IN TRANSIT

Transportation Loss Prevention & Security Association

Autumn Issue 2005

INSIDE

Transportation Loss Prevention and Security Association

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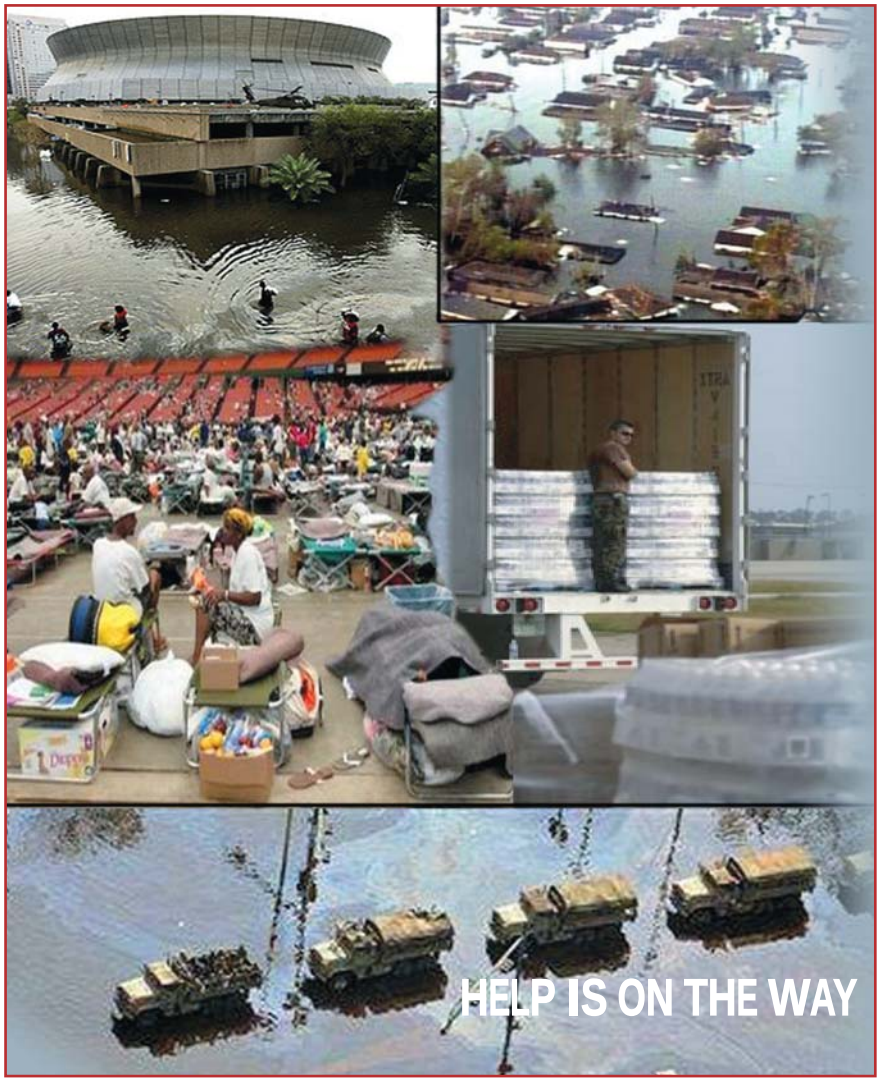
TRUCKERS HELP HURRICAINE KATRINA VICTIMS



True Knights of the Road

A catastrophe brings out the best in America. No where can this be seen better than in the response of the trucking industry to Hurricane Katrina. It has been said that everything you eat, wear or touch has at some time been carried by a truck. We can all be proud to add to that list. Now we know aid and assistance come by way of truck also. Katrina victims were buoyed by the appearance of trucks both individually and by caravan rolling down the road toward flood devastated areas. Both men and women of the trucking industry needed no prodding to drop their everyday chores and rally to the cause of helping those in need. For people who lost so much, the sight of their fellow Americans bringing relief is what this country is really all about.

FROM THE EXECUTIVE DIRECTOR...

Quo Vadis?

Every once in a while we should ask ourselves where are we going…quo vadis. As for myself, I must admit that I am still getting used to the computer. Well there is no time to waste. Starting with deregulation of the motor carrier industry in 1980 and the airline industry before that, the transportation industry has been buffeted by the winds of change over the last 25 years. Just as we are adjusting to one new event, others come over the horizon like so many waves. We find little time to look toward the future as we have our hands full dealing with the present.

Nevertheless, what I learned in the Boy Scouts, I believe to be true. Always be prepared. Do you know when you phone a Call In center for information on what is wrong with your computer; the person on the other end who speaks perfect English is sitting in India? More than 100,000 U.S. tax returns were prepared in India last year. "American" cars are mostly made in some other country. Globalization is not just a word, it is a reality. So how will globalization affect where we are going in transportation? Again, we are behind the curve because it already does.

