. Under Robinson's contract with Groff, the carrier was an independent contractor for Robinson (that argument probably wouldn't work had Groff asserted it regarding Foster), and Groff controlled the means and method of transportation. "Control over the result" isn't enough to make an independent contractor's driver a broker's employee.

The court looked at Schramm's negligent entrustment theory the same way. Robinson didn't give Foster his truck, so it hadn't entrusted him with anything, let alone negligently.

Federal motor carrier safety regs at 49 USC § 14704(a)2) are written rather broadly, and impose liability on brokers for damages ensuing from their acts and omissions. The court recognized that, "at first blush," this suggested Robinson might be on the hook. But looking at the statute's context and history, the court concluded it was intended to apply to commercial damages only. Moreover, it doesn't create a private cause of action (as has been ruled in other federal precedents).

But what about Robinson's contractual assumption of liability? Schramm argued that the guarantee's broad language reasonably implied Robinson would accept liability for anything, including personal injuries, as asserted by anyone. The court disagreed. Accepting commercial liability for clearly business purposes doesn't mean you're agreeing to liability for the Lindbergh baby.

But then the court reached Schramm's argument that Maryland state "negligent hiring" law dictated Robinson was liable. Old Line law imposes a duty of care on entities which select carriers. Apparently, FMCSA's website suggested Groff might not have been an

ideal selection (based on its operational history). This presented a question of fact, even though “evidence of Robinson’s alleged negligence is somewhat thin. . .” Summary judgment was denied on this issue, suggesting a jury might decide whether a broker may be liable in Maryland for truckers’ accidents.

The Interstate Commerce Act isn’t a basis for federal jurisdiction in former motor carrier employees’ non-compete action against motor carrier, but . . . nice try.
M,G, & B Services, Inc. v. Buras, et al, 2004 WL 1872718 (ED La 2004)

Motor carrier M,G & B sued in Louisiana state court some of its former employees for allegedly breaching a non-compete clause in their employment contracts. The employees removed the action to the U.S. District Court for the Eastern District of Louisiana, asserting that federal law under the Sherman Act and the Interstate Commerce Act (ICA) governed part of the dispute. M,G & B moved to remand the case back to state court asserting there was no federal jurisdiction.

Going through a nice little summary of jurisdictional issues involved in removal, the federal court explained that a federal jurisdictional basis must be supported by the complaint. Defenses to the complaint’s allegations, even if the complaint’s nature necessarily contemplates them, cannot support removal. While M,G & B was a motor carrier and the employment terms it imposes on its employees might implicate elements of the ICA (as well as the Sherman Act), those sources of federal law weren’t the subject of the complaint. Indeed, the defendants failed to suggest how the ICA possibly could bear on the substance of the complaint.

The case was remanded to Pelican State court. Not totally put off by the defendants’ argument, the federal court refused to award plaintiff its attorneys’ fees. The removal theory wasn’t “frivolous.”

Ongoing contractual relationship between motor carrier and driver service provider means no workers comp in Tennessee
Honsa v. Tombigbee Transport Corp., 141 S.W.3rd 540 (Tenn. 2004)

Tennessee motor carrier Tombigbee leased its drivers from Transway pursuant to a service agreement whose term had expired. But Tombigbee kept ordering drivers from Transway, and Transway kept sending them, all in accordance with the service agreement’s provisions.

In the Volunteer State, drivers are motor carrier employees for workers compensation purposes unless a contract specifically provides that they’re independent contractors. Three Transway drivers got hurt while working for Tombigbee. They sued the carrier seeking for workers comp benefits, alleging that no valid contract was in place to make them independent contractors. Affirming a court of appeals decision, Tennessee’s Supreme Court found that the continuation of transactions by Transway and Tombigbee,

despite the service agreement's technical conclusion, essentially created a new contract with identical terms. Nothing in Tennessee law regarding driver independent contractor status says the contract has to be written. Consequently, the drivers aren't Tombigbee employees entitled to workers comp coverage.

