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9th Circuit rejects L.A. port's owner operator prohibition

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

The U.S. Court of Appeals for the Ninth Circuit has rejected the Port of Los Angeles' ("the Port") plan to require motor carriers providing drayage services at the Port to exclusively use employee drivers in those operations in *American Trucking Associations, Inc. v. City of Los Angeles*, Case No. 10-56465, decided 9/26/11.[1] The case grew out of the Port's 2008 plan to insure adequate drayage service was available to service planned expanded Port facilities. The plan required motor carriers serving the Port to enter "concession agreements" which included some 14 requirements that motor carriers had to meet as a condition for their pickup of containers at the Port for movement to customers, railroads, or other motor carriers for further transport.

The motor carrier concession agreements were adopted as a part of the Port's "Clean Truck Program" which featured a ban on older and higher polluting tractors on Port property, incentives for acquisition of new and cleaner trucks for Port operation, and a penalty system intended to

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District court refuses to reconsider Carmack preemption of cargo claim

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

In *Personal Communications Devices v. Platinum Cargo Logistics, Inc.*, Case No. SACV 09-00516 DDP (ANx), July 29, 2011, the U.S. District Court for the Central District of California denied plaintiff's Motion for Reconsideration of a partial grant of summary judgment in cargo claim litigation. Plaintiff Personal Communication Devices ("PCD") had tendered seven shipments of mobile phones to Defendant Platinum Cargo Logistics, Inc. ("Platinum") for transport from California to Kentucky. Platinum then subcontracted the services of codefendant Celestial Freight Solutions, LLC ("Celestial") to perform the actual transport.

PCD refused Platinum's standard cargo liability limitations and elected a higher declared value of $35,000 per shipment or a total of $245,000 for all seven shipments. PCD also procured cargo insurance of $5 million for each truckload of its mobile phones that were in issue. Additionally, per PCD, the parties had agreed to certain security procedures for the moves, including the separate shipment of each of the seven shipments. Contrary to this agreement, PCD claimed Platinum had unilaterally consolidated all seven shipments into a single trailer for a single movement of mobile phones which were valued at $7.7 million. The day after Celestial took control of the shipment, the tractor/trailer and the $7.7 million in mobile phones were stolen from a storage yard and never recovered.

PCD then sued Platinum, Celestial, and the truck driver for (1) breach of contract (against only Platinum); (2) breach of bailment; (3) negligence, gross negligence, recklessness and/or willfulness; and (4) conversion. On October 6, 2009, the court granted Platinum's Motion to Dis-

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discourage motor carrier use of older tractors in drayage operations. As the Port deemed the motor carriers themselves as being better able to acquire and maintain newer and cleaner trucks than independent contractor owner operators who had leased their trucks to the motor carriers, the concession agreements required Port motor carriers to ultimately phase out their use of owner operators in Port drayage operations and to exclusively use motor carrier tractors operated by employee drivers in those operations.

The American Trucking Associations, Inc. ("ATA"), the nation's leading trucking industry trade association, challenged several concession agreement provisions as being unlawful state action on matters that had been preempted by the Federal Aviation Administration Authorization Act ("FAAA Act"), 49 U.S.C. §14501, *et seq.* After ATA obtained a preliminary injunction against some concession agreement terms, the U.S. District Court for the Central District of California held that none of the challenged provisions were preempted by the FAAA. The District Court found some questioned provisions were not preempted because they did not relate to motor carrier rates, routes, and services while other provisions were allowed because the Port had required the agreement provision as a market participant in the operation of its Port business and not as a market regulator pursuant to 49 U.S.C. §14501(c)(1). The District Court also sustained the agreement's requirement for Port motor carriers' creation and administration of regular maintenance plans as being responsive to motor carrier safety and therefore not preempted by the FAAA per 49 U.S.C. §14501(c)(2)(A). ATA appealed from the District Court's decision.

ATA challenged five concession agreement provisions on appeal. The five requirements were 100 percent employee drivers, approval of off-street parking plans, maintenance plans for permitted trucks, posting placards on trucks with phone numbers for public reports of truck emissions, safety, and compliance with Plan requirements, and demonstration of financial fitness to meet concession agreement requirements. ATA contended the District Court's decision was based on a misinterpretation of applicable law. The Ninth Circuit ultimately sustained most Port concession agreement requirements, but the Court found the requirement that motor carriers must use exclusively employee drivers in Port drayage operations to be unlawful.

The Court's opinion noted the FAAA Act was enacted in order to prevent states from interfering with deregulation of the interstate trucking business. The FAAA Act provided that "a state[or] political subdivision of a State ... may not enact or enforce a law, regulation, or other provision having the force and effect of law related to a price, routes or service of any motor carrier ... with respect to the transportation of property," 49 U.S.C. §14501(c)(1). In addressing the independent contractor prohibition, the Ninth Circuit found that specific requirement unlawful and subject to federal preemption as that Port requirement sought to impact third party behavior unrelated to the motor carrier concessioner's obligations to the Port.

