

## **Hot Recent Cases in Motor Carrier Law**

by *Steven W. Block* November 1999

### ***Don't Like Your Lease? You Can Sue Federal Court.***

*Owner-Operator Independent Drivers Association et al v. New Prime, Inc., et al*, 1999 U.S.App. LEXIS 18496 (8<sup>th</sup> Cir. 1999)

A Court of Appeals has ruled on a segment of that ongoing turf battle between judges and administrative agencies. Who gets to decide leasing disputes, the Federal Highway Administration (FHWA) or federal courts? The judiciary has declared itself king of this particular mountain.

The Owner-Operator Independent Drivers Association (OOIDA) filed a class action suit against motor carrier New Prime alleging that the latter's standard lease agreements and other contracts contain illegal reserve fund and security deposit provisions. Importantly, OOIDA wanted mullah, not just some interpretative ruling saying that such provisions were verboten.

But the Western District of Missouri dismissed OOIDA's complaint, concluding that FHWA has primary jurisdiction over matters involving the agency's expertise. OOIDA appealed, asserting that the matter is straightforward and clearly within a court's competence. The appeal was consolidated with several other similar disputes within the Eight Circuit.

The issues boiled down to an analysis of FHWA's primary and/or exclusive jurisdiction in the context of deregulation and just what Congress meant by ICCTA. The Eighth Circuit first determined that an agency's primary jurisdiction, as a general matter, doesn't equate to its exclusive jurisdiction under all circumstances. Analyzing ICCTA and its legislative history, the court found very significant that Congress didn't want FHWA to waste its "scarce resources" by resolving essentially "private disputes." While OOIDA's claims stemmed from alleged violations of the Truth-in-Leasing regs, this fact didn't change the claims' essential private-remedy character.

Moreover, regs are not "agency orders," which clearly would be under FHWA's domain if they were the basis of a claim. ICCTA's language is ambiguous and inconsistent, but the court ruled the statute's most logical interpretation allows federal court jurisdiction over actions for money damages even if the decision necessarily would have regulatory effect and even if an agency has something to do with implementation of the subject regulation.

This decision shows the judiciary's tendency to interpret most disputes as contractual in nature and therefore properly brought as contract claims in court.

### ***It's All in the Name!***

*William Wrigley Co. v. Stanley Transportation, Inc. et al*, 1999 U.S. Dist. LEXIS 12242 (N.D. Ill. 1999)

Does Carmack's preemption of state law remedies apply in contract carriage? You darn tootin' it does. At least the Northern District of Illinois said it did in a dispute over lost cargo. Here, Wrigley sued surface transportation carriers it had contracted with, seeking common law remedies. The carriers moved to dismiss based on Carmack. Wrigley argued Carmack was inapplicable to contract carriage.

The court simply looked to the post-deregulation title of 49 USC § 13102. Earlier, Carmack supplanted state remedies in actions against "common carriers." The statute's new title replaced "common" with "motor." Hence, the court found Carmack now rules out any state law claim against any motor carrier, including the defendants here.

### ***Small Claims under Carmack***

*Mayflower Transit v. Davenport*, 714 N.E.2d 794 (Ct.App Ind. 1999)

Here's one that went a long way for its value. A household goods move got soaked in Mayflower's leaky trailer. The shipper sued in Indiana's small claims system and was awarded two grand on equitable principles. That's right, equity. Mayflower's limitation of liability argument fell on deaf small claims court ears.

Mayflower appealed. The Indiana appellate court premised its opinion on the notion that review of small claims decisions "is particularly deferential." That set the tone for the court's ruling.

Anyway, the court found that Carmack did apply. But it also went through the requirements for limitation of liability and found that Mayflower had satisfied nary a one of them in the small claims proceeding. No tariff, no option for full liability, and no explanation of limited liability.

Oh, and that business about equity? Harmless error, concluded the appellate court. The \$2,000 awarded was less than the amount the shipper had claimed. Go figure.

### ***What Constitutes "Use and Operation"? The Empire State Speaks.***

*Argentina v. Emery World Wide Delivery Corp., et al*, 1999 U.S.App. LEXIS 20021 (2d Cir. 1999)

Argentina hurt himself offloading a truck owned by Emery. He sued the carrier under New York's Vehicle and Traffic Law, which holds the "owner" of a vehicle "liable and responsible for death and injuries to person and property resulting from negligence in the use and operation of such vehicle. . ." Argentina argued that offloading activities amount to "use and operation" as contemplated by the statute.

