September 2017

Hot Motor Carrier Law

By Steve Block

ICCTA and FAAAA preempt equity claims, too.

***Mrs. Ressler's Food Products v. KZY Logistics, LLC v. Blue Grace Logistics*, et al., 2017 WL 3868703 (D NJ 2017)**

Shipper Mrs. Ressler's Food Products ("Ressler") hired broker Blue Grace to arrange transportation of a cargo of deli food products from Pennsylvania to California. Blue Grace booked the shipment with motor carrier Longitude Trucking, but in violation of a clause in its contract with Blue Grace, Longitude interlined the load to KZY Logistics. The load arrived spoiled and was rejected.

Ressler sued KZY and Longitude in the U.S. District Court for the District of New Jersey, alleging tort and contract theories and seeking recovery of the load's $69 thousand value. KZY counterclaimed, alleging that Ressler was unjustly enriched by the shipment, and brought a third-party action against Blue Grace and its insurer alleging the broker was unjustly enriched by KZY's uncompensated services. Blue Nile moved to dismiss KZY's third-party action claiming, among other things, that the Interstate Commerce Commission Termination Act and Federal Aviation Administration Authorization Act preempt KZY's equity-based unjust enrichment theories.

The court agreed, and dismissed the third-party action. ICCTA and FAAAA are not as broadly preemptive as is Carmack in their attempts to keep state regulation and adjudication out of interstate trucking. However, they are designed to keep state law from interfering with aspects of trucking agreements that parties undertake without concern that a common law concept might upset their intentions. As the court put it, "the parties must be allowed to contract around state-law based claims and, if not, then those claims are preempted."

Here, Ressler's agent Blue Grace contracted with Longitude not to interline. If KZL could thwart that obligation based on an unjust enrichment theory, then the shipper's ability to contract with carriers through its broker would be undermined. Thus, KZY's equity theory would allow an "enlargement or enhancement" of the Ressler-Blue Grace-Longistude contracts "based on state laws or policies external to the agreement." ICCTA and FAAAA don't allow that.

And while the court was on the subject – it sua *sponte* dismissed Ressler's tort and contract claims as preempted by Carmack. The shipper's claims presumably can be reasserted properly.

Even if interstate portion of a transit was by air, Carmack still governs load delivered by truck.

***Sony Biotechnology, Inc. v. Chipman Logistics and Relocation*, et al., 2017 WL 3605500 (S.D. Cal 2017)**

Sony booked transit of a spectral analyzer from Seattle to San Diego through intermediary S&M Moving. Motor carrier Chipman Logistics and Relocation delivered the load damaged to the tune of some 125 grand. Apparently, Airways Freight Corp. undertook an unknown leg of the transport, which may have been from Seattle to California. In other words, it was unclear whether Chipman hauled the load interstate, or just from a California airport to destination.

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Sony sued all three service providers in the U.S. District Court for the Southern District of California, alleging both Carmack liability and liability under common law bailment and negligence theories. Chipman moved to dismiss the latter based on Carmack preemption. Sony opposed the motion claiming, hey, we don't know whether the load crossed state borders on the road or in the air. It reasoned that Carmack would only apply only to a surface interstate move, and Chipman may never have crossed a state line. In that case, the alternatively pleaded state law causes of action should apply.

The court granted the motion. The "intent of the parties" governs whether a move is interstate, and not which mode of transport executed the delivery. "Neither continuity of interstate movement nor isolated segments of the trip can be decisive" as to whether Carmack governs a haul as an interstate transaction. Thus, "[t]hat the analyzer was transported interstate at all renders the entire shipment subject to the Carmack Amendment, even if the transportation by truck occurred fully intrastate."

Local delivery services broker isn't liable for driver's accident just because it requires him to comply with customers' security policies.

***Grange Indemnity Insurance Company v. BreavEx, Inc.*, 2017 WL 3497486 (Ct. Apps. Ga. 2017)**

Beavex is a local delivery services broker in Atlanta. While driver Sarr was running a delivery to a Wells Fargo Bank in his Honda Civic, he collided with and injured motorists. The motorists' subrogated insurer sued BeavEx, claiming Sarr was its employee for master-servant liability purposes, and alternatively, that BeavEx was Sarr's "statutory employee" under Federal Motor Carrier Safety Regulations at 49 CFR §390.3(a)(1). The court granted BeavEx's motion to dismiss.