U.S companies are choosing partners not only in Mexico and Canada, but also in India and China. If your call can be routed to India for advice on fixing your computer, why can't a shipper's call be routed through India to obtain transportation? I am not speaking about international transportation; I mean local or interstate transportation. Certain fast food restaurants presently take orders at a drive-up window and those orders are instantaneously sent to India and relayed back to the food preparers in the U.S so that your food will be ready at the pick-up window.

Today's transportation business is dependent on speed, efficiency, and cost. Overnight delivery is now the norm rather than the exception. Geography is no longer a dull subject in school. It is an integral part of a worldwide business. As our well-known transportation companies merge, acquire, and globalize, we must be prepared to accept change and adapt to it. If you are still doing the same job in the same way as you did 10 years ago, you better start looking over your shoulder. You better start asking where you are going because without a plan for the future, your destination is limited or non-existent.

Our industry continues to grow and change. Guaranteed on-time shipments are the lynch pin of the new business environment. Unless we keep pace with the changes; participate in continuing education; support our trade organizations and add value to our companies; it will be too late to ask where we are going, "quo vadis", because we will already be "quo gone!"

William D. Bierman, Esq.
Executive Director

TO SUE OR BE SUED...THAT IS THE QUESTION.
OR WHAT'S A DECLARATORY ACTION FOR?

By *William D. Bierman, Esq*-Nowell Amoroso Klein & Bierman, P.A.

In the transportation industry as in many other fields of endeavor, when negotiation fails to resolve a claim, the parties get involved in litigation. In certain cases, suit is unavoidable. Usually, a transportation company will be the defendant in the lawsuit and the plaintiff chooses the place to sue, legally know as the forum. The transportation company or the motor carrier must then scramble to locate knowledgeable and competent counsel in the forum state to defend the case. The plaintiff starts with an advantage because it chooses the time and place to sue.

AT THE MERCY OF YOUR ADVERSARIES

In a typical cargo claim situation for example, if the shipment is made pursuant to a standard bill of lading, the motor carrier will receive notice of claim within nine months of delivery. The claimant has two years from the time of declination of the claim to institute suit. Therefore, no matter the nature and weight of the carrier's defenses, and absent a settlement, the carrier will not be able to resolve the claim until the claimant starts suit. From a practical point of view, the carrier must carry this potential claim on its books until a court or jury decides the issue. This article poses the question; must the carrier remain at the mercy of the claimant to see if the carrier will be subjected to suit? While I want you to read the rest of the article, I will tell you in advance that the answer may very well be no. YOU MAY CHOOSE TIME AND PLACE OF SUIT. A Declaratory Judgment (DJ) action provides potential defendants with a procedural mechanism to obtain judicial resolution of present controversies that would otherwise linger at the discretion of claimants. A DJ affords potential defendants an opportunity to remove uncertainty created by unresolved claims which might otherwise affect the value of the defendant's business or may affect the statistics which show a number of pending claims. Moreover, the DJ action allows a company such as a motor carrier to select the time and place of suit.

DECLARATORY JUDGMENT vs. ADVISORY OPINION

Although the remedy of a DJ action has its roots in foreign venues, American state courts first recognized declaratory judgments in the early 1900's. The U.S. federal courts recognized the remedy approximately a decade after the state courts. This delay grew out of the body of federal law, which was reluctant to render "advisory opinions". Once the federal court held that the essential ingredient for federal review in a DJ action is the existence of an actual case or controversy, the court overcame its resistance to the label "declaratory judgment".

ACTUAL CASE OR CONTROVERSY

Congress adopted the original Declaratory Judgment Act in 1934. The Act as now amended exists as 28 U.S.C. para. 2201 and 2202. In keeping with the court's reasoning, the Act reads in part, In a case of actual controversy within its jurisdiction…any court of the United States, upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not such further relief is or could be sought.

DECLARATORY JUDGMENT IS DISCRETIONARY

The termination of uncertainty and controversy remains the Declaratory Judgment Act's basic goal and the courts have recognized and advanced it in many contexts. Nevertheless, the ability of the Act to achieve the goals of removing uncertainty and controversy is directly affected by its discretionary nature. The Act is not mandatory but gives courts considerable discretion to refuse to hear a declaratory action. Therefore, a party seeking a declaratory judgment must both hurdle the issue of judicial discretion as well as other principles of judicial restraint.

DECLARATORY JUDGMENTS IN TRANSPORTATION CASES

There is a good discussion of the applicability of a DJ in the transportation context in the recent case of Mayflower Transit, L.L.C. v. Troutt, 332 F.Supp. 971 (U.S.D.C. W.D. Texas 2004). In this household goods moving case, the Troutts' had made common law claims against Mayflower in excess of $75,000. Mayflower took the position and sought the court to declare (1) that any alleged claims of Defendants for breach of contract, loss of use, fraud and property damage are preempted by the Carmack Amendment, (2) that Mayflower is not liable to Defendants for delay or property damage, and (3) that Mayflower is not obligated to transport Defendant's office furniture until Defendants pay the applicable interstate tariff charges for such shipment.