The Southern District of New York found Emery not liable, pointing to Argentina's concession that the vehicle itself didn't cause his injuries, and that proximate cause of rested with the truck's improper loading.

On appeal, the Second Circuit certified interpretation of the state law to New York's Court of Appeals (the state's highest court), which held that loading and unloading do indeed constitute "use and operation," and that the vehicle itself need not be the proximate cause of injury for liability to obtain. Accordingly, the Second Circuit reversed.

### ***Your Worst Nightmare: An Insurer Sues for Legal Malpractice***

*Reliance National Indemnity Co. v. Jennings*, 1999 U.S. App. LEXIS 18494 (8<sup>th</sup> Cir. 1999)

This one's just to keep you on your toes. A trucking accident caused a fatality. Witnesses were in abundance, but nearly all of them either disappeared or changed their stories or both. Most importantly, a state trooper who originally concluded the truck driver wasn't responsible changed his mind. In court. On the stand. Can you picture insurance-appointed defense counsel's jaw hitting the table?

But that was only our colleague's first of many head aches. After advising Reliance of minimal exposure, counsel was unable to find two key witnesses. A huge verdict came down against the trucker and, of course, Reliance.

Reliance sued, accusing defense counsel of not taking proper steps to find the witnesses and blowing assessment of the case. The Eastern District of Arkansas gave a jury instruction limiting recoverable damages to unreimbursed losses (the insurer had recovered much of what it paid the claimants by way of reinsurance). Defense counsel was found only three percent liable, because Reliance itself should have undertaken steps to find the witnesses and should more zealously have explored settlement options, when settlement was possible for cheap.

The Eighth Circuit affirmed over Reliance's appeal. "Clients who hire professionals should conduct their own affairs reasonably, and comparative fault considers the duties of all parties ..."

Still, it must have been a harrowing affair for defense counsel. Draw from this case what you will, but one thing's for sure: you have to communicate well with insurance companies that hire you.

### **A Bankrupt Estate on the Rampage, or How a Wise Holding Humbled Humboldt**

*Humboldt Express, Inc. v. The Wise Company, Inc.*, 1999 U.S. App. LEXIS 23002 (4<sup>th</sup> Cir. 1999)

This undercharge decision shows how tough that pervasive issue of the mid 1990's really is. It just won't go away!

Here, bankrupt carrier Humboldt's trustee hired an auditing agency to find something unpaid to recover from shippers. Anything!! Lo and behold, many thousands in delinquent late penalties – incurred by shippers who had discounted freight rates premised on unfulfilled, thirty-day payment provisions – emerged from the depths of Humboldt's records. The trustee moved for summary judgment against shipper Wise on the ground that no evidence refuted Humboldt's prima facie case.

The Western District of North Carolina, rubber stamping its bankruptcy court, agreed with the carrier and entered judgment. Wise wisely appealed.

Taking the kitchen sink approach to appeal, Wise argued that the lower court had erred in some half a dozen ways. The Fourth Circuit agreed on most all of them, and sent the matter back down the hill.

Specifically, the district and bankruptcy courts concluded that Humboldt's claim was a "core proceeding." This procedural concept dictates whether a district court should review a bankruptcy's claim de novo or for clear error. The Western District of North Carolina concluded accounts receivable claims were core. The appellate court disagreed and rejected the district court's logic that accounts receivable are property of the bankrupt estate. Any claim would be core by that analysis. Moreover, undercharge issues involve claims to "public right," which a precedent dictates as being non-core to a bankruptcy proceeding.

Having concluded the district court should have reviewed de novo, the Fourth Circuit found clear error. While nonpayment of the late penalties were not at issue, Humboldt bore a burden with regard to the entire laundry list of elements carrier trustees face to recover undercharges. Wise had submitted affidavits creating questions of fact as to four of these. Most importantly, Wise submitted Humboldt's invoices, very few of which itemized or charged late penalties. This would be required for Humboldt to recover.

Also of significance was Wise's factual argument that the late penalties amounted to just that – penalties. Unreasonable ones at that. Accordingly, Wise had presented enough to survive summary judgment by way of an improper liquidated damages defense.

We could go on and on (like the court did in this “complicated case”). Some of Wise's arguments were rejected (equitable defenses and statute of limitations), but it does get to be heard on factual issues. We'll keep you posted.