While the Ninth Circuit recognized the Port's valid interest in the continued stable provision of drayage services, the Court found the Port could not obtain that stability by unilaterally inserting itself between the relationship between any Port motor carrier and its drivers. As the Port did not pay driver wages, the Court found the Port could not impose requirements on motor carriers as to the status of its drivers as either employees or contractors so as to impact driver wages in favor of the drivers. As the Port did not pay the drivers, the Court also rejected both the Port's argument and the District Court's holding that the Port had been a market participant in imposing the exclusive employee requirement. One member of the Ninth Circuit panel dissented, stating his view that some concession agreement requirements other than the exclusive employee requirement were also preempted by the FAAA Act and therefore also unlawful.

There is no question that the Port's attempted interference with the motor carrier/driver relationship would affect the motor carriers' service. As such, the Port's requirement for motor carrier use of exclusively employee drivers in Port drayage operations was subject to federal preemption under the FAAA Act and therefore unlawful. ■

Scopelitis partner Christopher McNatt from the firm's Los Angeles, CA office served as a member of the ATA Litigation Team led by ATA attorney Robert Digges, Jr. through trial and at the Ninth Circuit.

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miss PCD's state law claims based on the federal preemption of state law cargo loss and damage claims under the Carmack Amendment, 49 U.S.C. §14706.

Platinum next moved for partial summary judgment, seeking to limit its Carmack Amendment liability to PCD's agreed declared value of $35,000 per shipment on each of the seven stolen shipments as opposed to the $7.7 million in actual damages that PCD claimed in its lawsuit. Celestial joined in Platinum's motion with no objection from PCD. On September 22, 2010, the court granted PCD's and Celestial's Partial Summary Judgment Motion and limited the damages as against all defendants to $245,000.

PCD next moved for reconsideration, asserting that the court had failed to consider that Platinum was obligated to comply with the security provisions of their agreement as a condition precedent to the application of the $35,000 per load cargo valuation. PCD also cited *Royal Sun Alliance Ins. PLC v. UPS Supply Claim Solutions, Inc.*, 2010 WL 3000052 (S.D.N.Y., July 23, 2010), claiming that subcontractor Celestial could not claim the liability limitations that PCD had agreed to give Platinum.

The court first rejected PCD's motion as to Platinum, finding that Carmack allowed carriers to limit their cargo loss and damage liability to some reasonable amounts less than the cargo's actual value in 49 U.S.C. §14706(c)(1)(A). In order to limit liability under Carmack, the court found a carrier must (1) give the shipper a reasonable opportunity to choose liability limits; (2) obtain an agreement as to the shipper's choice of the maximum carrier liability; and (3) issue a bill of lading prior to shipment per *Hughes Aircraft Co. v. North Am. Van Lines*, 970 F.2d 609, 611-12 (9th Cir. 1992). In granting partial summary judgment to Platinum, the court concluded that PCD satisfied each of *Hughes* elements. PCD's motion, however, did not contest the conclusion that Platinum had met the *Hughes* elements and instead argued that Platinum had to show its compliance with the security requirements before Platinum could invoke the Carmack liability limit defense.

In its decision to deny PCD's Motion for Reconsideration, the court first noted PCD's motion relied on out of circuit case law holding that limited liability provisions must be "strictly construed" and "carefully scrutinized." The court further found that PCD's cited precedent also held that the *Hughes* elements constituted the standard for determining whether liability limits would be enforced or not. The court then concluded that PCD had cited no case law holding that carriers must meet some further standard beyond the *Hughes* test to successfully limit their liability. The court added that if it accepted PCD's argument, its ruling would wrongly render the *Hughes* standard to be meaningless.

The court also rejected PCD's motion as to Celestial. The court first noted that PCD had not previously objected when Celestial had joined in the motion by asserting that subcontractors could not claim the benefit of the original carrier's liability limit. The court next found that the *Regal & Sun Alliance Ins., PLC* case on which PCD relied upon was decided in New York and was not binding precedent on the California District Court. Last, the court stated that *Regal & Sun Alliance Ins., PLC* had been decided prior to PCD's opposition to Platinum's Partial Summary Judgment Motion and some five weeks before the court's hearing on Platinum's motion, but was not raised at those stages of the case. The court then concluded that the *Regal & Sun Alliance Ins., PLC* decision could not constitute any basis for reconsidering Celestial's Partial Summary Judgment. ■

The author notes that his partner Chris McNatt from Scopelitis' Los Angeles, CA office was one of the counsel representing defendant Celestial Freight Solutions, LLC in the case discussed in this article.

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