Keeping local authorities in tow: Philadelphia regs are mostly preempted

Helmrich Transportation Systems v. City of Philadelphia, 2004 WL 2278534 (E.D. Pa 2004)

Over the past several years, federal courts around the country have been striking down state and local regs which impact towing companies (*see* August 2002 Highlights Motor Column). This time, the City of Brotherly Love got its hand slapped for trying to enforce certain licensing, lettering and fee requirements on tow truck operators.

The general rule is that 49 USC § 14501(c)(1) precludes state and local authorities from enacting regs which have the "effect of law related to a price, route, or service of any motor carrier . . . with respect to the transportation of property." Courts have held that the term "with respect to" should be interpreted broadly. That pretty much nips tow truck licensing and fee requirements in the bud.

Like other local government agencies in the same predicament, Philadelphia pointed to the federal statute's two exceptions. Under the federal statute, states and cities can implement safety regs, and they have freer reign when it comes to nonconsensual towing. Like its predecessors, Philadelphia largely failed in this argument. But not quite. The municipal tow truck licensing fee was only fifty bucks, an amount so low the court couldn't see how it could seriously impact service pricing. One of the licensing requirements was really just a business privilege license which, again, hardly regulated motor carrier aspects of the towing business. These regs were allowed. But Philly failed to show how vehicle identification lettering requirements were a safety concern, or how mandating towage permission forms reduces danger to life and limb. Therefore, most of the city regs are preempted.

DOT's Inspector General raid is okay in the Fourth Circuit

United States v. Sanders, et al, 104 Fed. Appx. 916, 2004 WL 1688340 (4th Cir. 2004)

The Federal Motor Carrier Safety Administration accused motor carrier K&C Trucking of various hours of service violations on a particularly nasty scale, compounded by allegations of conspiracy and making false statements to Department of Transportation investigators to conceal violations. DOT asked K&C nicely for certain documentation, then demanded production, then slapped a subpoena on the carrier. K&C still wouldn't produce the documents. Consequently, DOT's inspector general obtained a search warrant for K&C's premises. Combat-ready federal agents stormed the carrier's kitchen while the media waited outside. Incriminating documents (from K&C management to drivers directing them to violate hazmat rules) were found there.

A federal grand jury in the Western District of Virginia asked to see the documents. The feds already had them, so K&C's agreement wasn't needed. The grand jury indicted K&C and its principals on the basis of the documents, prompting the carrier to move the court to exclude them from consideration. The district court granted K&C's motion, finding that the search had been executed in bad faith, and that the grand jury's subpoena of the ill-gotten documents was improper.

The court didn't apply criminal law's exclusionary rule (whereby evidence obtained in violation of a defendant's constitutional rights is suppressed). Rather, it resorted to the court's general supervisory powers, concluding that DOT-IG's search was, well, too harsh. The court deemed the "totality of circumstances" demonstrated the search was in "bad faith" because it was beyond the scope of an IG's authority.

On the government's appeal, the Fourth Circuit reversed and allowed the evidence. The district court abused its discretion in applying its supervisory power. The feds' conduct simply wasn't so severe under the circumstances as to amount to "brazen lawlessness." The lower court's approach would only be appropriate in cases of "severe official misconduct," which wasn't demonstrated here.

Mayflower hits the dec with preemptory strike against a shipper
Mayflower Transit v. Troutt, 332 F.Supp.2d 971 (W.D. Texas 2004)

Shipper Troutt approached a Mayflower agent requesting freight charge quotes for transport of household goods and office furniture. Troutt refused the office furniture quote, stating it was above his budget, and apparently directed Mayflower to move his household goods only. Mayflower did so. Troutt then demanded that Mayflower move his office furniture, and hit the carrier with damages demands based on its refusal to do so. Hmm.

Mayflower, probably confused and ticked, brought an action for declaratory judgment against Troutt in the Western District of Texas, seeking an order clarifying that Mayflower had no obligation to transport freight it hadn't been hired or paid to transport. Troutt appeared in the action and requested additional time to answer. Then he disappeared.

Mayflower brought a motion for default judgment. The court went through a detailed analysis of the basis of its subject matter jurisdiction (Troutt would have to seek recovery under the Carmack Amendment), federalism, default judgment standards, and how miffed it was at Troutt. A dec action is appropriate here, a default judgment is even more appropriate, and Mayflower is not required to haul freight it wasn't hired to haul.