

## Hot Recent Cases in Motor Carrier Law - November 2005

by *Steve Block* November 2005

### **Carriers aren't shielded from liability by a forwarder**

*Accu-Spec Electronic Services, Inc. v. Central Transport International, et al*,  
2005 WL 2250691 (W.D. Pa. 2005)

Shipper Accu-Spec booked interstate transit of an x-ray machine with freight forwarder Logistics Plus, which placed the transit with carrier Central Transport. The freight was damaged on delivery, and Accu-Spec sued Central Transport seeking recovery of the x-ray machine's repair or replacement costs.

Central Transport moved to dismiss, stating that the shipper could look only to Logistics Plus for recovery. The carrier pointed to Carmack's provisions regarding forwarder liability, and the notion that Carmack was designed to obviate shippers seeking out and naming multiple carriers in freight claims. Moreover, a congressman's statement recorded in Carmack's legislative history specified that freight forwarders bear sole liability.

The U.S. District Court for the Western District of Pennsylvania saw right through Central Transport's argument, and denied the motion. Going through a neat little historical summary of forwarder law, the court noted that numerous courts have held carriers and forwarders concurrently liable. Just because shippers need not sue the actual carrier (and may name the forwarder only) doesn't mean they're prohibited from doing so. And that congressman? While the court found his unequivocal statement bothersome, it ruled he was confused about the law and, nonetheless, legislative history doesn't trump clear statutory language.

### **The Federal Arbitration Act doesn't exclude dispute over freight forwarder records keeping**

*DVC Trucking, Inc. v. RMX Global Logistics*, 2005 WL 2044848 (D. Colo. 2005)

Freight forwarder RMX Global Logistics booked a series of transits with motor carrier DVC Trucking. DVC later asked RMX for copies of certain shipping records, which 49 CFR § 371.3(c) mandates forwarders preserve and make available. RMX refused. DVC sued RMX in the U.S. District Court for the District of Colorado. RMX moved the court to compel arbitration of the issue as provided by a term in the parties' contract.

DVC opposed RMX's motion, urging that the Federal Arbitration Act, 9 USC § 1, et seq ("FAA"), excludes mandatory arbitration of issues concerning transportation workers. DVC argued it was a Ma and Pa operation whose issues concerned the carriers' principals the same as transportation workers might be

affected individually. The court didn't buy it. FAA's exclusion is meant for employment related matters, such as wages, entitlements, wrongful dismissal and personal injury. The contract at issue here was an arms-length business transaction between two companies.

DVC also argued that part of the relief it was seeking was revocation of RMX's license and other relief that only the U.S. Secretary of Transportation could implement. Arbitration, urged DVC, wouldn't set in motion wheels needed for that relief (as provided by 49 USC 14707(b)). That argument didn't fly either, as the court found the statute's application "a dubious proposition." Revocation of a forwarder's license requires a registration violation, which DVC couldn't realistically demonstrate. This matter goes to arbitration as the parties originally intended and agreed.

### **OOIDA rides again, just in the wrong state**

*Owner-Operator Independent Drivers Association, Inc. v. North American Van Lines, Inc.*, 382 F.Supp.2d 821 (W.D. Virginia 2005)

The trucking industry sees more than its share of venue disputes. By its unique nature, different locales often are at issue in court battles, with evidence, witnesses and preferred law being in two or more distant jurisdictions. Plaintiffs typically enjoy the benefit of a legal precept granting them deference as to the court they select. This allows many plaintiffs to "forum shop," or seek courts reputed to rule in their favor on certain issues.

Trucking class actions especially encourage venue disagreements and forum shopping. Numerous players typically are involved, several jurisdictions at least arguably are involved, and the stakes are high. Usually, the situs of a compelling event, witnesses, documents and/or parties will suffice to invoke a given court's jurisdiction. But there are certain minimum thresholds class-action plaintiffs must cross before enjoying the deference they're so fond of claiming.

Just ask the Owner-Operator Independent Drivers Association ("OOIDA"), the trade organization that represents drivers in various issues including lease disputes with carriers. OOIDA recently filed a class action suit against North American Van Lines ("NAVL") in the Western District of Virginia, where one plaintiff driver lived. Apparently that one driver was the sole basis OOIDA thought venue in the Old Dominion State was proper. All witnesses and documents were in Indiana (where NAVL's operations are headquartered). The leases at issue were executed in Indiana, and any leasing violations took place in the Hoosier State. Under these circumstances, the court didn't agree that deference to a plaintiff's selected forum or the convenience of a single driver overrode general venue principles. Virginia may be for lovers, but it's not for this lawsuit.

