NEWSLETTERS

Federal Preemption, Brokers and Cargo Claims | A Primer and Update

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U.S. Constitution

Article VI: This Constitution, and the laws of the United States which shall be made in pursuance thereof; and all treaties made, or which shall be made, under the authority of the United States, shall be the supreme law of the land; and the judges in every state shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding.[i]

Article 1, Section 8, Clause 3: Congress shall have the power …To regulate commerce with foreign nations, and among the several states, and with the Indian tribes…[ii]

F4A: A State...may not enact or enforce a law...related to a price, route, or service of any... broker…with respect to the transportation of property.[iii]

A small group of men in Philadelphia in 1787 recognized that commerce between the states should be governed by federal, rather than state law. The Commerce Clause[iv] of the U.S. Constitution gave the federal government power to regulate commerce. Since then, federal regulation of the transportation industry has waxed and waned through the formation of the Interstate Commerce Commission,[v] enactment of the Motor Carrier Act of 1980,[vi] F4A,[vii] and the sunset of the Interstate Commerce Commission by ICCTA.[viii]

Transportation was heavily regulated until 1980; at that time, Congress decided to allow market conditions, rather than government regulations, to determine rates and charges. The Motor Carrier Act of 1980 did not remove federal preemption. Congress reaffirmed federal preemption of transportation in 1994 in the Federal Aviation Administration Authorization Act (F4A). Pursuant to F4A, no state may enact or enforce any law, rule, regulation, standard, or other provision having the force and effect of law related to a price, route, or service of any motor carrier of passengers, motor carriers of property, freight forwarders or brokers.[ix]

In 1995, the ICC Termination Act sunset the Interstate Commerce Commission and gave shippers and carriers more freedom to contract. A carrier providing transportation may enter into a contract with a shipper to provide specified services under specified rates and conditions. [x] If the parties expressly, in writing, waive certain provisions of the Interstate Commerce Act, those provisions are legally waived.

Although transportation has changed considerably and the degree of regulation has changed, the need for federal preemption remains. To ensure enforceability, contracts for transportation should

include express waivers of the provisions of the Interstate Commerce Actthat are not applicable. However, careful drafting of the waiver language is critical. Because it is critical to retain federal preemption, it is important *not* to waive the entire Interstate Commerce Act.

Today, the industry relies heavily on brokers[xi] to arrange transportation of cargo. Federal preemption in regards to brokers is explicit in F4A.[xii] However, plaintiffs' attorneys continue to file suits against brokers, based on state causes of actions. The courts continue to reaffirm federal preemption and to dismiss state causes of action because they are preempted by federal law. To maintain this favorable treatment, brokers must be careful to not give up their right to federal preemption.

Examples of some recent cases regarding federal preemption of claims against brokers are *Mecca & Sons Trucking v. White Arrow,***[xiii]** *Nature's One, Inc. v. Spring Hill Jersey Cheese, Inc., v. WD Logistics, L.L.C. et al,***[xiv]**and *Georgia Nut Company v. C.H. Robinson Company.***[xv]**

In *Mecca*, Trader Joe's purchased approximately $81,000 worth of cheese from Singleton Dairy. The Master Vendor Agreement between Trader Joe's and Singleton gave Trader Joe's the right to reject delivery of the cheese if the temperature during transit exceeded 40 degrees.

Singleton Dairy retained Mecca, as a broker, to arrange transportation of the cheese to Trader Joe's. Mecca arranged for White Arrow, a motor carrier, to provide the final leg of the move. The rate quote between White Arrow and Mecca specified a required temperature in transit of no more than 40 degrees.

When the shipment arrived at Trader Joe's, the temperature recorders onboard showed the ambient temperatures had exceeded 40 degrees during transit. Trader Joe's rejected 11 of the 17 pallets of cheese, based on the temperature readings. The rejected cheese was moved to a cold storage warehouse and inspected seven weeks later. The inspector found no damage to the cheese, even after this much time had elapsed.

Mecca filed a complaint against White Arrow in the Superior Court of New Jersey. White Arrow removed the case to Federal Court. Mecca then amended its complaint to add Trader Joe's as a defendant. The Second Amended Complaint asserted claims of negligence, breach of contract and indemnification against White Arrow and a claim for wrongful rejection against Trader Joe's.

White Arrow filed a cross-claim against Trader Joes' for wrongful rejection. Trader Joe's filed a cross-claim for indemnification against White Arrow. The subject case is in regards to the parties motions for summary judgment.

Trader Joe's motion for summary judgment on Mecca's claim and White Arrow's cross-claim were in regards to Trader Joe's alleged wrongful rejection of the cheese. Relying on the Master Vendor Agreement between Trader Joe's and Singleton, which gave Trader Joe's the right to reject a shipment if the temperatures during transit exceeded 40 degrees, the court granted Trader Joe's motions for summary judgment.

