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Hot Motor Carrier Law

By Steve Block

Broker need only allege it paid shipper to have Carmack standing against carrier.

***Coyote Logistics, LLC v. MPJ Trucking, Inc.*, 2018 WL 4144628 (N.D. Ill. 2018)**

Brokers typically ask their shipper customers for assignments of rights against motor carriers when they pay those shippers for damaged cargo claims. Even though brokers generally aren't legally liable for cargo damage, that's the trend, especially with larger shippers which frequently insist that their brokers assume primary cargo liability.

But it might not be necessary. The U.S. District Court for the Northern District of Illinois recently addressed some rather egregious allegations by freight broker Coyote Logistics against motor carrier MPJ Trucking regarding the latter's alleged refusal to deliver several loads of beer. Coyote believed MPJ never had any intention of delivering its customer's cargo, and holding it ransom, forced improper payments from the broker. Ultimately the beer spoiled before delivery.

Coyote didn't have a formal assignment of the shipper's rights, but did allege in its complaint that it had paid the shipper some 145 grand, and it named itself "as subrogee of" the shipper in the complaint. To this court at least (in denying MPJ's motion to dismiss), that's enough to give Coyote standing in equitable subrogation, as the court put it, "standing in the shoes of the shipper." The court also ruled that the complaint sufficiently stated a Carmack claim by alleging good cargo condition on tender; delivery in damaged condition; and damages. The broker needn't describe any further factual background in a complaint.

Coyote didn't fare so well with its conversion, negligence and attorney fee claims against MPJ. While some courts have been more flexible in allegations of outright carrier theft, this one focused on Carmack's preemption of state/common law claims and definition of recoverable damages. Those claims were dismissed.

Motor carrier's disclosed agent might be liable for lost cargo.

***Solochek v. United Van Lines, LLC and Schroeder Moving Systems, Inc.*, 2018 WL 4386100 (E.D. Wisc. 2018)**

Household goods motor carriers generally are liable for cargo loss as the disclosed principals of the interstate agents they typically operate through when a bill of lading is issued. But can the agent dodge liability on the same theory? Several courts have held they can in light of wording within 49 USC §13907(a), which provides:

> Each motor carrier providing transportation of household goods shall be responsible for all acts or omissions of any of its agents which relate to the performance of household goods transportation services ... and which are within the actual or apparent authority of the agent from the carrier or which are ratified by the carrier.

But the concept isn't firmly established in the law. Here, shipper Julie Solochek hired United Van Lines (UVL) agent Schroeder Moving Systems to transport her stuff from Milwaukee to her second home in Nashville, which included a $175,000 lithograph of Mickey Mouse. She purchased high value cargo insurance, and when Mickey didn't arrive with the rest of her belongings, she made a claim. Apparently, the coverage wasn't available, so Solocheck sued both UVL and Schroeder in the U.S. District Court for the Eastern District of Wisconsin.

Schroeder moved to dismiss under FRCP 12(b)(6), which works only if a claim is invalid on the face of the complaint. The court didn't see much by way of allegations or attached documents in the complaint, and while it recognized courts often let out carriers' agents in household goods cargo claims, the Seventh Circuit hasn't done so yet. The court basically hedged the issue based on the lack of allegations in the complaint regarding agency, and denied the motion, but seemed disinclined to let Schroeder out.

New evidence doesn't change the judge's mind: FAAAA does preempt personal injury claims against broker C.H. Robinson.

***Krauss,* et al. *v. IRIS USA, Inc.,* et al., 2018 U.S. Dist. LEXIS 127660 (E. Dist. Penn. 2018)**

We wrote about this broker friendly decision from the U.S. District Court for the Eastern District of Pennsylvania, where shipper IRIS USA, Inc. shipped a load of Legos toys. 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 the consignee's employee Krauss was injured while offloading it. He sued IRIS, CH Robinson and KV Load seeking personal injury damages and 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. 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." Many found it surprising that a personal injury claim could relate to "actual loss or injury of the goods in transit."

The court also granted C.H. Robinson then moved to dismiss Krauss's claims based on FAAAA preemption. Despite many 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.

Recently, Krauss came back into court asking for reconsideration of the broker's dismissal based on new evidence that its vetting process was insufficient. The judge was unimpressed, to say the least. Krauss pointed to C.H. Robinson's Carrier Management Program that included a notation "No Carrier Management … Please remove this carrier" for KV Load, which sounded like the broker had concerns about the trucker before booking the load. After C.H. Robinson explained that this notation meant only that KV Load had opted out of national service, the judge concluded it made no difference.

Similarly, Krauss learned that FMCSA had recorded safety violations by KV Load which a private subscription service brokers use would have revealed had C.H. Robinson used it. But that would require a heightened vetting process, which would significantly affect the broker's services, and therefore be preempted.

Lastly, the injured dock worker believed C.H. Robinson had reason to know KV Load wasn't a conscientious carrier based on its late deliveries. That, too, "goes to the core of what it means to be a careful broker," and would be preempted as affecting its services.

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Failure to raise argument in first of two motions to dismiss results in waiver of Carmack preemption.

***Meadowgate Technologies, LLC v. Fiasco Enterprises, Inc.*, 2018 WL 3032589 (S.D. Cal. 2018)**

This somewhat confusing opinion from the U.S. District Court for the Southern District of California concludes that a motor carrier can waive the right to assert ICCTA preemption over state and common law causes of action by failing to raise it in earlier proceedings.

Shipper Meadowgate Technologies brought suit against motor carrier Fiasco Enterprises (the complaint's substantive allegations aren't clear). The original complaint was dismissed with leave to amend, the order not explaining why, but Fiasco apparently didn't raise ICCTA preemption. Meadowgate filed an amended complaint asserting both Carmack and state law claims. Fiasco moved to dismiss the amended complaint's state law claims based on ICCTA preemption.

The court didn't like it, and denied the motion because the carrier didn't raise ICCTA preemption in the first motion. Fiasco asserted that it couldn't have raised ICCTA preemption earlier because the original complaint didn't allege a through bill of lading that would give rise to ICCTA. The court ruled that an allegation of a through bill of lading isn't essential to ICCTA, and Fiasco would necessarily have known one was issued. The court also noted that whether state law or Carmack is applied makes no difference in the outcome; and Carmack's preemptive effect may not apply here anyway. Hmmm.

The court seemed most put off by delays Fiasco's position would cause. But federal preemption over state law shouldn't be waivable, at least not so easily as by failure to raise it in response to a complaint whose allegations had been amended.

Federal preemption doesn't provide basis for federal jurisdiction over motor carrier's dispute with former owner operator.

***Hoosier Air Transport, Inc. v. Schofield*, 2018 WL 2772581 (S.D. Ind. 2018)**

Motor carrier Hoosier Air Transport entered into an owner operator lease agreement with driver Schofield that included the usual terms regarding her obligations to pay the carrier specified operating costs. When she ended the lease, Hoosier claimed she owed some 25 grand in costs, which she refused to pay. Hoosier sued Sheffield in Indiana state court seeking to collect.

Schofield removed the action to the U.S. District Court for the Southern District of Indiana, alleging federal jurisdiction under both federal question and federal preemption theories. The court rejected both, and sent the matter back to state court.

While the Truth in Leasing regs and Motor Carrier Act are at the heart of Hoosier's claim, the requirement that a state court interpret federal law doesn't automatically implicate federal jurisdiction or preemption. State courts do that all the time. And complete federal preemption, which is rarely applied, would apply only if Congress had so completely and thoroughly legislated trucking law that state courts have no place addressing it.