BeavEx required its drivers to wear a company logo badge, comply with customer delivery schedules, and comply with vehicle inspection and accident reporting requirements. However, these did not rise to the level of control a worker must be subject to in order to create master-servant liability. The broker-driver contract specified that drivers were independent contractors which operate their own cars, and the requirements were imposed not by BeavEx, but by its customers. Such general supervisory requirements aimed at safety are not evidence of control sufficient to "destroy the independence of the relation."

Nor do FMCSA regs convert Sarr into BeavEx's statutory employee, as he was not hauling interstate, operating a truck over 10,001 pounds, or driving a vehicle designed to transport more than eight passengers – all of which are addressed in 49 CFR §390.5 as threshold requirements for carriers to become liable as *de* facto employers of owner-operators.

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Motor carrier's contract with broker, incorporated into carrier's bill of lading, might be enough for it to establish limitation of liability.

***United Van Lines, LLC v. Deming*, et al., 2017 WL 3149301 (N.D. Cal. 2017)**

Shipper Scott Deming was employed by Capella Education Company, which had a contract with freight broker Plus Relocation Services to arrange its employees' household goods moves. When Deming was relocated from St. Paul to San Francisco, Plus arranged the transit with United Van Lines. United's Transportation Services Agreement with Plus provided that United's liability would be limited to five bucks a pound, and that the shipper could increase that liability level by declaring cargo value on bills of lading and paying a higher freight charge.

United issued to Deming its bill of lading which stated United's $5.00/pound limitation of liability, but didn't offer Deming an option to obtain a different level of liability. When Deming's stuff arrived with water and mold damage, he sought to recover its full $48,000 value. United beat him to the U.S. District Court for the Northern District of California's courthouse, seeking a declaratory judgment that its liability was limited. Deming moved to dismiss.

At issue was whether United had effectively given Deming an opportunity to obtain a level of liability other than $5.00/pound, one of the requirements motor carriers face to escape full liability. The court concluded that United's bill of lading didn't do the trick – a carrier's simply asserting that its liability is limited is insufficient. But the bill of lading's incorporation of United's Transportation Service Agreement with Plus might be sufficient – even though Deming wasn't a party to it or aware of its terms. Evidence might demonstrate that Plus acted as an intermediary not just for Capella, but for Deming as well. That's not to say United wins, but the court couldn't dismiss based on the current record. At issue might be whether Deming could have even seen United's contract with Plus had he wanted to.

Broker trust fund administrator can't escape obligation under its BMC-85 to pay motor carrier freight charges based on alleged exemption for TOFC/COFC transportation.

***Transportation Financial Services, LLC v. ETL, Inc.*, 2017 WL 4159363 (D. Or. 2017)**

Transportation Financial Services ("TFS") is a trust fund administrator for freight brokers which hare required to post bonds or obtain financial security under 49 USC §13906(a) to a minimum of $75,000. As such, it files with FMCSA forms BMC-85 assuming financial responsibility for its broker clients against which claims for non-payment of freight charges (and others) are made. TFS filed a BMC-85 for broker Rail Logistics, LLC, which had a contract with motor carrier ETL. When Rail Logistics failed to pay ETL's freight charges, ETL made a claim to TFS, and TFS paid ETL about 22 grand.

By mistake, it later urged. TFS came to believe that the services ETL provided were exempt from trust fund coverage under 49 CFR §1090, which details "rail trailer-on-flatcar/container-on-flatcar ("TOFC/COFC") service, and disqualifies trust fund liability for charges arising under it. TOFC/COFC service involves intermodal rail/truck transports. TFS sued ETL in the U.S. District Court for the District of Oregon, seeking to force ETL to reimburse the payment.

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On cross motions for summary judgment, the court agreed with ETL that TFS hadn't demonstrated the exemption. For the 49 CFR §1090 exemption to apply, the motor carrier must specify, often through its tariff, that it would perform TOFC/COFC service. The Rail Logistics/ ETL agreement made no such specification, and ETL didn't even have a tariff. TFS pointed to ETL's individuals bills of lading which used an acronym for a service it claimed was tantamount to TOFC/COFC, but 49 CFR §1090 specifies that the notice must be given in a "transportation contract," and bills of lading don't qualify as such under the Federal Bill of Lading Act. Moreover, the use of terminology in the bill of lading wasn't sufficiently clear. TFS's claim was dismissed accordingly.

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