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CARMACK TO THE RESCUE

Federal law protects mover in storage-in-transit lawsuit

By Jonathan Todd and Justin Clark

This summer, an interstate van line was granted a motion to dismiss all state law claims associated with an alleged contract for storage of household goods. The court observed that the execution of a contract for storage does not permit recovery under state law because, even when separately contracted, the service was incidental to interstate transportation and was thus construed as storage-in-transit.

As interstate movers are well aware, the Carmack Amendment provides a uniform national standard of liability for common carriers providing interstate service. In general, the Carmack Amendment governs claims and limits carrier liability for loss, damage or injury to cargo, and pre-empts common or state law remedies related to such loss, damage or injury.

This case, *Lloyd v. All My Sons Moving & Storage of Southwest Florida* (2016 U.S. Dist. LEXIS 92962 (M.D. Fla. July 18, 2016)) shows why care must always be taken to ensure that the limitation of liability and pre-emption available under the Carmack

Amendment extend as broadly as possible across the portfolio of interstate moving services.

THE BACKGROUND

The plaintiff hired All My Sons Moving & Storage to load her goods in Florida, store the goods for an indefinite period of time, and then ultimately deliver the goods to her residence in Connecticut. Her household goods were held in storage at a Florida location for approximately one year until she provided instructions for All My Sons to complete delivery in Connecticut.

The plaintiff alleged that delivery did not meet her expectations because the shipment involved multiple deliveries over a lengthy period of time and her goods sustained loss and damage. She also alleged that the total cost of her services exceeded the contracted amount and that not all contracted services were performed.

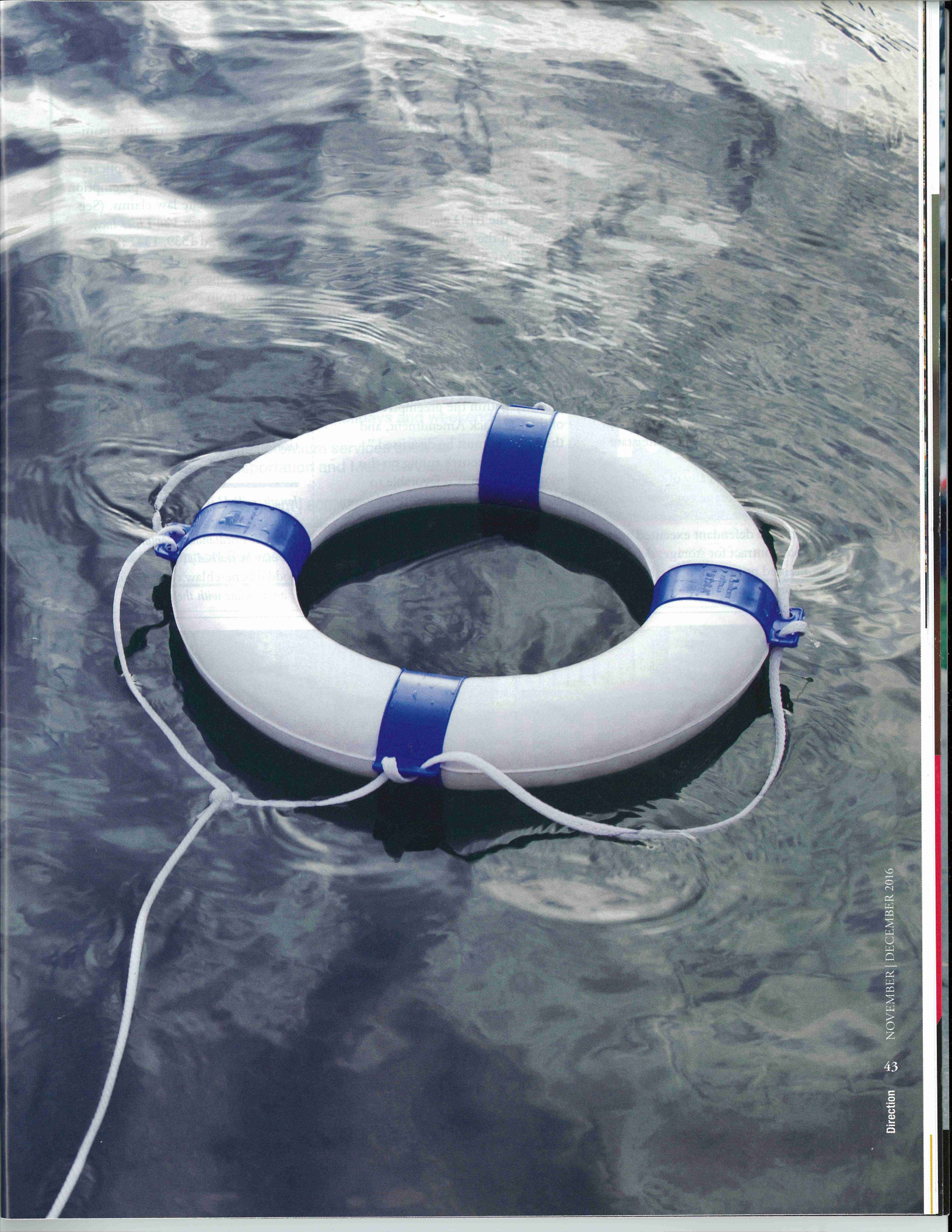
Furthermore, she alleged the existence of a contract for storage services that were to be provided in addition to an interstate household goods move. The plaintiff sought damages for breach

of contract, carrier liability under the Carmack Amendment, and intentional infliction of emotional distress (IIED). She asserted that the breach of contract and IIED claims arose out of a contract for storage rather than the interstate household goods transportation for which she separately contracted.