THREE-STEP INQUIRY

The court in Troutt enunciated a three-step inquiry to determine whether to decide a matter on a declaratory judgment basis: 1. Whether the matter is "justicable". In other words, whether there is an actual legal controversy; 2. If the court has jurisdiction, whether the court has authority to grant declaratory relief; 3. Even if the court has authority, should the court exercise its discretion to hear the matter and will it serve a useful purpose. Based on the allegations in the Troutt case, the court held that there was a case or controversy and that a declaratory judgment in this case would not serve as a mere advisory opinion since it would adjudicate the rights, duties and liabilities of the parties. BAD FAITH FORUM SHOPPING. While a DJ procedure is not called for in all cases where its requirements can be met, it certainly can be an important strategic tool when employed in the right case. The party choosing to seek a DJ must be able to defend against a bad faith forum shopping claim where an adversary may allege that the forum sought was done so merely to inconvenience the other side or to obtain an improper "home town" advantage. Nevertheless, as long as a credible argument can be made for choice of venue, the fact that a DJ action is brought in one state or another should not prejudice the choice.

CONCLUSION

Thus in the right situation, a would-be defendant can seize the initiative and act decisively to bring an issue before a court of its choosing and need not remain at the mercy of the plaintiff. So when you are pondering whether to sue or be sued, consider the power of the declaratory judgment.

TRANSPORTATION CASE SUMMARIES

(SEPTEMBER 2005)

by *Wesley S. Chused* - Looney & Grossman, LLP

1. McLaughlin Transportation Systems, Inc. v. Barbara Rubenstein, Case No. 03-11545-MVB (D. Mass. 2005). **("Specified or determinable" claim-filing requirement - strict interpretation)** After delivery of her household goods shipment, plaintiff claimed loss and damage and the motor carrier sent her a claim form with instructions to file it in writing within the nine month time period prescribed by the Bill of Lading. About 8 ½ months after delivery, plaintiff's lawyer wrote to the carrier asserting a claim for "payment of $100,000," adding, "This is the claim anticipated by your letter to [plaintiff]. . . . I will provide further particulars in due course." The specific claim information was not forthcoming until 11 months after delivery and the carrier denied the claim as untimely. The carrier filed a declaratory judgment action in U.S. District Court seeking to have plaintiff's claim declared untimely. Plaintiff counterclaimed for an assortment of damages. In granting the plaintiff carrier's motion for summary judgment, the Court noted that Massachusetts is a "strict compliance" (1st Circuit) jurisdiction in which estimations and approximations of damage amounts are insufficient to meet the "specified or determinable" claim-filing requirement of the FMCSA (49 C.F.R. §370.3). The Court noted that the shipper was not excused from the nine month claim filing requirement, ruled the shipper's counterclaim for unfair and deceptive practices under Massachusetts state law was preempted by the Carmack Amendment and denied her cross-motion for summary judgment.

2. Siemens Power Transmission & Distribution, Inc. v. Norfolk Southern Railway Company, 2005 U.S. App. LEXIS 17202 (11th Cir. 2005). **("Specified or determinable" claim-filing requirement - liberal interpretation)** An electrical transformer was damaged during rail transportation from Virginia to Florida. The plaintiff shipped the transformer back to Germany for repairs, notifying the rail carrier it estimated "a total cost of $700,000 - $800,000 [as] the amount of our claim." The district court had granted the railroad's motion for summary judgment on the grounds that the shipper had failed to file a claim within nine months of the date of delivery. On appeal the 11th Circuit reversed. Following an analysis and of the history of the claim filing requirements under the Carmack Amendment, and the minimum claim filing rules originally promulgated by the former Interstate Commerce Commission, the Court noted that the circuits have not uniformly applied the "specified or determinable amount of money" claim filing requirement, with some courts holding that the rule applies only to "uncontested" claims. The Court in Siemens ruled that the claim filing requirement was intended to put the carrier on notice so as to enable the carrier to exactly compute its losses and that the language of the statute should be interpreted according to its ordinary, contemporary and common meaning. The Court liberally construed the claim filing regulations and held the plaintiff's notice of claim together with its offer to have the carrier inspect the damage were sufficient. The Court rejected numerous cases cited by the defendant railroad that required actual compliance with the "specified or determinable amount" regulation and rejected the notion that its liberal interpretation of the regulation would allow shippers to bypass the mandated claims process.

