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Hot Motor Carrier Law

By Steve Block

Commonly owned freight brokerage and motor carrier are distinguishable entities for cargo liability purposes.

AMG Resources Corp. v. Wooster Motor Ways, Inc. and WMW Logistics, Inc., 2019 WL 192900 (D. NJ 2019)

Wooster Motor Ways, Inc. ("Wooster") and WMW logistics ("WMW") are commonly owned and operated out of the same address, the former operating as a motor carrier and the latter as a freight broker. WMW's longstanding shipper customer, scrap metal dealer AMG Resources, frequently would call WMW to arrange transit of its cargo, but no master contract governed the parties' relationship. Out of 92 loads WMW booked for AMG, Wooster transported only one, and AMG never requested that Wooster provide its transportation services.

WMW posted an AMG cargo of copper wire on a load board which an apparent motor carrier identified as "MKD" accepted for transport. AMG prepared the bill of lading, and off went MKD with the cargo never to be seen again. AMG brought suit against Wooster and WMW in New Jersey state court alleging Carmack, contract and tort claims. The defendants removed the action to the U.S. District Court for the District of New Jersey. On cross motions for summary judgment, the court dismissed plaintiff's claims.

A transportation service provider's status as broker or carrier isn't determined by how it labels itself, and confusion often arises when a single entity wears both broker and carrier hats. But here the entities were legally separate, and it was clear AMG didn't understand either WMW or Wooster to be its carrier. AMG itself prepared the bill of lading naming MKD as its carrier, and it could point to no course of dealing whereby it requested or thought it was receiving carrier services by Wooster. Master brokerage agreements frequently impose liability terms, but none existed here. On these grounds, AMG's Carmack and contract claims were dismissed. The court saw no need to address AMG's negligence claims, finding FAAAA preemption.

C.H. Robinson strikes out twice: FAAAA doesn't preempt motor vehicle personal injury claim against broker (Part I) …

Gilley v. C.H. Robinson Worldwide, et al., 2019 WL 1410902 (S.D. W Vir 2019)

Cases are going every which way on this issue, and here's the first of two that won't let a broker off the hook on an accident claim. Freight Broker C.H. Robinson Worldwide booked shipper Big Valley Foods' load with motor carrier J&TS Transport Express for transit from Pennsylvania to North Carolina. J&TS's driver was involved in an accident that, tragically, caused the deaths of the entire Gilley family. The truck's brakes allegedly weren't properly maintained.

The Gilleys' estate alleged the basis for C.H. Robinson's liability as negligent selection of J&TS, as the trucker hadn't yet been FMCSA rated. That's generally not a basis for an insufficient vetting claim, at least not in the case law. There was no suggestion C.H. Robinson directed or controlled the carrier's operations, other than Gilley's unsupported assertion that the broker had the right to do so.

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In response to C.H. Robinson's motion to dismiss based on FAAAA preemption, the U.S. District Court for the Southern District of West Virginia analyzed case law going this way and that (including an earlier one against C.H. Robinson), noting that the Supreme Court and federal courts of appeal have yet to rule. It found there was no preemption for personal injury claims mainly because FAAAA preemption applies only to claims that "relate to" a broker's services (how this one doesn't, we don't learn). The court also found that FAAAA's "safety exception," which does preserve state rights to promulgate and enforce law related to safety, applies. It's time for a higher court to rule on this…

… (Part II)

In another highway accident involving a C.H. Robinson-brokered truck, the U.S. District Court for the District of Arizona agreed with the Southern District of West Virginia, providing us a more detailed analysis of the whys and wherefores of its conclusions. This court explained that, consistent with Ninth Circuit analysis, state laws giving rights to claimants "are more likely to be preempted where they operate at the point where carriers provide services to customers at specific prices," such that FAAAA "preemption occurs where 'a customer invokes [state law] to obtain certain rates or services outside those provided for in the contract, but not where 'the law is a generally applicable background regulation in an area of traditional state power that has no significant impact on a carrier's prices, routes, or services' [emphasis in the original]."

As C.H. Robinson's selection of carriers takes place after its agreement with a customer is consummated, the court found no FAAAA preemption for the accident. There is no risk of this claim "creat[ing] a patchwork of state regulations," and the broker must only "conform to the general duty of care when it hires trucking companies to deliver goods." Common law negligent hiring claims apply to many industries, and like most others, this one isn't "targeted or directed at the trucking industry."

Carmack preempts state law "bad faith" claim arising from carrier's damage and loss of cargo.

Security USA Services, Inc. v. United Parcel Service, Inc., 2019 WL 1051017 (D. New Mex 2019)

Shipper Security USA hired UPS to deliver from New Mexico two packages of computer equipment for use at a trade show in Texas. Security USA selected the "three-day option" because of its urgent need for the cargo. Only one of the two packages arrived, and it was damaged. Security USA felt that UPS has jerked it around, claiming that the carrier was consistently rude, misrepresented the cargo having departed when it hadn't, and finally delivering the missing box by throwing it on the shipper's lobby floor with its contents ripped open and vandalized. Security USA sued UPS in New Mexico state court, and the carrier removed to the U.S. District Court for the District of New Mexico. An amended complaint changed a contract allegation to a Carmack claim, and included a "bad faith refusal to pay" claim under New Mexico law.

Carmack damages were only about ten grand, but Security USA claimed it had to purchase substitute equipment and pay employees to get it ready, resulting in losses over twice that. UPS moved to dismiss the bad faith claim based on Carmack preemption. The court granted the motion.

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Certain precedents have allowed state and common law causes of action incidental to cargo damage when they are "separate and distinct from the loss of, or the damage to, the goods that were shipped in interstate commerce." However, a line is drawn against any claim based on state law that would "substantively enlarge the responsibility of the carrier." Even though this bad faith claim related not to cargo damage but to claims handling, New Mexico's bad faith law essentially is a species of punitive damage that precedents specifically have disallowed under Carmack. They would have the effect of increasing the carrier's exposure for cargo damage.