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Hot Motor Carrier Law

By Steve Block

Carmack governs service provider's potential liability for improper trailer cleaning.
Heniff Transportation Systems, LLC v. Trimac Transportation Services, Inc., 847 F.3d 187 (5th Cir. 2017)

Yes, you read that title correctly. The U.S. Court of Appeals for the Fifth Circuit recently affirmed the U.S. District Court for the Eastern District of Texas's conclusion that Carmack governs a motor carrier's claim against a tanker cleaning service that allegedly didn't do a good job, resulting in contamination of a the carrier's cargo.

Motor carrier Heniff hired Trimac to clean out Heniff's tanker trailer between hauls of chemical cargos. An inadequate cleaning allegedly ruined a cargo shipper Huntsman had hired Heniff to haul from Texas to Illinois (despite the bill of lading calling for a very thorough "Kosher wash"). Heniff and its insurer paid the consignee's claim (to the tune of some 240 grand), and then sued Trimac to recover their losses, alleging state and common law theories of liability.

Trimac moved to dismiss those causes of action based on Carmack preemption. The courts, agreeing with Trimac's analysis, found that Carmack governs because the cleaning service was a "service[] related to [the] movement [of passengers or property in interstate commerce] as contemplated by 49 USC §13102[23]" (defining transportation for purposes of Carmack jurisdiction). They rejected Heniff's arguments that this type service is dissimilar to examples of services provided in the statute (not to mention all precedents applying Carmack) because those examples are non-exhaustive; and Trimac's absence on the bill of lading because Carmack provides that "[f]ailure to issue a bill of lading does not affect the liability of a carrier."

This analysis glaringly expands Carmack applicability beyond anything we've seen before, at least in published decisions from high-level courts. Its logic could be applied to motor carrier claims against any number of service providers whose wrongdoing causes motor carrier losses or exposure to shippers. Courts have held the "bill of lading [not affecting] liability of a carrier" language to prevent a carrier from escaping Carmack, and not to broaden the statute's scope. Let's see how other courts react to it …

Insurer isn't liable for coverage on trailer used without permission.
Sentry Select Ins. Co. v. Lopez, et al., 2017 WL 1077065 (W.D. Tex. 2017)

Insurer Sentry Select covered a fleet of trailers which was owned by Dyke and Dykes Trailer and leased to Goal Transports. Motor carrier Trans Front had routinely been hauling the trailers between points in Mexico and Texas. An accident tragically caused the deaths of two inhabitants of a truck hauling one of these trailers. At issue was whether their truck was hauling the trailer "with permission," which was a condition of coverage under Sentry Select's policy. As there was no "express permission," Sentry Select had to deal with the decedents' contention that permission was "implied" when the insurer brought a declaratory judgment action in the U.S. District Court for the Western District of Texas seeking to establish no coverage. Apparently, the decedents had taken a truck-trailer combo for a run that was hundreds of miles outside its contemplated use between Texas and Mexico when the accident occurred.

Their position was that Goal basically was loosey-goosey allowing free use of the trailers, and knew without objection about runs such as the one at issue. Evidence didn't support that, and the fact Goal had no "numbering

system" to keep track of what trailer was used for what purpose didn't equate to implicit permission for them to be used for any purpose. "Permission" to use equipment in this kind of insurance context means "more than mere sufferance or tolerance without taking steps to prevent, and the term is used in the sense of leave, license or authority with the power to prevent." Nor do federal motor carrier regs have anything to do with this. Those regs are designed to ensure the user of equipment in interstate commerce takes responsibility for it, and may be vicariously liable for injuries when it fails to do so. As this action doesn't address Goal's liability, those federal regs don't come into play.

