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2020 Year in Review: Cargo

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Overview

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Carmack Preemption

- ▶ *Saia Motor Freight Line, LLC v. Overstock Sleep, LLC*, C.A. No. 19SC-0490-B, In the State Court of Forsyth County State of Georgia (Aug. 24, 2020)
- ▶ Carrier sued Defendant, Shipper, for unpaid freight charges
- ▶ Defendant, Shipper, counterclaimed for state law causes of action for breach of contract and negligent misrepresentation
 - State law causes of action are preempted by both the Carmack Amendment and the Federal Aviation Administration Authorization Act (“FAAAA”)
 - The negligent misrepresentation counterclaim resulted from a dispute of carrier receiving benefit of payment from delivering the freight safely and timely leading to Carmack Preemption of the claim
 - Breach of contract counterclaim alleged carrier did not deliver the goods safely and timely, which clearly fell under Carmack Preemption
 - Even if no Carmack Preemption, FAAAA would preempt state law counterclaims because affecting routes, rates, and services of motor carrier.



Carmack Preemption

- ▶ *Sirous Razipour v. Joule Yacht Transport, Inc. and Molly's Marine Service, LLC, 2020*
WL 4904456 (MD August 20, 2020)
 - Carrier transporting a yacht from Naples, FL to Newport Beach, CA
 - Shipper filed suit against marine rigging company for negligence and damages when the yacht was left sitting in a boatyard in Florida
 - Marine rigging company filed cross claim for contribution against the motor carrier
 - Cross claim against motor carrier not based upon separate indemnity agreement or other type of contract with rigging company
 - Carmack preempted the marine rigging company's cross claim against the motor carrier
 - Carmack allows contribution or apportionment of damages against motor carriers but not third parties such as brokers, freight forwarders, or the rigging company
 - Cross claim of marine rigging company dismissed



Carmack Preemption

- ▶ ***Mtelehealth, LLC. v. United Parcel Service, Inc.*, 441 F. Supp.3d 1312 (S.D. Fl. 2019)**
 - Plaintiff Shipper sued Defendant carrier under the Carmack Amendment plus causes of action for fraudulent conversion, negligence, negligent supervision, and violations of Florida's Civil Theft Statute
 - Defendant Carrier removed to Federal Court
 - Reminder of 30 day Removal Time Limit
 - Can extend Answer Date but cannot extend Removal Date
 - Terms and Conditions of Carrier's Terms and Conditions capped liability to a maximum of \$100
 - Terms and Conditions applicable unless Shipper could establish facts of true conversion, i.e. motor carrier (not just an employee of motor carrier) actually stole freight for carrier's own use
 - Carmack Preemption of state law causes of action



Carmack Preemption

- ▶ *Fergin v. Westrock Co.*, 955 F.3d 725 (8th Cir. 2020) (Eighth Circuit Case)
 - Employee of shipper was unloading cardboard boxes after the delivery of the cardboard boxes by the motor carrier
 - Employee opened trailer door and the cardboard boxes fell on the employee
 - District Court entered summary judgment for Defendant Motor Carriers finding that plaintiff's personal injury cause of action was preempted by Carmack
 - Eighth Circuit reversed and remanded on this issue
 - Court found that because the plaintiff was not a party to the bill of lading, his state-law personal injury claim was not preempted by Carmack



Limitation of Liability

- ▶ ***CorTrans Logistics, LLC v. Landstar Ligon, Inc.*, Case No. 1:17-cv-02033, 2020 WL 5702186 (S.D. Ind. Sept. 23, 2020).**
 - Motor Carrier and Shipper entered into a Transportation Services Agreement limiting liability for cargo damage to \$100,000
 - Later amended the Transportation Services Agreement to increase limitation of liability up to \$250,000 via a rate confirmation that:
 - Specified increased liability limitation
 - Included the price for the shipment, and
 - Signed by an authorized representative of the parties
 - Shipper emailed requesting \$250,000 in coverage
 - Rate confirmation did not mention limitation of liability
 - Additional amount for increased coverage not paid
 - Load stolen
 - Shipper sued for breach of contract, negligence, bailment, and conversion
 - Court examined *Hughes* test to allow for limitation of liability:
 - (1) Carrier obtains shipper's agreement as to its choice of liability
 - (2) Carrier gives shipper a reasonable opportunity to choose between the two or more levels of liability, and
 - (3) Carrier issues a receipt or bill of lading prior to moving the shipment
 - Court held liability limited to \$100,000 because requirements of contract not met



Broker or Carrier

- ▶ *CorTrans Logistics, LLC v. Landstar Ligon, Inc.*, Case No. 1:17-cv-02033, 2020 WL 5702186 (S.D. Ind. Sept. 23, 2020).
 - Motor Carrier, Landstar, that signed Transportation Agreement with CorTrans retained AY Global to actually haul the load that was stolen
 - Shipper argued Transportation Services Agreement limitation of liability was inapplicable because Landstar acted as a broker instead of a carrier
 - Court held Landstar was acting as a carrier and therefore limitation of liability to \$100,000 applicable
 - Court looked at the Transportation Services Agreement which defined Landstar as a carrier and parties were bound by this definition



