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Hot Motor Carrier Law

By Steve Block

Court can infer elements of a Carmack claim from broadly crafted complaint..

Metalform Services, et. al *v. J.J. & Associates, Inc.*, 2017 WL 6048819 (E.D. Mich. 2017)

ICE Industries contracted with Metalform Services, which transports and assembles/disassembles heavy machinery, to take apart a machine press in Alabama and transport it to Mississippi. Metalform contracted with motor carrier GWS Logistics to haul the press, and GWS, through freight broker TCM Transport, subbed out the load to motor carrier J.J. & Associates. GWS prepared a bill of lading identifying J.J. as the carrier of record and Metalform and GWS as shippers. The cargo was damaged in transport.

ICE made a claim which the opinion doesn't address, but ultimately, Metalform and GWS sued J.J. in the U.S. District Court for the Eastern District of Michigan alleging both Carmack and state and common law theories of liability. As J.J. hauled the load interstate, Carmack clearly preempted the state and common law claims.

J.J. brought a FRCP 12(c) motion for judgment on the pleadings asserting that plaintiffs lack standing, having served only as freight brokers, and not as J.J.'s shipper. The court rejected the argument. While the complaint didn't allege what role the plaintiffs played, it didn't allege they were brokers. As the complaint was written, the court must infer they had standing until discovery proves otherwise.

J.J. also argued that the plaintiffs didn't allege any actual damages. This didn't fly either because, for FRCP 12(c) purposes, "the court must interpret 'actual damages' broadly to encompass 'all damages'"; plaintiffs did allege losses of $250,000 based on delayed delivery; and their names did appear on the bill of lading. This was enough for the court to infer Carmack damages, at least for purposes of a motion to dismiss on the pleadings. Thus, the motion was denied pending discovery to flesh out what really happened here.

… and similarly, unclear complaint and factual circumstances prevent court from dismissing service provider's claims against motor carrier.

Anderson Trucking Service, Inc. v. Eagle Underwriting Group, et al., 2018 WL 564569 (D. Conn. 2018)

A shipper engaged unspecified transportation service provider Ridgeway International USA to arrange transit of a submarine from Massachusetts to Australia. Ridgeway booked surface transit with motor carrier Anderson Trucking Service for carriage of the cargo from Massachusetts to the Port of Baltimore pursuant to a through ocean bill of lading that terminated in Australia. Anderson's trailer caught fire en route, allegedly damaging the trailer to the tune of some $8.3 million. Anderson believed its agreement with Ridgeway didn't include full liability, such that the shipper should have bought its own insurance.

The shipper and its insurer filed claims against Anderson. Anderson brought suit in the U.S. District Court for the District of Connecticut against all involved seeking to establish its limited liability. Ridgeway counterclaimed against Anderson, alleging the loss was entirely Anderson's fault, seeking indemnity from Anderson for any liability Ridgeway might have, and that despite Ridgeway's notice to Anderson to preserve evidence, Anderson destroyed evidence.

Anderson moved to dismiss on the pleadings Ridgeway's claims on the ground of Carmack preemption. The carrier's theories were that Ridgeway was seeking to hold Anderson liable for cargo damage, such that claims for indemnity and spoliation of evidence were preempted. While appearing to recognize the validity of Anderson's theory, the court concluded it couldn't rule on the current record.

Carmack applies only to shippers' claims against motor carriers. Here, it wasn't clear whether Ridgeway was a freight forwarder or NVOCC, which might qualify as a shipper of record, or a "forwarding agent" which probably wouldn't. Anderson's complaint alleged both, and the record suggested any number of different hats Ridgeway might be wearing at different phases of the transaction. Carmack specifically doesn't preempt one carrier's claims against another, and the court recognized that "how a company labels itself," i.e., as an intermediary or something else, doesn't control. Thus, the parties will have to undertake discovery to establish the role(s) Ridgeway actually played, so the motion was denied.

Shipper's waiver of Carmack in transportation contract is binding on consignee.

Sanofi-Aventis U.S., LLC, et al. v. *Great American Lines, Inc.*, et al., 2017 WL 6032465 (3rd Cir. 2017)

Pharmaceuticals manufacturer and shipper Sanofi-Aventis had a transportation contract with motor carrier Great American Lines (GAL) that waived Carmack applicability as allowed by 49 USC §14101(b). That statue provides: "If the shipper and carrier, in writing, expressly waive [Carmack], the transportation provided under the contract shall not be subject to the waived rights and remedies …" It doesn't say anything about a consignee having to agree to the waiver for it to be effective.

GAL's truck containing a load of Sanofi-Aventis' drugs was stolen while en route to the shipper's customer McKesson Corporation, which had insured the load with AXA Corporate Solutions Assurance. AXA paid McKesson's insurance claim, and sued GAL alleging Carmack liability. Affirming the U.S. District Court for the District of New Jersey, the Third Circuit Court of Appeals ruled that Sanofi-Aventis's waiver of Carmack was binding on McKesson, even though the consignee wasn't a party to the transportation contract that contained it.

Carmack waivers are statutorily enforceable based on shipper/carrier agreement, and the consignee is bound by it even though Carmack empowers it to bring cargo claims in its own name, and even if wasn't an intended third-party beneficiary, or even aware, of the waiver. The carrier is entitled to rely on terms it agrees to with its customer, i.e., the shipper.

AXA tried to argue that a Truck Manifest was a separate contract between McKesson and GAL pursuant to which it would be entitled to make a Carmack claim, but the document, apart from naming McKesson as a consignee, didn't contain any contract terms.

FAAAA doesn't preempt negligence action against freight forwarder derived from unsafe truck operation.

DNOW, L.P. v. Paladin Freight Solutions, Inc., et al., 2018 WL 398235 (S.D. Tex 2018)

Shipper DNOW engaged freight forwarder Paladin Freight Solutions to forward a load of concrete reinforced barriers to DNOW's customer Tricon, all within Texas. Paladin booked the load with motor carrier L&M, whose driver crashed into Tricon's on-premises fire hydrant causing property damage.

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Having indemnified Tricon, DNOW sued Paladin and L&M in Texas state court, alleging various negligence theories based on improper operation of a truck. Paladin removed the action to the U.S. District Court for the Southern District of Texas alleging Federal Aviation Administration Authorization Act (FAAAA) governance and preemption. The court heard cross motions, one from DNOW to remand, and the other from Paladin to dismiss. It denied Paladin's motion and granted DNOW's, kicking the matter back to state court.

Paladin pointed to FAAAA's provisions which bar states from enacting or enforcing law that "have a connection with, or reference to rates, routes or services" offered and provided by motor carriers, freight forwarders and freight brokers. The forwarder urged that DNOW's allegations, if successful, would imply that forwarders must "engage in some sort of additional safety practices in order to avoid liability for drivers' accidents," which would "necessarily affect Paladin's services."

The court agreed with DNOW that its allegations don't include negligent hiring or negligent entrustment, i.e., forwarder activities, but rather general claims about unsafe truck operations. While the former might implicitly impose constraints on Paladin, the latter don't. Moreover, U.S. Supreme Court and federal courts of appeal decisions make clear that FAAAA's preemption doesn't apply to health and safety concerns addressed by state law. Most precedents Paladin cited applied to cargo claims, a circumstance distinguishable from property damage and subject to other federal statutes. Because FAAAA doesn't apply and there's no diversity between the parties, this one goes back to state court.