**More roadblocks to collective lawsuits: you can't sue without damages, and ICCTA has no retroactive effect**

*Rivas v. Rail Service, Inc., et al*, 423 F.2d 1079 (9th Cir. 2005)

The Ninth Circuit recently took a look at four consolidated appeals addressing various driver employment claims against motor carriers. These included - you guessed it - alleged federal Truth-in-Leasing violations (failure to include leasing terms specifying that the motor carrier took responsibility for equipment throughout a haul), sale of insurance coverage (allegedly without state authority to do so) subject to California law, and other lease improprieties violative of ICCTA provisions. The district courts had found defendants liable in each instance.

The parties didn't make a fuss over federal jurisdictional issues, but the Ninth Circuit *sua sponte* took notice of potential defects. The court bounced plaintiffs' claims based on Truth-in-Leasing because, hey, the plaintiff drivers hadn't suffered any harm. Damages are a prerequisite to a claim under the statute, and the plaintiffs apparently conceded there were none. That circumstance also deprived plaintiffs of federal jurisdiction over their insurance claims.

The court of appeals also rejected claims for which the plaintiffs did allege damages, which would only be subject to federal jurisdiction under ICCTA. But the leases at issue pre-date ICCTA, and that statute has been held to have no retroactive effect. Thus, plaintiffs' judgments were reversed.

**Which Carmack hat was a rigger wearing? Any at all?**

*Delta Research Corp. v. EMS, Inc.*, 2005 WL 2090890 (E.D. Mich. 2005)

This case is a good example of players plunging into transportation activities not knowing the consequences, and the legal confusion that follows. Delta Research purchased a used boring mill to manufacture goods it would sell to a buyer in accordance with a long-term contract. It contracted with S.K. Rigging Co., a machinery rigger, to arrange transport of the mill to Delta's Livonia, Michigan facility from Cincinnati. S.K. Rigging, in turn, hired carrier EMS to supply a flatbed and cab, and to haul the mill to Michigan. Of course, the mill was destroyed en route.

Delta sued S.K. Rigging and EMS, alleging Carmack liability against both. On cross-motions for summary judgment, S.K. Rigging urged that Delta's complaint was facially defective, as it did not allege that S.K. Rigging was either a freight forwarder or carrier. The court rejected this argument, finding the complaint contained enough detail about the nature of the loss, as well as controlling statutory principles.

The next issue was whether S.K. Rigging was either species of transportation provider subject to Carmack dominion. It held itself out as a machinery rigger.

While it at least arguably performed freight forwarder services by booking a carrier's services, the court found compelling that S.K. Rigging did not do so in the ordinary course of its business. The opinion doesn't mention whether or not it issued a bill of lading. The court may have missed the mark in its analysis, but ruled as a matter of law that S.K. Rigging was not a forwarder.

But was S.K. Rigging a motor carrier? A broker (not subject to Carmack)? The court found issues of fact on these questions rendering summary judgment inappropriate. The issues of fact it found are questionable (e.g., was S.K. Rigging an "agent" of Delta), but the conclusion probably has some merit given the unusual circumstances.

The court's most impressive foray into transportation law is its dismissal of Delta's negligence claims. If the matter is subject to Carmack, such common law claims are preempted. If not (i.e., S.K. Rigging is a broker), then there would have to be evidence suggesting its selection of EMS was negligent. In the absence of such evidence, the negligence claims were properly dismissed.

**Carmack preemption extends to state-law claims beyond damaged freight**  
*AIG Aviation, Inc. v. On Time Express, Inc.*, 2005 WL 2416382 (D. Ariz. 2005)

This case is a nice little review of Carmack's preemption of common law remedies out of a much-needed Ninth Circuit jurisdiction. Air carrier Mesa Airlines/Freedom Airlines engaged motor carrier On Time Express to haul freight interstate from an airport. The cargo arrived damaged. The airline's insurer, AIG, sued On Time in Arizona state court, and the action was removed to the Grand Canyon State's federal court. AIG sought recovery under Carmack, but concurrently alleged theories sounding in state law (for such things as consequential damages). On Time moved to dismiss the latter theories.

The court granted On Time's motion. True, some courts have held that Carmack doesn't preempt claims arising apart from the shipment of goods itself (for such things as infliction of emotional distress). Rights and remedies not inconsistent with Carmack's intent are allowed. But sidestepping Carmack by alleging state-law theories which would provide higher levels of damages "would undermine the certainty that the legislature intended to provide" for damaged freight claims. Because the parties agreed in pleadings that On Time was indeed a carrier, the motion was granted.