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Hot Motor Carrier Law

By Steve Block

Carmack preempts state law cause of action and remedies even when motor carrier defaults.

***Scotlynn USA Division, Inc. v. Z Top Logistics, Inc.*, 2017 WL 2560925 (M.D.) Fla 2017**

We typically think of a defendant's failure to appear in an action in response to a properly served summons and complaint as a concession that everything alleged in the complaint is true and enforceable. Typically, the plaintiff gets judgment entered based on the theories of liability alleged in its complaint, along with the alleged damages so long as they're confirmed by a declaration filed with a motion for default.

Not so fast. When a knowledgeable court sees from the complaint itself that a plaintiff's causes of action are preempted, it can sua sponte enter a default judgment based only on what the law allows. In other words, even if a defaulting defendant motor carrier fails to raise Carmack preemption, a court can enforce it.

Just ask freight broker Scotlynn USA, the assignee of a shipper whose cargo was destroyed while being transported by motor carrier Z Top Logistics. Scotlynn sued Z Top in the U. S. District Court for the Middle District of Florida seeking recovery of some 39 grand it paid for a load of frozen chicken that went bad in transit, plus costs and attorneys' fees. The complaint alleged causes of action based on Carmack and breach of contract. Z Top didn't appear in the action.

Scotlynn obtained a clerk's default, but when it moved for entry of judgment, the court took a closer look. It concluded that Carmack preempted the breach of contract claim. No big deal as far as the principal damages are concerned – Scotlynn was awarded them – but Carmack doesn't allow recovery of attorneys' fees. Scottlynn's award didn't include those.

Magistrate recommends that a pending Bar Order in bankruptcy case shuts down collection action against entity not a party to the bankruptcy.

***Craft Brew Alliance, Inc. v. Baxter, Bailey & Associates, Inc.*, 2017 WL 3381715 (D. Or. 2017)**

This is another one of those interesting scenarios that arises out of unique features of freight brokerages. Shipper Craft Brew booked cargo through freight broker Network F.O.B., which engaged factoring agent Capital Finance Corp. d.b.a "Bay View Funding" ("Bay View") to collect freight charges from its shippers like Craft Brew. Craft Brew paid all of its freight bills just fine, but Network ran into trouble, and apparently didn't pass along its freight charge collections to motor carriers which actually hauled the cargo.

Network was forced into Chapter 7 bankruptcy in the Middle District of Florida, where the trustee filed a motion to enter a "Bar Order" that would enjoin any claims against Network in any court. That motion was pending consideration when a collection agency the motor carriers had engaged, Baxter, Bailey & Associates ("BBA"), started taking steps to collect the unpaid freight charges from raft Brew. Yes, a shipper can be forced to pay freight twice under circumstances like this, but that's another article.

Craft Brew sued BBA in the U.S. District Court for the District of Oregon seeking to shut the collection efforts down on the basis of the pending bankruptcy. BBA moved to dismiss, pointing to the fact that Craft Brew and BBA weren't even parties in the bankruptcy. A federal magistrate disagreed, and recommended that the court deny BBA's motion.

While no precise test guides courts in this situation, they enjoy a good deal of latitude when bankruptcy actions are pending. Because Network's bankruptcy was filed first chronologically, and could impact the rights of parties to this action,

the magistrate concluded that BBA's collection efforts should be halted pending adjudication of the Bar Order motion. If adopted, the Bar Order would stay BBA's collection of freight charges related to those Bay View had already collected. This course would avoid one federal court reaching conclusions inconsistent with another. BBA could still ask the court to reject the magistrate's recommendation.

Widow has a wrongful death claim against an uninsured truck driver based on exclusions in owner-operator policy.

***Creech v. OneBeacon America Ins. Co.,* 2017 WL 2805497 (S.D. Ga. 2017)**

At a port facility in Garden City, Georgia, truck driver Creech was in his rig queued up in front of a truck operated by driver Watson, who may have tried to break in line. Creech initiated an altercation with Watson which tragically left Creech dead. Mrs. Creech sued OneBeacon America Ins. Co. seeking to establish its owner-operator and contract driver policy, issued to motor carrier Evans Delivery Company, provided coverage under its "occupational accidents" coverage.

Creech had no lease or other formalized agreement with Evans, and didn't own the truck he was in at the time. He merely had an agreement with the carrier that he was an "independent contractor," and as such, would receive a portion of freight charges paid for his runs. One Beacon moved to dismiss on the ground Creech didn't qualify for coverage under the policy.

The court granted the motion. While owner operators and contract drivers are independent contractors, the policy specified that coverage pertained only to drivers who leased a truck (for which he was required to provide maintenance and repairs) under a written agreement; or held a commercial driver's license. Creech could satisfy neither.

Mrs. Creech urged that OneBeacon had waived these arguments by not presenting them in its original letter declining coverage. That position sometimes has merit in certain states, but not here. OneBeacon hadn't had a chance to investigate the full circumstances of the loss before its letter became due, and it specifically reserved the right to base declination on other circumstances.

Household goods mover survives summary judgment on its declaratory judgment action seeking to establish limitation of liability.

***United Van lines, LLC v. Deming,* 2017 WL 3149301 (N.D. Cal. 2017)**

Household good shipper Deming engaged freight broker Plus Relocation Services to arrange transportation of his stuff from Minnesota to California. Plus booked the shipment with United Van Lines ("UVL"), which issued a bill of lading to Deming. The bill provided that UVL's liability would be limited to five bucks a pound, but didn't give Deming an option for a different level of liability. Of course, the cargo arrived damaged by mold to the tune of 48 grand.

UVL sued Deming in the U.S. District Court for the Northern District of California seeking a declaratory judgment that its liability was limited to about five grand. Deming moved to dismiss the complaint on the ground he hadn't been given the option of higher carrier liability, one of the prerequisite hoops carriers must jump through to limit their liability. In that procedural posture, however, UVL need show only that it "plausibly" had given Deming an option of liability levels. In other words, if Deming's motion is denied, UVL doesn't win the case; rather, it merely gets a shot at proving its liability should be limited.

Perhaps bending a bit too far backwards, the court denied Deming's motion, concluding there were plausible circumstances in which UVL could demonstrate it had satisfied the criteria for limited liability. UVL had a transportation services

agreement with Plus, one which was incorporated into the bill of lading. That agreement did include an option for Deming to select a higher level of carrier liability (in exchange for a higher freight charge). Deming urged that hadn't seen the UVL-Plus agreement, and wouldn't be expected to because he wasn't a party to it. Nonetheless, the court concluded UVL should have an opportunity to argue in later proceedings that Deming was on notice of the UVL-Plus agreement. If so, its terms might be extended to him. Hmm.

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