Carmack governs delayed claim for damaged household goods despite three month storage interval before cargo left Maryland.
Monga v. A.B.S. Moving & Storage, Inc., et al., 2017 WL 749236 (D. Md. 2017)

Household goods shipper Monga was moving from Gaithersburg, Maryland to Austria, and hired A.B.S. Moving & Storage to take his stuff to its warehouse in Baltimore, and then transfer it to Allied International for the overseas haul. Monga claimed A.B.S. kept demanding more money than was originally agreed, which he paid after three months of haggling, and when his stuff arrived, some of it was damaged. Monga sued A.B.S. in Maryland state court alleging common law causes of action; A.B.S. removed to the U.S. District Court for the District of Maryland; and Mongo moved to remand back to state court on the ground A.B.S.'s responsibilities were all within Maryland, such that there was no interstate or international component to its services that would trigger federal jurisdiction.

A.B.S. pointed to case law holding that Carmack "applies to the intrastate portion of international shipments where the intention formed prior to shipment was for the goods to be carried by a continuous or unified movement to a final destination beyond port of discharge." That was the case here, notwithstanding Monga's contention that his contract with A.B.S. didn't reference an international shipment, and Allied had contracted with him separately. The contract arrangement was actually the idea of Monga's employer. The shipper also urged that three months in storage was too long for it to be part of a unified movement, but courts apparently have found even longer time periods to be part of a single effort.

Denying Monga's motion on the basis of Carmack preemption giving rise to federal jurisdiction, the court didn't dismiss the claim altogether, as Fourth Circuit precedents require courts to simply "recharacterize" preempted common law causes of action as Carmack ones. Monga's related claims for A.B.S.'s overcharging him are not preempted, but the court kept jurisdiction over them as well.

Carrier's employees are exempt from state and federal overtime compensation regs even with respect to their cargo loading activity.
In re Two Men and a Truck Litigation, 2017 WL 741012 (W.D. Ark. 2017)

Motor carrier Two Men and a Truck ("TMT") had four former employees who worked in various capacities, including driving interstate and loading trailers of trucks others would drive. They sued TMT in the U.S. District Court for the Western District of Arkansas claiming unpaid overtime compensation under Arkansas and federal Fair Labor Standards Act regs. TMT moved for summary judgment, pointing to 29 USC §213(b)(1) which exempts employees for whom "the Secretary of Transportation has power to establish qualifications and maximum hours of service," which under 49 USC §31502, includes employees whose responsibilities extend to "safety of operation and equipment of" a motor carrier. Per 29 CFR §782.2, loaders are included in that list.
TMT's ex-employees kept time sheets that showed how much of their labor was devoted to driving and how much to loading. The court easily dismissed the driving time as exempt, but the plaintiffs argued they never received any

safety training for their loading activity, such that loading time shouldn't be held exempt. Evidence in the record refuted this, but regardless, the nature of the work controls, and not whether safety was on the employer's mind in having its employees do their work.

The focus of the analysis "is not the worker's level of judgment, discretion or relative supervision," but on the physical act of loading freight in a safe manner, which has an undeniable, direct effect on safety." On these bases, the court ruled the former employees' loading activities also came under the Secretary of Transportation's regulatory authority, and were exempt as well. No overtime pay for TMT's former employees.

FAAAA doesn't preempt owner-operators' state law wage claims based on alleged misclassification. *Lupian*, et al. v. *Joseph Cory Holdings, LLC*, 2017 WL 896986 (D. NJ 2017)

This is another wage claim brought by owner-operators alleging their motor carrier lessee, here Joseph Cory Holdings ("JCL"), misclassified them as independent contractors when they qualified under governing Illinois law as employees. Here, the U.S. District Court for the District of New Jersey nixed JCL's motion to dismiss based on Federal Aviation Administration Authorization Act ("FAAAA") preemption, and allowed the claims to proceed.

As with most FAAAA issues, at issue was whether application of state law might impact the motor carrier's "price, route or service." Based on analogous precedents, the court concluded that while the Illinois law at issue could conceivable boost labor costs, and thereby impact pricing and servicing, driver compensation was too remote from the customer relationships to trigger FAAAA applicability. The Illinois law at issue focuses on JCL as an employer, and not as a motor carrier. It actually can be "contracted around" such that the motor carrier could easily and cheaply avoid owner-operator claims by having them sign a waiver. The claims proceed.