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Hot Motor Carrier Law

By Steve Block

Another reason why brokerage and carrier operations should be kept separate and distinct …

Hall v. Kang, et al., 2017 WL 2414916 (W.D. Okla. 2017)

Truck driver Kang, running a load for motor carrier Skyview Farms, Inc., collided with motorist Hall, injuring her. Hall sued Kang, Skyview Farms and freight broker Skyview Transportation, Inc. in Sooner State court, and the defendants removed to the U.S. District Court for the Western District of Oklahoma. Skyview Transportation promptly moved to dismiss on the ground it had nothing to do with the accident. Skyview Farms conceded Kang had been working as its employee, and that it was liable under the doctrine of *respondeat superior*.

Hall argued that Skyview Transportation was Skyview Farms' alter ego, and therefore concurrently liable. The companies shared the same address, corporate officers and directors, and phone number. Building signage didn't distinguish the two, and a Skyview Farms employee had an email address ending in "@skyviewtrans.com." Apparently, Hall wanted to get her hands into Skyview Transportation's deeper pockets.

Under Oklahoma law, a corporation may be civilly liable as another's alter ego if its separate existence is "a design or scheme to perpetrate fraud or … so organized and controlled and its affairs so conducted that it is merely an instrumentality or adjunct of another corporation." The question is control, which is largely a factual issue not often subject to summary judgment. Skyview Transportation had refused to answer Hall's discovery requests to develop a fact record.

In support of its motion, Skyview Transportation argued that Oklahoma law precludes arguments regarding employer liability when *respondeat superior* is conceded. Hall pointed to FMCSA regs governing motor carrier operations, and claimed these preempted that Oklahoma law. The court disagreed with Hall, as FMCSA regs and Oklahoma law aren't inconsistent. Nonetheless, the court denied Skyview Transportation's motion, finding questions of fact. The broker may come out on top here, but still has a legal battle to deal with, and pay for, all because of its close connection with a carrier.

Eradication of the Filed Rate Doctrine doesn't shield shipper from liability for freight charges.

Top Worldwide, LLC v. Midwest Molding, et al., 2017 WL 1422841 (Ct. Apps. Mich. 2017)

Midwest Molding sold its products over a period of years to G&B Global. Midwest would prepare bills of lading for transit by carriers booked by freight broker Top Worldwide, and G&B would pay the Top Worldwide's freight invoices on delivery. Then, G&B went out of business leaving invoices for 35 shipments unpaid. Top Worldwide, the carriers' assignee of unpaid freight charge claims, sued Midwest in Michigan state court, where it won a summary judgment motion holding Midwest liable. Midwest appealed to the Michigan Court of Appeals.

Some might call Midwest's argument a bit novel. It urged that eradication of the Filed Rate Doctrine, the deregulation step we took in the 1990s eliminating mandatory common carriage based on government-filed tariffs, nixed the concept that bills of lading are enforceable contracts. The shipper's theory was that carriers no longer are

strictly mandated to collect freight charges from shippers under bills of lading. Thus, a broker seeking to collect freight charges shouldn't be able to look to bills of lading as the sole basis of their claim. And given the course of dealing whereby G&B had been paying Top Worldwide's bills, the broker didn't have a reasonable expectation Midwest would pay them if G&B didn't.

Affirming the summary judgment, the court disagreed. This was a state law contract action which federal law isn't concerned with. Bills of lading can and do establish contract rights between the parties that are separate and apart from earlier statutory obligations they might have created. The law (still) clearly provides that shippers designated in bills of lading are liable for freight charges. True, bills of lading are subject to common law freedom to contract, but Midwest's bill of lading didn't provide for "no recourse" against the shipper (it left the box unchecked), and nothing else supported the shipper's contention that the parties had agreed only G&B would pay Top Worldwide's freight bills. A course of conduct can overcome the terms of a contract, but to defeat the presumption that contract terms control, the course of conduct must "clearly" demonstrate an intended and understood deviation from them. That wasn't the case here.

Factual issues preclude summary judgment determination of whether driver gets FLSA overtime pay.

Garcia v. JIA Logistics, Inc., 2017 WL 2346149 (S.D. Fla 2017)

The federal Fair Labor Standards Act (FLSA) mandates that most categories of workers receive time-and-a-half pay for work they perform over 40 hours in a given week, but the statute includes an exemption for workers subject to the Motor Carrier Act (MCA), i.e., interstate truck drivers. A question often arises as to whether drivers qualify as "interstate" when they run loads both within a single state and cross-border.

When driver Garcia sued his former motor carrier employer, JIA Logistics, in the U.S. District Court for the Southern District of Florida seeking recovery of unpaid overtime, he encountered that uncertainty. In Garcia's case, he ran loads, often containing guns and ammo, only within Florida, but much of his cargo was to and from ports en route to out-of-state destinations. JIA moved for summary judgment, but the record wasn't clear enough for the court to sort out MCA's applicability.

Drivers are covered by FLSA if they work "in part" on vehicles weighing less than 10,000 pounds, unless the cargo is hazardous and require placarding (like ammo), in which case they're automatically exempt given MCA regulation of such cargo. Courts across are split as to what "in part" means, some saying even *de minimus* time in interstate commerce creates an FSLA exemption, while others hold that FLSA applies if a driver operates a smaller vehicle each week. A driver's work may be entirely within a state, but it's still considered interstate if the transport is a leg of an interstate move.

This court ruled it didn't need to decide that yet, because the record wasn't clear how much time Garcia ran what kinds of trucks for what periods of time running what kind of cargo. Because the court couldn't rule regardless of which test it applies, it denied JIA's motion and sent the matter back to the parties to further develop the record.

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