3. Campbell v. Allied Van Lines, Inc., 410 F.3d 618 (9th Cir. 2005)**. (Attorneys' fees award to household goods shipper)** The Court affirmed a U.S. district court's award of attorneys' fees to household goods shippers even though they had not sought arbitration under 49 U.S.C. §14708 prior to bringing suit. In a two-to-one decision, the Ninth Circuit construed §14708's attorneys' fee provision very narrowly, literally and out of context. The appellant carrier contended that the language of §14708(d)(3) prevents shippers from receiving an award of attorneys' fees only if the shippers first participate in the arbitration program described in the preceding sections of §14708. The majority rejected that argument and ruled that a shipper may obtain an award of attorneys' fees under subsection (d)(3)(A) simply by showing there was no arbitration decision and disregarded the other requirements of the statute that called for arbitration. The dissent provides some colorful and interesting reading in which the dissenting judge found that, "The most reasonable interpretation of §14708(d)(3)(A) is that it makes attorneys' fees available if the shipper takes advantage of the opportunity for arbitration that the carrier is statutorily bound to provide and no decision is rendered within the sixty day period provided."

4. Delta Research Corporation v. EMS, Inc., 2005 U.S. Dist. LEXIS 18353 (S.D. Mich. 2005). **(Carrier, freight forwarder or broker?)** The plaintiff sought to recover for the destruction of a $290,000 boring mill destroyed during transportation by motor vehicle from Ohio to Michigan. The plaintiff, Delta, had hired defendant S.K. Rigging Co. to load and transport the machine, and S. K., in turn, hired defendant EMS, Inc. to provide the actual flat bed/truck transportation. Delta filed a two-count complaint against S.K. alleging a claim under the Carmack Amendment and a claim of negligence. On cross-motions for summary judgment, Delta contended that S.K. was liable either as a carrier, freight forwarder or a broker, while S.K. asserted that based on the allegations in the complaint it was neither a carrier nor a freight forwarder, and hence, not subject to Carmack Amendment liability. Following a detailed discussion of the differences between carriers, freight forwarders and brokers, the Court denied Delta's motion for summary judgment, finding that there were questions of fact that remained as to exactly what S.K. held itself out to perform, and therefore also denied S.K.'s motion for summary on the Carmack Amendment count. However, the Court granted S.K.'s motion for summary judgment on Delta's negligence count, ruling that in the event the fact finder determines that S.K. was acting as a common carrier, then any state common law negligence claim would be preempted and, conversely, if S.K. was not

acting as a motor carrier, it could not be vicariously liable for any negligence of EMS, an independent contractor.

5. Jason York v. Day Transfer Company, et al., Civil Action No. 04-551A (D. R.I. 2005). **(Broker/carrier liability; "inducement by misrepresentation").** A federal court judge in Rhode Island granted in part and denied in part the motion of the plaintiff/household goods shippers to amend their complaint to add claims of broker liability, inducement by misrepresentation and negligence in voiding their insurance coverage in connection with a household goods shipment that, apparently, the defendants transported from a storage warehouse. The Court first denied plaintiffs' motion to amend their complaint to add a claim of broker liability on the part of defendant Day Transfer on the basis that the amended complaint alleged that Day Transfer was engaged to provide services with respect to the transportation of plaintiffs' household goods. The Court recognized the definition of "transportation" at 49 U.S.C. §13102(21) and Carmack Amendment preemption of claims sounding in negligence and ruled that since the plaintiffs did not dispute Day Transfer's claim that it was a motor carrier subject to the Carmack Amendment, the plaintiffs' motion to amend the complaint to add a broker liability claim was denied. Next, the Court overruled the objections of defendant Apollo to the plaintiffs' motion to amend their complaint and add a claim of "inducement by misrepresentation" in connection with the limitation of liability on the bill of lading, because it was unable to conclude from the bill of lading exhibits whether plaintiffs had failed to allege sufficient facts, and therefore granted the motion to amend adding that claim. Finally, the Court denied plaintiffs' motion to amend and add a claim of negligence against the defendant warehouseman, Andrews, claiming that Andrews was negligent because it permitted the plaintiff's household goods to be damaged by mold during storage in Andrews' warehouse, and that Andrews knew or should have known that mold would be excluded under the plaintiffs' insurance policy. The Court ruled that Andrews could not be said to have caused the loss of any such insurance.

6. PCI Transportation, Inc. v. Fort Worth & Western Railroad Company, 2005 U.S. App. LEXIS 15251 (5th Cir. 2005). **(Rail contract, removal, preemption)** The U.S. Court of Appeals for the Fifth Circuit affirmed a decision of the U.S. district court denying the plaintiff's motion to remand the case to the state court and plaintiff's motion for preliminary injunction. The plaintiff, PCI Transportation, operated a distribution warehouse in Fort Worth, Texas that was served by the defendant railroad's spur. Although the parties had entered into a one-page letter agreement specifying the number of demurrage-free days and the number of switches per day to which PCI would be entitled, a dispute evolved nonetheless and PCI filed suit in state court alleging that the railroad had violated their agreement and engaged in various practices that resulted in improper demurrage fees being charged to PCI. PCI moved to remand the case to state court claiming that its dispute with the railroad was exclusively within the scope of the one-page contract and that the contract was not subject to STB jurisdiction under 49 U.S.C. §10709. The Court rejected this argument, finding that the contract's coverage was not exclusively within the scope of §10709 and that the injunctive relief PCI sought was broader than that which the contract contemplated. The Court also denied the plaintiff's motion to remand, citing its own prior decision in Hoskins v. Bekins Van Lines, which applied the complete preemption test in response to the Supreme Court's 2003 decision in Beneficial National Bank v. Anderson. Finally, the Court denied PCI's request for a preliminary injunction because it had failed to establish that there was a substantial likelihood that it would prevail on the merits as it had never submitted the contract to the district court for review.