Carrier Liability Maritime

- ▶ *ELCO Insurance Company, Limited, a subrogee of ELI Lilly and Company v. Spirit Trucking Company*, 18-c-6800, 2020 WL 6343135 (N.D. Ill. Oct. 19, 2020)
 - Eli Lilly hired DHL to move the shipment from England to Nebraska
 - DHL issued an Express Sea Waybill, designating Eli Lilly as shipper and DHL as forwarding agent and Nebraska as the destination of the shipment
 - DHL hired Hapag-Lloyd to transport the shipment for part of the journey
 - Hapag-Lloyd issued a sea waybill of its own, not mentioning Eli Lilly but describing DHL as the shipper and consignee
 - Hapag-Lloyd waybill had a Himalaya clause
 - One year statute of limitation contained in Hapag-Lloyd waybill
 - Motor carrier hired to move shipment from Chicago to Nebraska
 - Cargo destroyed and four years later plaintiff filed suit
 - Citing *Kirby*, the Court found the motor carrier entitled to use Hapag-Lloyd's waybill



Household Goods Carriers

- ▶ ***Catherine Cook v. New York Moving & Storage, Inc. et al.*, No. 2:19-cv-00098-DBBJCB, 2020 U.S. Dist. LEXIS 179954**
 - Plaintiff Shipper hired Household Goods Carrier to store her goods and then transport them from New York to Utah
 - Upon arrival in Utah, many of the household goods
 - HHG Carrier offered and encouraged shipper to purchase insurance but Shipper signed Bill of Lading and selected waiver of full replacement value protection
 - Plaintiff claimed \$500,000 in damages
 - Four part test from *Sassy Doll Creations, Inc. v. Watkins Motor Lines, Inc.*, 331 F.3d 834, 841 (11th Cir. 2003) applied:
 - Carrier must:
 - (1) maintain a tariff within the prescribed guidelines of the Interstate Commerce Commission;
 - (2) obtain the shipper's agreement as to his choice of liability;
 - (3) give the shipper a reasonable opportunity to choose between two or more levels of liability; and
 - (4) issue a receipt or bill of lading prior to moving the shipment
 - The Court refused to simplify the test to: (1) whether the carrier offered the opportunity to accept or waive full value protection to the shipper; and (2) did the shipper waive full value protection in writing
 - However, the court ruled in favor of Defendants on their motion for summary judgment finding that the plaintiff waived full value protection based on the four part test



Broker Liability

- ▶ ***AMG Resources Corporation v. Wooster Motor Ways, Inc.***, 796 Fed.Appx. 96 (3d Cir. Jan. 9, 2020)
 - Plaintiff shipper sued Broker and its affiliated motor carrier for loss of a shipment of copper
 - Broker had arranged for the freight to be hauled by a different one-man motor carrier that was not sued by Plaintiff Shipper
 - No written agreement between Shipper and Broker
 - Court ruled in favor of Broker and its affiliated motor carrier because neither entity picked up the load nor transported the load
 - Carmack claim against Broker and affiliated motor carrier failed



Broker as Plaintiff

- ▶ ***Ikon Transportation Services, Inc. v. Texas Made Truckin, LLC a/k/a Alfredo Rodriguez d/b/a Freddy's Freight et al.*, 2020 WL 3488435 (W.D. Wis. June 26, 2020)**
 - Plaintiff Broker and Defendant Motor Carrier executed a broker-carrier agreement, where Motor Carrier assumed liability for loss or damage of freight while in Motor Carrier's custody or control
 - Motor Carrier signed Bill of Lading then began securing freight to trailer
 - Shipper insisted Motor Carrier move the trailer before being properly secured
 - Freight damaged while moving trailer to other end of shipper's location
 - Broker filed claim against Motor Carrier when Broker had paid for the damages to the cargo
 - Broker styled its complaint as a negligent breach of contract action against Motor Carrier
 - Broker failed to provide notice of a Carmack Claim even though the Carmack Amendment was mentioned in the broker-carrier agreement
 - Broker did not adequately plead Carmack Amendment claim and the Court did not allow the Broker to Amend the Complaint at the Summary Judgment stage



Broker as Plaintiff

- ▶ *Amark Logistics, Inc. v. UPS Ground Freight, Inc.*, 2020 WL 248976, 2020 U.S. Dist. LEXIS 7659 (N.D. Ohio Jan. 16, 2020)
 - Broker filed suit in state court against Defendant Motor Carrier alleging breach of contract based on the Broker-Carrier Master Transportation Agreement, negligence and the Carmack Amendment
 - Defendant removed to Federal Court and filed a motion to dismiss
 - Court found Carmack inapplicable to this case where the broker did not have an assignment from the shipper to sue the motor carrier for cargo damages
 - Carmack Amendment claim dismissed and the Federal Court declined to grant supplemental jurisdiction over the breach of contract and negligence claims



Sufficiency of Pleadings

- ▶ ***EMCO Corporation v. Miller Transfer & Rigging Co.*, 2020 WL 1915254, 2020 U.S. Dist. LEXIS 68556 (N.D. Ohio Apr. 20, 2020)**
 - Compare with *Amark Logistics* case
 - Shipper filed one count complaint against Motor Carrier for Breach of Contract
 - Motor Carrier filed Motion to Dismiss for failure to allege Carmack Amendment
 - While only alleging breach of contract and not Carmack, the complaint was federal in nature and fulfilled the three elements of Carmack liability, placing Defendant Motor Carrier on notice of a Carmack Amendment claim



What to Expect in 2021

- ▶ Eyes on the new administration
- ▶ FAAAAA preemption