THE COURT DECISION

All My Sons moved for dismissal, relying on the Carmack Amendment. In response, the plaintiff maneuvered to position the breach of contract and IIED claims as arising directly as a result of the storage services, rather than the interstate moving services. This strategy was an attempt to maintain both state law claims in the face of All My Sons' motion relying on the Carmack Amendment.

Despite the plaintiff's attempt to divide the services she hired All My Sons to perform, the court disagreed with this parsing of the services. The court was unconvinced that the existence of a separate contract for storage renders associated claims outside the scope of Carmack preemption, and it



granted All My Sons' motion to dismiss the counts for breach of contract and IIED. Specifically, the plaintiff failed to demonstrate that the state law claims were in fact separate and distinct from the performance of interstate transportation services and the alleged loss and damage to her goods.

The plaintiff's breach of contract claim suffered from the fact that there was no evidence that the storage service, while allegedly agreed and performed under a separate contract, was separate and distinct from the interstate transportation service. Rather, the goods were at all times under All My Sons' care, custody and control for performance of interstate transportation services.

The court specifically observed that the purported storage contract had no bearing on the case: "Even assuming plaintiff and defendant executed a separate contract for storage, defendant maintained possession of the belongings from the time they left plaintiff's

Florida residence until they were delivered to her Connecticut residence. ... This illustrates that storage of the belongings was part of the agreed transportation."

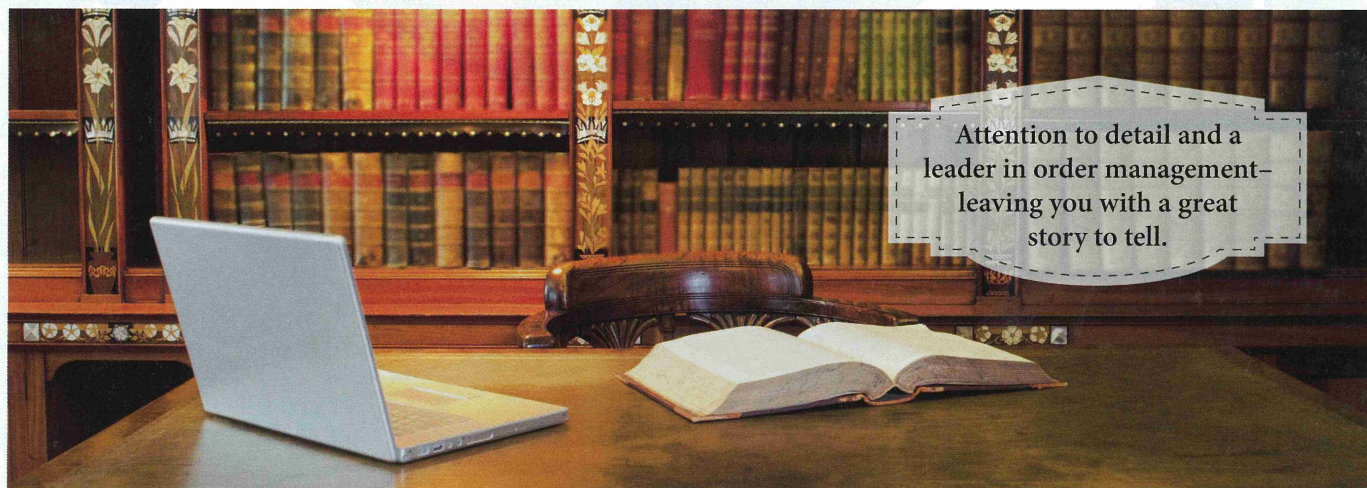
As for the IIED claim, the court noted that the plaintiff contended only that All My Sons' alleged actions in connection with the delivery of her goods caused IIED. She did not argue that IIED resulted specifically from the defendant's activities in performance of the storage services. In the words of the court, the allegation of IIED in the context of delivery services "falls squarely within the preemptive scope of the Carmack Amendment, and therefore ... must be dismissed."

While the court's ruling on this motion to dismiss is favorable to household goods movers, the outcome could have been very different if this shipment had been handled in another manner. Suppose, for example, that the shipment converted to permanent storage during the year-long service.

Under such a scenario, the termination of interstate transportation service would certainly complicate the assertion of Carmack preemption to dismiss the state law claims. (See *Hansen v. Wheaton Van Lines Inc.*, 486 F. Supp. 2d 1339, 1347 (S.D. Fla. 2006).) Carmack preemption terminates upon the conversion of the shipment from storage-in-transit to permanent local storage.

Of course, operational best practices are always dependent on the services actually requested and performed. Conversion to permanent storage may be requested by a shipper or required if interstate transportation in fact terminates. ■

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