7. Royal Air, Inc. v. AAA Cooper Transportation, Inc., 2005 U.S. Dist. LEXIS 14880 (W.D. La. 2005). **(Unsigned bill of lading; released rate)** Plaintiff sued the defendant motor carrier, AAA Cooper, for damage to a used airplane engine transported from Louisiana to Oklahoma. The carrier obtained a clear delivery receipt at destination and, about one month later, the shipper filed a claim for concealed damage. AAA Cooper denied the claim due to the clear delivery receipt but later offered to settle for $400 based on the $0.50 per pound (for used equipment) limitation of liability in its tariff. Significantly, the bill of lading issued by the carrier at origin was not signed by the shipper but contained the now-standard "Note 2" which referred to the possible application of a limitation of liability. The defendant removed the case from state to federal court and filed a motion for partial summary judgment on the released rate limitation. In granting the defendant's motion, the Court noted that the signing of the bill of lading by the shipper was not required so long as the bill of lading was accepted by the shipper, and that acceptance constitutes the shipper's agreements to its terms. The court concluded that the plaintiff's mere failure to sign the carrier's straight bill of lading does not in and of itself preclude the defendant from limiting its liability in accordance with its tariff. The court also ruled that the Carmack Amendment preempted the plaintiff's request for attorneys' fees.

8. The National Hispanic Circus, Inc. v. Rex Trucking Inc., 414 F.3d 546 (5th Cir. 2005). **(Special damages)** The defendant motor carrier lost a set of the plaintiff's circus bleachers, as a result of which the plaintiff circus had to rent replacement bleachers and ultimately order a new set of bleachers costing $87,500, plus shipping of $36,000. Three months later the defendant located the trailer containing the original lost bleachers. At trial the jury awarded the circus $123,000 in damages for its purchase and shipping of the new bleachers. The defendant appealed the district court's denial of its motion for judgment as a matter of law in which it argued that the court erred by permitting the jury to decide the question of foreseeablility. The Fifth Circuit Court of Appeals affirmed the district court's denial of the defendant's motion and ruled that the trial court had properly submitted the issue of foreseeability to the jury for determination. The Appeals Court also rejected the defendant's argument that the district court erred in excluding from evidence the opinion testimony of its claims manager as to the resale value of the original "found" bleachers because he had no first-hand knowledge or experience with respect to the resale value of used, custom made bleachers. The Court rejected the defendants' argument that it did not actually "lose" the bleachers but only "misplaced" them for several months and therefore it should be liable only for damages resulting from the rental value of the temporary bleachers. The Court observed that although, ordinarily, the measure of damages is the difference between the market value of the goods at the time of delivery and the time when they should have been delivered, this case was one in which awarding such "market value" diminution would not be appropriate because the award would not fairly compensate the plaintiff for its actual

-Continue Next Page

HEAVY HAUL OF NEW LAWS FOR MOVING COMPANIES

By Gordon McAuley - Hanson, Bridgett, Marcus, Vlahos & Rudy, LLP - San Francisco, CA

For the past few years local, state, and national lawmakers have been hearing an increasingly loud protest from household goods shippers. The world wide web sired a wild wild west of internet brokers for household goods moves. While some of the brokers performed well most of the time, the bad moves left shippers in a very sour mood. And some internet brokers were simply not reputable in their business practices. Not surprisingly, internet-savvy shippers who used the web to find moving companies, also surfed the web to complain, usually by inserting "scam" into their webpage titles. Some of the complaints were the result of the shippers simply not understanding the contracts they signed, and how moving companies are required to do business under applicable federal statutes and regulations. Nonetheless, state and federal regulators thought they did not have enough supporting law or enforcement ability to quell the bad operators. That is no longer true. Now, the many good operators have been ensnared in the stringent remedies intended to punish the few bad actors. In addition, the new law begins an erosion of the federal preemption of state regulation of interstate household goods carriers. The following is a summary of significant new provisions in the Household Goods Mover Oversight Enforcement and Reform Act of 2005 which affect all interstate moves of household goods where a moving company is employed to do the loading and hauling of the furniture and other household flotsam and jetsam.

state and federal regulators thought they did not have enough supporting law or enforcement ability to quell the bad operators. That is no longer true.

