May 2010 Vol. 45, No. 3

ILLINOIS STATE BAR ASSOCIATION

ENERGY, UTILITIES, TELECOMMUNICATIONS & TRANSPORTATION LAW

The newsletter of the Illinois State Bar Association's Section on Energy, Utilities, Telecommunications & Transportation Law

Central District of Illinois finds federal question jurisdiction over interstate based freight charge complaint

By William D. Brejcha; Scopelitis, Garvin, Light, Hanson & Feary, P.C.

In *Old Dominion Freight Lines, Inc. v. Old Colony Baking Company, Inc.*, 2010 U.S. Dist. LEXIS 4774 (C.D. Ill., 1/21/10), the U.S. District Court for the Central District of Illinois struck Old Dominion's original complaint seeking recovery of unpaid interstate freight charges because the complaint failed to adequately establish subject matter jurisdiction. The District Court directed plaintiff to file an Amended Complaint which "properly set forth the basis for federal jurisdiction." Old Dominion's Amended Complaint alleged that it was a motor carrier transporting goods and merchandise in interstate commerce, it was subject to federal court jurisdiction under 49 U.S.C. §13501, and its tariff rate based claim for $7,512.73 was subject to 28 U.S.C. §1337 federal question jurisdiction.

In addressing whether those allegations created federal question jurisdiction, U.S. District Court Judge John A. Gorman first cited 49 U.S.C. §13501 for the proposition that the District Courts maintained jurisdiction to enforce Surface Transportation Board orders and to enjoin or suspend any Surface Transportation Board order for the payment of money. The District Court next found that while the language of §13501 did not explicitly confer federal jurisdiction over claims for interstate freight charges such as Old Dominion's, the Supreme Court decision in *Thurston Motor Lines v. Jordan K. Rand, Ltd.*, 460 U.S.

Continued on page 2

INSIDE

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Continued from page 1

533 (1983) had previously held that there was federal question jurisdiction over motor carrier freight charge actions based on rates published in tariffs which were then required by the Interstate Commerce Commission, a regulatory agency whose existence was statutorily terminated in 1995.

The District Court also cited *Old Dominion Freight Line v. Allens Distribution, Inc.*, 86 F.Supp. 2d 92 (E.D.N.Y. 2000) in support of its finding of federal question jurisdiction. In that case, the New York District Court also relied upon *Thurston* to support federal question jurisdiction after both deregulation and the enactment of the Interstate Commerce Commission Termination Act of 1995. This 2000 *Old Dominion* decision has been criticized in both *On Track Transp., Inc. v. Lakeside Warehouse & Trucking, Inc.*, 245 F.R.D. 213, 225 (E.D.Pa. 2007) and *Central Transp. Intl. v. Sterling Seating*, 356 F.Supp. 2d 786, 790 (E.D. Mi. 2005) (no federal question on tariffs not filed with a regulatory agency). Accordingly, while Judge Gorman's recent decision can be cited for the proposition that federal question jurisdiction exists for tariff based freight charge claims, the rationale on which the District Court's conclusion is founded may be subject to question, notwithstanding Judge Gorman's citation to 49 U.S.C. §13501. ■

tion, should be used to determine subsidies for the extension of broadband networks.

The Commission also asks parties to recommend alternative means for distributing support for broadband services.

Although the NOI and NPRM reflect widespread agreement among the Commissioners that reform is necessary, the separate statements of the Commissioners reflect disagreement about whether the reverse auctions recommended in the National Broadband Plan are the best means for distributing support as suggested in the NOI. Disagreement about the replacement distribution mechanism could stall current reform efforts just as it has stalled past reform efforts. ■

District Court finds shipper's Carmack claim valid, but finds shipper negligence claim preempted

By William D. Brejcha; Scopelitis, Garvin, Light, Hanson & Feary, P.C.

Judge Blanche Manning of the U. S. District Court for the Northern District of Illinois denied part of a logistics company's Rule 12(b)6 motion to dismiss a 49 U.S.C. Section 14706 Carmack Amendment cargo loss claim, but granted the motion to the extent it claimed Carmack preemption of a related state law negligence claim in *Eastco International Corporation v. Coyote Logistics, LLC*, 2009 U.S. Dist. LEXIS 118136 (N. D. Ill., 12/18/2009). The case arose out of an Eastco shipment of a mold from Illinois to Ohio where the mold was lost in transit. Eastco had hired Coyote "to transport the missing mold." But Coyote's Rule 12(b)6 motion to dismiss alleged that Coyote had only acted as a broker on the shipment and hired motor carrier Vitran Express to actually transport the load such that only carrier Vitran could be liable under Carmack. Coyote's motion further alleged that Eastco's negligence claim related to the cargo loss was preempted by Carmack and should be dismissed as Congress had designated Carmack as the exclusive shipper cargo loss and damage cause of action concerning interstate transportation.

