May 2018

Hot Motor Carrier Law

By Steve Block

FAAAA doesn't preempt cargo claim against broker C.H. Robinson asserted as breach of contract …

Georgia Nut Co. v. CH Robinson Co., 2018 U.S. Dist. LEXIS 71806 (N.D. Ill. 2018)

Georgia Nut hired freight broker CH Robinson to arrange transit of its cargo of almonds from Del Rio in California to Georgia Nut's facility in Illinois, and CH Robinson booked the load with motor carrier All Interstate Trucking. Before departure, Georgia Nut placed a tamper-proof band on the trailer door marked with the shipment's bill of lading number, and on arrival saw that the band's bill of lading number didn't match the one at origin. Concluding the band had been tampered with and that the almonds couldn't be certified as fit for human consumption, Georgia Nut claimed a loss of $162,000, and sued both broker and carrier in the U.S. District Court for the Northern District of Illinois.

Georgia Nut pleaded a negligence claim against CH Robinson, claiming the broker failed to properly vet All Interstate. Had it done so, it would have learned All Interstate had driven a total of one registered mile in the preceding year, and therefore was unqualified. CH Robinson moved to dismiss the negligence claim based on Federal Aviation Administration Authorization Act (FAAAA) preemption, which bars state-law tort claims against freight brokers. That motion was granted, and the shipper promptly amended its complaint to allege a breach of contract claim against the broker.

CH Robinson again moved to dismiss, claiming that Georgia Nut's newly-minted theory was just a disguised negligence claim, one that should be preempted just like the earlier theory. This time, the court disagreed and denied the motion. The brokerage contract required CH Robinson to hire a trucker that was "experienced, reputable and reliable." The court concluded that the elements of a contract claim differ from those based on negligence, and if the shipper proved them, it could succeed in its claim.

FAAAA doesn't preempt contract claims against brokers. CH Robinson argued that the contract didn't require it to pay any damages for losses caused by a trucker, but that wasn't essential, as its shipper was claiming consequential damages resulting from losses foreseeable at the time the brokerage contract was executed. Nor did the court buy CH Robinson's argument that Georgia Nut's claims were derived from preempted industry custom and courses of dealings beyond the contract's contemplation, as any such considerations weren't mandatory, and the parties could contract around them as part of their bargain.

… but FAAAA does preempt personal injury claims against C.H. Robinson.

Krauss, et al. *v. IRIS USA, Inc.,* et al., 2018 U.S. Dist. LEXIS 74922 (E. Dist. Penn. 2018)

The U.S. District Court for the Eastern District of Pennsylvania applied some novel analyses to reach conclusions that are rather divergent from the mainstream in concluding that Carmack and FAAAA preempt personal injury claims against a freight broker, here again, C.H. Robinson. Great news for the brokerage industry if this case is followed, but query whether it will in light of conflicting decisions.

Shipper IRIS USA, Inc. sold a load of Legos toys to consignee Fightback for Autism (Fightback). IRIS hired broker C.H. Robinson to arrange the transit, and the broker booked transit with motor carrier KV Load. IRIS and KV Load apparently loaded the cargo improperly onto wrong-size pallets, and Fightback employee Krauss was injured while offloading it. He sued IRIS, CH Robinson and KV Load seeking personal injury damages, as well as the costs to fix his forklift.

On KV Load's motion for summary judgment, the court dismissed Krauss's negligence claims against the carrier based on Carmack preemption. Yes, the court ruled that "the Carmack Amendment limits a carrier's liability to the 'actual loss or injury' of the goods in transit …, meaning that the carrier, KV Load, was not liable for common-law claims for Mr. Krauss's personal injuries or for damage to the forklift." You read that right. No explanation about how a personal injury equates to "actual loss or injury of the goods in transit."

On a second round of motions for summary judgment, C.H. Robinson moved to dismiss Krauss's claims based on FAAAA preemption. The court granted that motion as well. Yep, you read that right, too. Despite a plethora of terrifying decisions against brokers in recent years holding just the opposite, this court concluded that Krauss's personal injury claims "related to a service" of the broker, i.e., a connection exists "where it has a forbidden significant effect on rates, routes or services." Krauss's theory against CH Robinson was that it didn't adequately vet KV Load, and carrier vetting, being a significant broker function, couldn't be subject to common law liability.

That makes conceptual sense, but flies in the face of many other decisions that have held brokers liable for carrier-fault accidents. The court did point out that its decision "does not grant freight brokers sweeping immunity from personal injury claims," as "the Court's ruling is narrow," and derived from "the particular circumstances of this case." In other words, something about this factual scenario prompted the court to find preemption with a dash of contrition.

IRIS didn't fare so well, as it couldn't claim either FAAAA or Carmack preemption without being a carrier or broker.

Trucker's insurance coverage extension applies to claim against shipper, but not against broker.

Great West Casualty Co. v. Merchants Metals, LLC, et al., 2018 Mich. App. LEXIS 1681 (Sup. Ct. Mich. 2018)

Here's an interesting case addressing insurance coverage for claims brought under hold-harmless clauses we typically see in broker-carrier contracts. Shipper Merchants Metals engaged broker Access America to arrange transport of its cargo of metal fencing materials between its two facilities in Michigan and Colorado. Access America hired motor carrier Determined Transportation to transport the load, and Determined dispatched its driver Frank Wojcik for the run. While offloading the cargo in Colorado, a roll of fencing material fell on Wojcik, injuring him. The driver sued Merchants in Michigan state court, alleging the shipper had improperly loaded the cargo. Merchants brought third-party actions against Access America and Determined, claiming that the shipper-broker contract required Access America to defend and hold Merchants harmless, and that it had third-party beneficiary status under the broker-carrier contract between Access America and Determined. The latter contract contained an indemnification provision that required Determined to hold Access America and Merchants harmless for "negligent or willful acts" of the carrier.

Determined looked to its insurer, Great West, for coverage as to the third-party action. Great West's policy extended coverage to "insured contracts," which included contracts for liability for bodily injury in tort. Great West denied coverage, prompting a coverage dispute that worked its way up to the Michigan Supreme Court. That court concluded that the policy requires Great West to provide coverage for Merchants' claim, but not for Access America's claim.

Wojcik sued Merchants in tort, and if Determined is held liable to Merchants, coverage lies for the contractually-derived tort liability. However, Access America wasn't seeking indemnity for its tort liability to Wojcik; rather, it sought indemnification for its contractual liability to Merchants. In other words, Merchants claimed that Access America must indemnify it under the shipper-broker contract for tort liability, and Access America just sought indemnification from Determined for its contractual liability to Merchants. Great West's policy didn't go that far.