The new regulations apply to motor carriers that transport household goods and that offer binding and nonbinding estimates, inventorying, packing, and loading and unloading services in interstate commerce. Excluded are motor carriers that merely transport containers packed with furniture by the homeowner. Cost estimates based on a telephone description of the contents of the homeowner's dwelling now will be a rarer event. Telephone estimates by household goods brokers have been a major source of complaints by homeowners when the estimates proved to be highly inaccurate. If the moving company is located within 50-miles of the homeowner, a binding or non-binding written estimate now must be done in person unless the homeowner signs a waiver to allow an oral estimate. A carrier may charge the shipper for preparing a binding estimate, but non-binding estimates are prepared without charge. Non-binding estimates may be based only on the expected weight of the shipment: non-binding estimates based on the amount of space the shipment will occupy on the truck (volume estimates) are no longer allowed.

Excluded are motor carriers that merely transport containers packed with furniture by the homeowner.

The new regulations apply to motor carriers that transport household goods

The Campbell decision rendered the mandatory arbitration program meaningless and bureaucratic anomaly

When the written estimate is presented to the shipper, the carrier also most provide a copy

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Transportation Casee -Continued From Previous Page

loss. Since the plaintiff circus required custom made bleachers to fit its tent, the cost of the new bleachers was a proper basis for calculation of damages.

9. Hewlett-Packard Co. v. Brother's Trucking Enterprises, Inc., 373 F. Supp. 2d 1349 (S.D. Fla. 2005). (Broker liability) Plaintiffs contracted with defendant Salem Logistics, Inc. to transport a shipment of electronic equipment from California to Florida. Through an Internet freight matching website, Salem hired defendant Brothers Trucking Enterprises, Inc. to perform the transportation, but the shipment was stolen when the vehicle was left unattended in Hialeah, Florida. Salem moved for summary judgment on the plaintiffs' claims of carrier liability under the Carmack Amendment and in negligence, claiming it was not the carrier. The court denied Salem's motion, ruling that there remained genuine issues of fact for trial as to whether Salem was acting as a motor carrier because of various representations it had made to the shipper concerning the transportation services and savings the shipper would enjoy by using Salem. The court found that Salem's representations suggested that its actions were not limited to arranging transport, and that a fact finder could find that it was acting as a motor carrier. The court also denied Salem's motion on the negligence claim, ruling that although the Carmack Amendment applies only to carriers, if Salem were found to be a broker, it could be liable in negligence based on the facts of the case.

of Department of Transportation's document, "Ready to Move?" when the estimate is prepared, and give the shipper the D.O.T.'s Publication OCE-100, "Your Rights and Responsibilities When You Move" before the contract is signed.

Fortunately, the new legislation corrected the harm of the Ninth Circuit's statutory interpretation in Campbell

Arbitrary arbitration language is clarified

The new law clarifies poorly-worded sections of existing law regarding a moving company's provision for arbitration of smaller damage claims. The confusing language of 49 U.S.C. section 14708(d) resulted in a court recently holding that a prevailing party shipper may get attorney fees in any household goods litigation, regardless whether the carrier offered to arbitrate the matter before suit was filed. Campbell v. Allied Van Lines, 410 F.3d 618 (9th Cir. 2005), construed the language of 49 U.S.C. section 14708 in a way its drafters likely did not intend. Section 14708 requires that moving companies offer arbitration to shippers as a means of resolving claims of $5,000 (now amended to $10,000) or less. Section 14708(d) allows shippers their attorney fees in a later successful court proceeding if their claim was submitted to the carrier within 4 months and an arbitration award was not rendered through arbitration within 60 days of submittal to the arbitrator, or the proceeding is to enforce an arbitration award. In Campbell, the shipper never sought arbitration, although the carrier participated in such a program. The Arizona trial court, and the Ninth Circuit, interpreted section 14708 in a way that many regard as bizarre. They held that section 14708 will allow attorney fees if the shipper does not elect to go to arbitration at all, even if the carrier offers such a program, and offers to submit the shipper's claim to that process. This decision rendered the provision for arbitration by the carriers a waste of time and money. The shipper almost always will recover something in its litigation, even if it is for a scratched couch, thus making it the prevailing party entitled to attorney fees. The Campbell decision rendered the mandatory arbitration program a meaningless bureaucratic anomaly, which ensured that few shippers would opt for arbitration when doing so eliminated the possibility of the shipper getting attorney fees.

Fortunately, the new legislation corrected the harm of the Ninth Circuit's statutory interpretation in Campbell, presumably eliminating the need for the defendant carrier to seek an appeal to the U.S. Supreme Court in that case. Section 14708(d) has been changed to read that attorney fees are available to the shipper if the carrier does not advise the shipper of the availability of arbitration, an arbitration decision was not rendered quickly, or to enforce an arbitration decision. This eliminates the judicially-created ambiguity in the prior language of the statute. If a shipper is advised of the arbitration option but fails to accept it, the shipper will not be entitled to attorney fees in a later court action.

