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Hot Motor Carrier Law

By Steve Block

Broker C.H. Robinson can't be held liable for negligent carrier selection …

Enbridge Energy, LP v. Imperial Freight, Inc., et al., 2019 WL 1858881 (S.D. Tex. 2019)

Consignee Enbridge Energy purchased natural gas pipeline equipment from shipper Toshiba International Corp. in an arrangement that included Toshiba's delivery of the product from Texas to Michigan. Toshiba had a longstanding freight brokerage contract with broker C.H. Robinson for such shipments, and the broker hired motor carrier Imperial Freight to make the haul.

Imperial's driver apparently miscalculated an offramp's curvature, causing a rollover accident that damaged Enbridge's cargo to the tune of some 675 grand. The driver was cited for careless vehicle operation. Enbridge sued C.H. Robinson and Imperial in the U.S. District Court for the Southern District of Texas, and the broker wanted out.

As C.H. Robinson was a broker not subject to Carmack, all of Enbridge's claims against the broker were different flavors of common law liability (there was no written Enbridge-C.H. Robinson contract). The court dismissed the consignee's breach of fiduciary duty claim (there is no such broker-customer duty). It also dismissed various negligence claims based on FAAAA preemption – including negligent carrier selection (Imperial didn't have enough insurance coverage for the load).

Other courts finding FAAAA preemption of negligence claims against brokers have left carrier selection sacrosanct, outside the concept of state meddling in rates and routes of interstate transportation, such that they can be liable for a bad carrier pick. Brokers have statutory duties to book cargo only with competent carriers. This court nonetheless found preemption on that ground without explanation, noting that the record didn't suggest C.H. Robinson had selected an improper carrier. It didn't designate the carrier's driver, and as Imperial passed FMCSA muster, it should be good enough despite the insurance issue.

… but can be for failing to clarify it's a broker!

Tryg Insurance v. C.H. Robinson Worldwide, Inc., 2019 WL 1766995 (3rd Cir. 2019)

Brokers can't be too careful, and should err on the side of specifying in contracts and other documentation that they're indeed brokers and not carriers. Just ask C.H. Robinson, which recently saw the Third Circuit Court of Appeals affirm a decision from the U.S. District Court for the District of New Jersey that leaves it on the hook for 124 grand in melted chocolate.

The courts concluded C.H. Robinson had "held itself out as a carrier" in its arranging transport of the candy load from Pennsylvania to New Jersey. Again, it had no written contract with its customer, and the broker's account manager had suggested that C.H. Robinson's services were a "seamless" process by which it would "transport the goods," taking responsibility for safe delivery.

The shipper had prepared a bill of lading which named C.H. Robinson as the carrier of record (without the latter's objection), and the broker's invoicing contained such service terms as "line haul" and "fuel surcharge." Nothing suggested a broker commission or what role C.H. Robinson was claiming to have played. Never mind that evidence confirmed the broker never even touched the cargo – as it hadn't in many years of the parties' relationship. Thus, the trial court didn't err by reaching the conclusion it did.

Driver's claim to invasion of privacy based on in-cab surveillance camera may proceed to trial.

Mousavi v. John Christner Trucking, LLC, 2019 WL 1756539 (N.D. Okla. 2019)

Those surveillance cameras have always been a little controversial, especially when they point inwards at the driver, and record his/her every movement and sound. You have to imagine what it'd be like to have a camera trained on you at your desk, recording your every movement, phone call, make up fix, and other unmentionables…

A driver for motor carrier John Christner Trucking (JCT) recently took his employer to task in the U.S. District Court for the Northern District of Oklahoma. An American citizen of Iranian dissent, driver Kazem Mousavi thought he'd made clear by agreement with JCT that the surveillance camera would record only what transpires outside after a "triggering event" turns it on. After learning he'd been taped for months, Mousavi claimed he suffered such anxiety that he became medically unfit to drive. He did anyway and, yes, was involved in accident. JCT suspended and later fired him.

JCT moved to dismiss Mousavi's lawsuit for failure to state a claim for which relief may be granted, claiming its driver has no reasonable right to privacy within his workplace; that he consented to the camera which he should have known might record him; and the cab's Bluetooth system, which Mousavi concededly was aware of, could've picked up the same sights and sounds. The court rejected these points, finding Mousavi's complaint adequately alleged that JCT's device exceeded his consent; he was told he wouldn't be recorded inside; and reasonable expectation inherently is a question of fact not proper for summary disposition. The latter question involves a subjective analysis and a determination of what society is prepared to accept.

The court noted Mousavi's argument that a cab isn't a traditional workplace, as drivers can be inside "almost every waking moment," including time off from duty for sleeping.

Mousavi alleges that JCT's treatment of him was discriminatory based on ethnicity. The court did dismiss that claim, finding that nothing suggested that JCT's actions, including firing Mousavi, had anything to do with the driver's Iranian background. Mousavi also had alleged negligence per se against JCT for causing his accident, i.e., allowing him to drive when he was medically unfit. This claim was based on federal regs that require carriers to ensure driver fitness. However, those regs are designed to protect the public, and not drivers. Thus, the alleged violation couldn't support a negligence per se claim, which was dismissed.

Ambiguity regarding delivery impacts cargo liability analysis.

Total Quality Logistics, LLC v. Balance Transportation, LLC, 2019 WL 1531208 (Ct. Comm. Pleas Ohio 2019)

This damaged cargo claim at first appeared to be garden variety, with shipper C&C North America engaging broker Total Quality Logistics (TQL) to arrange transit of a flatbed load of granite to consignee Sun City Granite, and TQL arranging transit with motor carrier Balance Transportation. TQL paid C&C's damaged cargo claim of about 30 grand after Sun City claimed slabs were damaged, and as C&C's assignee, sued Balance in Ohio state court.

Balance claimed the damage occurred after delivery. Sun City signed a clean bill of lading, and then asked Balance's driver to move his truck a short distance for offloading. He did so, and then removed the straps. Only a short while later did he hear the crash of falling granite while Sun City personnel we're unloading the cargo. The Sun City rep took back the bill of lading and noted damage on it.

So on whose watch did the damage occur? The court, granting Balance's motion for summary judgment and denying TQL's, found that delivery had been consummated before the damage. TQL urged that Balance's driver hadn't completed all necessary tasks, which included moving his truck to the proper place for offloading and taking off the straps, before the damage. The court didn't find that persuasive, as sun City had taken "control" over the load by the time. It told Balance's driver what to do and where to do it under its own supervision. That, along with the original version of the signed bill of lading (which the driver had photographed and sent to Balance's factoring agent) were enough to pass the responsibility baton to Sun City.