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Hot Motor Carrier Law

By Steve Block

Carmack doesn't preempt cargo claims filed under 409 USC §14704(a)(2) of ICCTA.
Starr Indemnity & Liability Co. v. YRC, Inc., 2017 WL 168179 (N. D. Ill. 2017)

Shipper Cessna Aircraft Company booked for transit with motor carrier YRC a cargo of two jet engines from Florida to West Virginia. The cargo was damaged when YRC's truck rolled over under unclear circumstances. Cessna's subrogated insurer, Starr Indemnity & Liability, sued YRC in the U.S. District court for the Northern District of Illinois to recover its $1.9 million payout to Cessna.

Starr alleged the rollover resulted from TRC's failure, in violation of 49 CFR §398.4(g)(1), to properly block and brace the cargo within its trailer. The insurer claimed this violation is a basis for carrier liability under 49 USC §14704(a)(2) of ICCTA, and its complaint alleged liability under both Carmack and 49 USC §14704(a)(2). YRC moved to dismiss the latter statutory theory as preempted by Carmack.

The court denied the motion, although you can sense Judge Dow's furrowed brow reading the opinion. 49 USC §14704(a)(2) is indeed a liability statute separate and apart from Carmack and, especially as it's within the same Act, isn't preempted regardless of a claim's nature. Other courts have held so. But this statute's intention is to hold the feet of violators of any "order of the Secretary [of USDOT" to the fire of civil liability. Cargo damage resulting from an alleged reg violation wouldn't seem to fit that equation, but the court concluded Starr gets a chance to show otherwise before tossing out this liability theory.

Statutory employer concepts do not confer federal question jurisdiction in wrongful death action.
Moody v. Great West Casualty, et al., 2017 WL 77417 (S.D. Da. 2017)

Ocean carrier CMA-CGM issued a through bill of lading for cargo transported landside by motor carrier Georgia Freightways, whose truck was involved in an accident that, tragically, resulted in the death of Virgil Moody. Mr. Moody's estate representatives sued the carriers and their insurer in Georgia state court alleging wrongful death claims He felt CMA-CGM was liable based on principles of agency and respondeat superior pertinent to nondelegable duties under the Shipping Act and statutory employer concepts under 49 CFR §390.5 of the FMCSA regs.

Defendants removed the action to the U.S. District Court for the Southern District of Georgia claiming those liability theories presented federal questions creating federal jurisdiction. On the plaintiffs' motion to remand, the court disagreed and sent the case back to state court.

As a plaintiff is the "master of his complaint," he can craft his allegations so as to determine jurisdiction. Wrongful death is purely a state law issue. True, the plaintiff's liability theory wouldn't be available "but for federal law," but as the court put it, "there is a large difference between a federally based theory and a federal claim." Going through the federal question analysis, this claim failed the "substantiality" test, which depends not on the federal

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point being substantial to the claim, but on "the importance of the issue to the federal system as a whole." Given that carrier liability for traffic accidents under regulatory *respondeat superior* principles (1) wouldn't "control many other cases"; and (2) the federal government had "little interest in litigating in the federal forum," substantiality isn't present. Failure to satisfy those two prongs obviates the third, the question of law's "purity."

… and further regarding statutory employer liability, an owner-operator lease isn't necessary for it to arise.

Puga, et al. *v. About Tyme Transport, Inc.*, et al., 2017 WL 25557 (S.D. Tex. 2017)

Motor carrier RCX accepted a brokered load, but its owner operator couldn't handle it because of an equipment failure. RCX went to another motor carrier, About Tyme, and had its driver Ronald Brown run the load. Brown was involved in an accident that injured Alexandro Puga and, tragically, killed Brown. Puga sued all concerned, including RCX and About Tyme. He settled with About Tyme out of court.

RCX claimed it wasn't liable as Brown's statutory employer, first because it was only a broker in the transport; second because Brown wasn't under lease to RCX; and third because it had been established in settlement discussions that About Tyme was Brown's employer. The U.S. District court for the Southern District of Texas wasn't impressed by any of these arguments, and denied RCX's motion for summary judgment.

Because RCX wasn't even licensed as a broker, and the bill of lading named RCX as the carrier of record, the oh-I'm-just-a-broker argument didn't cut it. Nice try. And while statutory employer concepts most typically apply to owner-operator leasing arrangements, the statutes don't actually require one. The operative word is "arrangement," which implies the nature of the carrier-driver relationship governs over its documentation. Statutory employer liability commences when a driver "responds to the carrier's direction," which clearly happened here. Lastly, motor carrier law has long held that a driver can have more than one employer (even if an out-of-court settlement could serve as *res judicata* on the issue). RCX is on the hook.

ICCTA's 18-month statute of limitations for freight charge collection actions doesn't preempt Indiana's 10-year statute of limitations.

Kennedy Tank & Mfg. Co., Inc., et al. *v. Emmert Industrial Corporation*, 2017 WL 24875 (Sup. Ct. Ind. 2017)

Shipper Kennedy Tank & Manufacturing hired motor carrier Emmert Industrial Corporation to haul an enormous process tower from Indiana to Tennessee. The cargo, which was some 280 feet long, was subject to various routing, permitting and loading requirements which Emmert documented in its contract as possible sources of higher freight charges. When a bridge closure resulted in additional charges of some half a million bucks, Kennedy refused to pay.

Apparently, the parties went back and forth trying to settle the dispute, and before Emmert filed suit in Indiana state court, ICCTA's 18-month statute of limitations for freight charge collection actions expired. Indiana's statute

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of limitations is ten years; the trial court found ICCTA doesn't preempt the state statute; Indiana's court of appeals reversed, finding preemption; and the parties made their way to the Hoosier State's Supreme Court for ultimate resolution.

The high court agreed with the trial court and found Emmert was not time barred. Going through a nice review of the two-ponged federal preemption analysis, the court concluded (1) the two statutes of limitation are not "physically impossible" to comply with, as Emmert could have filed suit within 18 months; and (2) that Indiana's longer statutory period wouldn't do "major damage to the federal scheme." The first prong being obvious, the court focused on the second in what was a matter of first impression in Indiana.

The court ruled that interstate trucking civil liability matters generally have been relinquished to court enforcement as opposed to USDOT regulation, such that federal uniformity isn't a priority. This is especially true for statutes of limitations. State collection actions are "unlikely candidates for federal regulation because there is no uniformity vital to national interests," and "Congress has actually removed its prior exclusive federal regulation from contract actions …" Just because interstate transportation is involved doesn't mean federal regulation should be exclusive given that the federal statutes contemplate a "coexisting system of state and federal regulations."

The court recognized that other states have gone the other way, and doesn't get into what happens when conflicting state statutes of limitation might be involved. That could lead to forum shopping, uncertainty and inconsistent results.

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