Whee! We are sliding down the slippery slope

The most troubling change in the federal statutes is the potential erosion of federal preemption of state law remedies applicable to interstate household goods moves, and the exclusive jurisdiction of the Department of Transportation and federal attorneys general over enforcement of violations of federal laws applicable to interstate household goods movers. 49 U.S.C. sections 14710 and 14711 have been added to provide state attorneys general with authority to prosecute violation of the federal statutes, which regulate interstate carriers. Before now only the D.O.T., federal attorneys general, or the affected household goods mover, could sue to enforce registration and other federal requirements. State governments are now authorized to prosecute interstate carriers for violation of federal statutes pertaining to registration, safety, and insurance requirements. Moreover, they will be allowed to collect, and keep, any fines issued by the court for violation of the statutes. Your author is concerned that the new law starts an erosion of federal preemption of state law remedies, and is only the beginning of the slide down that slippery slope of the confusion of disparate state court remedies that fostered the passage of the Carmack Amendment in the first place. While the new law does not yet allow states attorneys general to prosecute the household goods carriers for violation of state consumer remedies statutes, your author predicts that it will happen soon unless the industry, and concerned citizens, are vigilant against this onslaught.

The most troubling change in federal statues is the potential erosion of federal preemption of state law remedies applicable to interstate household goods moves

State governments are now authorized to prosecute interstate carriers for violation of federal statutes pertaining to registration, safety, and insurance requirements.

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The above are the "highlights" of the legislation as it applies to household goods carriers and their customers. Space does not allow for a review of other changes to the law, but future articles may discuss those as well. An ancient curse states "May you live in interesting times." The moving industry is finding the times to be very interesting indeed.

Complete Cargo Security Solutions:

Merging Physical Security Devices with Technology

By: Nick Erdmann - Transport Security, Inc.

Cargo theft has impacted nearly every industry, from paper products to televisions. Experts estimate that cargo and equipment theft costs 30 to 50 billion annually worldwide. Security is a necessity today; with the nation on heightened security alert,

Security is a necessity today; with the nation on heightened security alert, the transportation industry must be prepared.

the transportation industry must be prepared. By its very nature, the transportation industry places goods in a more vulnerable environment than when they are at a shipper's or receiver's facility. It's not like having your goods in a warehouse; you cannot post a security guard, install lights or a closed circuit TV or build a fence around your freight. Expensive freight is moved along highways and by sea everyday and physical security devices and new tracking devices are becoming more of a necessity for trucking and container companies. New security procedures and rising insurance costs are also driving companies to secure their fleet. Before 9/11

Companies using high quality padlocks, king pin locks, air cuff locks and seal guard locks have effectively prevented cargo thefts.

companies would lock and seal only some loads that were deemed high value, and accepted theft as a cost of doing business. Today many security conscious companies have taken steps to combat theft of their equipment and products. These security procedures range from "low tech" physical security devices to "high tech" tracking devices. These devices are becoming more affordable, allowing companies to develop security programs incorporating one or both of these security devices, and drastically reducing the number of thefts among their company.

Physical Security Solutions

High security locks and seals are not a luxury item for transportation companies anymore. Physical security has become an effective tool in preventing cargo theft within the transportation industries security programs. Companies using high quality padlocks, king pin locks, air cuff locks and seal guard locks have effectively prevented cargo thefts.

When choosing a physical security device, a company must take into consideration their: fleet, equipment and employees. High

Effective king pin locks should be able to be keyed into a company's master keying system, allowing for added security

security locks must be of high quality and be flexible to the companies needs. The physical security company's products and reputation must also be reliable to ensure compatibility and service of those locks in the future. These steps along with a solid company policy will ensure a seamless security program.

Trailer Security

High security padlocks must be resistant to physical attack and being picked. These locks also must be able to withstand the harsh environments to which containers and trailers are exposed. These padlocks also need to be user friendly, allowing the company to set up a system that is flexible, yet provides the utmost security for their equipment. Characteristics of a good high security lock allow for master keying systems and restricted keyways, limiting the possibility for unauthorized duplication of keys.

In addition to securing rear trailer doors, companies must evaluate their need to secure unattended drop trailers and terminal trailers. There are many options including providing a secure drop yard for loaded

Thieves are not only stealing loaded trailers, but also taking the tractors.

trailers, which minimizes theft occurrence. High security king pin locks can be used to prevent unauthorized fifth wheel hook ups to trailers. Effective king pin locks should be able to be keyed into a company's master keying system, allowing for added security. High security king pin locks should be constructed of heavy duty steel and be resistant to physical attack and be pick resistant.

Transport Security, Inc. supplies both trailer and tractor high security locks that meet the security demands of the transportation industries.

The ENFORCER® Adjustable Lock for example, is a portable heavy duty lock that consists of 10 gauge chrome plated spring steel body and the locking component is surrounded with cast iron, preventing tampering. This device allows for a tight fit

Theft of a truck can happen within a few seconds

on virtually all containers and trailers and is secured with an ABLOY® lock that provides superior performance in weather and is highly resistant to physical attack.