The facts which Eastco alleged are as follows. After Eastco's shipping personnel hired Coyote to move the mold for $110, Eastco issued its Straight Bill of Lading naming the shipment details. Eastco's Bill of Lading identified Coyote as the carrier. The Bill of Lading also recited that shipper Eastco was familiar with and accepted "all of the terms and conditions ... including those on the back thereof, set forth in the classification or tariff which governs the transportation of this shipment." The Bill of Lading was attached to the Eastco Complaint. While Eastco delivered the cargo to Coyote, Coyote did not transport the mold itself, but instead tendered the mold to Vitran Express for the movement to Ohio. But the mold was not delivered and has never been found.

Once Eastco learned that its cargo was missing, it filed a claim with Vitran Express and Vitran paid Eastco $700 based on a Vitran tariff provision that limited the carrier's cargo loss and damage liability to only $10 per pound. Eastco's state court lawsuit against Coyote sought recovery of $18,300 (the $19,000 replacement cost mold less Vitran's $700 payment). Eastco's suit alleged claims under the Carmack Amendment and a state law negligence theory. Coyote removed the case to federal court and filed a Rule 12(b)6 motion to dismiss both Counts. As to the Carmack Amendment claim, Coyote asserted that it had no Carmack liability as it was not a carrier and that even if it was a carrier, Eastco's Bill of Lading expressly accepted Vitran Express' tariff rule which limited Eastco's cargo damage recovery to $10 a pound. Eastco also asserted that the Carmack cause of action preempted all state law claims related to interstate cargo loss and damage such that the negligence Count should be dismissed with prejudice.

Judge Manning first addressed Coyote's attack on the Carmack Amendment claim by noting both the statutory distinctions between brokers and carriers and the case law holding that the Carmack Amendment claim

ENERGY, UTILITIES, TELECOMMUNICATIONS & TRANSPORTATION LAW

Published at least four times per year.

Annual subscription rate for ISBA members: $20.

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OFFICE
Illinois Bar Center
424 S. Second Street
Springfield, IL 62701
Phones: 217-525-1760 OR 800-252-8908
www.isba.org

EDITOR
William D. Brejcha
30 W. Monroe
Suite 600
Chicago, IL 60602

MANAGING EDITOR/ PRODUCTION
Katie Underwood
kunderwood@isba.org

applied only to carriers and not to brokers. While the District Court acknowledged that brokers arrange for the shipment of goods by third party carriers, the District Court also cited the Federal Motor Carrier Safety Administration broker regulation at 49 CFR Part 371.2(a) which directed that carriers who accepted loads from shippers for transport did not become brokers merely by tendering those accepted loads to third party carriers. The District Court also cited case law holding that federal pleading standards required Eastco to only plead enough facts "to plausibly suggest its right to relief" and that Eastco had satisfied that standard by pleading that Coyote was a carrier and attaching the Bill of Lading which named Coyote as the carrier performing the transport.

As to Coyote's theory that Eastco's Bill of Lading had incorporated Vitran Express's tariff by reference, the District Court found that while the Bill of Lading language did incorporate the terms of "the tariff which governs the transportation of this shipment," the Bill of Lading never identified which tariff "governed" the transportation of the mold. The District Court also noted that Coyote had neither cited any other document demonstrating that Vitran's tariff governed the transport nor pointed to the Vitran tariff as being attached to Eastco's Complaint. On those bases, the District Court rejected the tariff based component of Coyote's Motion to Dismiss.

As to preemption, the District Court cited the 7th Circuit decision in *REI Transp., Inc. v. C. H. Robinson Worldwide, Inc.*, 519 F.3d 693, 697 (7th Cir. 693, 697-8 (2008) for the proposition that the Carmack Amendment generally preempts separate state law causes of action that a shipper might pursue against a a carrier for lost or damaged goods unless the claims try to remedy some "separate and independently actionable harm." The District Court found that the only relationship between Coyote and Eastco that was at issue was Coyote's loss of Eastco's cargo. As Eastco alleged that Coyote was the carrier who lost its goods in transit, the District Court held that the negligence claim related to the same conduct which was the subject of the Carmack Amendment claim such that the negligence claim was preempted.

Judge Manning's decision based on the complaint allegations and the law was appropriate. It appeared that Coyote held out carrier services to Eastco such that the mere fact it tendered the load to a third party carrier after Eastco issued its bill of lading naming Coyote the carrier failed to render Coyote as a broker in this transaction. Indeed, the District Court properly cited 49 CFR Part 371.2(a) in finding that a carrier does not become a broker by merely subcontracting its carrier obligations to a third party. And given Coyote's status as being identified as the carrier on the Eastco Bill of Lading, the District Court properly found that the Bill of Lading did not incorporate Vitran Express' tariff. Indeed, if the Bill adopted any tariff, it would have adopted Coyote's tariff (if Coyote had one).

The District Court also properly resolved the preemption issue. As Carmack is the exclusive cargo loss and damage remedy for interstate transport and as Easto alleged that Coyote was the carrier, the negligence claim was clearly preempted and properly dismissed. But what if Eastco had alleged alternatively that Coyote was a broker and that Coyote had negligently entrusted the load to Vitran? Would Carmack have also preempted that theory? These very good questions will be answered if they are presented in future litigation. ■