Tractor Security

Thieves are not only stealing loaded trailers, but also taking the tractors. These tractors in some cases are then used to steal other

trailers. Properly securing these expensive tractors starts with driver education and responsibility. Drivers must always lock doors, turn off the truck and secure the tractor brakes with a high security air cuff

Air brake locks must be user friendly

lock, preventing the release of truck and trailer brakes. Theft of a truck can happen within a few seconds of a driver leaving his truck unattended at a truck stop. Air brake locks must be user friendly, allowing the driver to easily attach the device to his brake nozzles within seconds. Properly securing a tractor can help prevent thieves from easily driving away with not only a loaded trailer, but an expensive tractor.

The Air Cuff™ Lock is an example of a brake lock that is a two part lock made of high impact resistant material and secured with an ABLOY® lock cylinder. The lock is user friendly and is installed on the brakes within seconds, completely locking out the tractor and trailer brakes.

Preventing seal integrity has become more of an issue since 9/11, especially with shipments of food and chemicals. Shippers have refused loads that show evidence of seal tampering, costing companies thousand of dollars. We have come to the point that we need to protect the seals themselves. Seal guard locks provide a barrier box that prevents unauthorized removal of cargo seals. These devices are made of a high strength steel and withstand physical attack. These units can be used in tandem with trailer locks to protect the cargo seals' integrity.

With heightened security for the transportation industry, physical security has merged with high tech tracking devices. These tracking devices enable a transportation company to accurately locate their assets in transit. There are an abundant

Basic GPS units have been around for years with great success.

amount of tracking devices on the market today, each having their own advantages and disadvantages depending on your companies needs. Three of the most popular types of tracking devices include GPS, A-GPS (Assisted GPS and CDMA {Cellular}). With any tracking technology your company chooses, researching the product and the supplier is very important, given this can be an expensive investment. Companies should compare technologies and run specific tests with their equipment and staff, making sure the technology is compatible with their company.

Tracking Technology

Basic GPS units have been around for years with great success. These devices collect and store data such as time, latitude and

These devices are accurately able to show stops and starts, location, speed and other important data.

longitude from GPS satellite while the unit is in use. Once the unit returns, the information on where the unit has been can be downloaded onto a computer into easy to read maps. These devices are accurately able to show stops and starts, location, speed and other important data. GPS devices tend to be bulky in nature and require external antennas mounted on trailers and containers and must be able to "see the sky" in order for the unit to work effectively. This limits the use of units in underground parking garages and warehouses, where thieves are more likely to transport stolen cargo and equipment. These units also tend to be "power hungry", limiting their battery and power life. These units are very effective for those companies who require a fleet management device for locating their fleets and for time management of deliveries.

A-GPS is a fairly new type of GPS device that has all of the features of basic GPS, but is more effective in areas where GPS is not. A-GPS is able to be very covert and does not have to "see the sky", with an internal antenna in some cases. Many of these devices can be the size of a cell phone or smaller. Many devices have self contained batteries, making it completely portable allowing them to be concealed in freight. This allows less chance of a thief discovering and disengaging the unit. A-GPS allows for real time tracking of an asset that can easily be seen on a laptop or computer, in real time sometimes reporting locations within seconds of "calling" the unit. With the compatibility of these units and complete user control, allows security personnel to have an exact location of their asset at their fingertips. Another feature A-GPS offers is "geofencing", which allows security personnel to define a location they want their asset to stay inside of, (ex. Terminal or certain route) and are notified via email or cell phone when their asset leaves the defined "geofence". Accurate locations of assets with this technology are made easier, with mapping technology that shows exact street names and major landmarks. These devices are also less "power hungry", therefore allowing a longer battery life, in some cases as long as a month. This makes these units more effective for longer shipments along the supply chain. Some of these newer devices use CDMA technology, which allows the unit to incorporate the cellular towers and technology for more

Companies combining the "tried and true" physical security products with the new technologies of the tracking devices,

accurate locations. Combining all of these features allows A-GPS/CDMA devices to provide a complete range of anti-theft and supply chain management tracking applications.

Conclusion

Technology is evolving everyday, with more sophisticated tracking devices and physical security options for the end user. Companies looking to secure their entire fleet are now combining the "tried and true" physical security products with the new technologies of the tracking devices, allowing for a complete security program. Ultimately saving the company money and lowering the risk of their cargo being stolen. Security programs must be thought out and well planned in order for the chain to be effective.

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Transport Security, Inc. / ENFORCER® has been providing high security cargo solutions for trucks, trailers and containers for over 20 years.

Membership Additions

The TLP & SA wishes to welcome new members:

Kellie C. Reis .-Wilber Law Firm-Bloomington, Il

Welcome Back:

Fritz Damm, Esq.-Clark Hill, PLC-Detroit, MI

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