As mentioned above, Mecca's Second Amended Complaint asserted claims of negligence, breach of contract and indemnification against White Arrow.

The contract between Mecca and White Arrow provided that "the Carrier's liability for cargo loss or damage shall be governed by the provisions of [the Carmack Amendment] 49 U.S.C. § 14706. [xvi] The court interpreted Mecca's breach of contract claim as a cause of action under Carmack. Mecca moved for summary judgment on its Carmack claim against White Arrow.

White Arrow's motion for summary judgment asked the court to dismiss the Second Amended Complaint against it, based on federal preemption of the negligence and indemnification causes of action and arguing that the Carmack claim failed in that Mecca failed to prove that the cheese was damaged in transit.

The court granted partial summary judgment for Mecca on the issue of Carmack liability, finding Trader Joe's rejection of the cheese reasonable and sufficient to satisfy the damage at destination element of the shipper's prima facie case under Carmack.

The court found for White Arrow on the issue of Carmack preemption of Mecca's state law claims.

In September 2017, the court award Mecca damages, including the amount it paid to Singleton based on the invoice value of the rejected goods, plus the costs of transporting, storing and disposing of the cheese after its rejection

White Arrow has appealed to the Third Circuit Court of Appeals, asserting the following arguments: (1) White Arrow has demonstrated that Trader Joe's wrongfully rejected the cheese; (2) Mecca has not proven a prima facie case of liability against White Arrow; (3) Mecca has not overcome White Arrow's position that Mecca has no standing to sue White Arrow for its damages; and (4) Mecca is not entitled to recover damages.[xvii]

In the *Nature's One* case*,* WD Logistics (a broker), at the request of Triple T Dairy Commodities, arranged for transportation of five shipments of organic nonfat dry milk from Triple T to a company called Spring Hill Jersey Cheese. Spring Hill, in turn supplied the dry milk to Nature's One. The milk was later found to be contaminated with egg allergens.

Nature's One sued Spring Hill; Spring Hill sued WD Logistics. Four of Spring Hill's claims against WD Logistics alleged that WD Logistics' negligence was the proximate cause of the milk's contamination. Spring Hill also brought claims against WD Logistics for indemnity and contribution.

WD Logistics filed a motion for summary judgment on the basis that Spring Hill's state-law claims were preempted by F4A.[xviii] The court agreed and ruled correctly that claims for negligence against brokers are preempted under F4A.[xix]

The court acknowledged that contract-based claims against brokers are not preempted by F4A, but as no contract-based claims had been pleaded, nor was a contract between Spring Hill and WD Logistics included in evidence, WD Logistics' motion for summary judgment was granted.[xx]

In *Georgia Nut,* **[xxi]** shipper Georgia Nut filed a negligence-based suit in federal court against CH Robinson and All Interstate Trucking for failure to properly deliver a shipment of almonds. The court dismissed the causes of action against Robinson for negligent hiring and supervision, based on F4A preemption. Georgia Nut filed suit again, this time for breach of contract, alleging that Robinson failed to conduct due diligence in selecting the carrier. Robinson argued that F4A preempted a breach of contract claim against a broker when based on the same conduct alleged in a previously

preempted negligent carrier hiring/supervision claim and that the contract claim could not stand because the shipper/broker contract did not contain a provision requiring Robinson to pay cargo claims.

The court ruled that because F4A does not preempt breach of contract claims, the contract count is not preempted and that the contract need not contain an express damage provision for a breach of contract claim to be viable.

These three cargo claim cases illustrate the importance of maintaining federal preemption in broker's contracts. Even though you should include waivers of conflicting provisions of the Interstate Commerce Act, it is important *not* to waive the entire Interstate Commerce Act. Without federal preemption, the protection given to interstate commerce by the Constitution would be lost and brokers would be subject to differing, onerous claims in each state.

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[i] Article VI U.S. Constitution

[ii] Article 1, Section 8, Clause 3 of the U.S. Constitution

[iii] Federal Aviation Administration Authorization Act of 1994, Pub. L. 103; 49 U.S.C. § 14501(c)(1)(2006).

[iv] Article 1, Section 8, Clause 3 of the U.S. Constitution

[v] Interstate Commerce Act of 1887

[vi] Motor Carrier Act of 1980, Pub. L. No. 96-296, 94 Stat. 793

[vii] Federal Aviation Administration Authorization Act of 1994, Pub. L. 103

[viii] Interstate Commerce Commission Termination Act, Pub. L. No. 104-88,109 Stat. 803,804.

[ix] 49 U.S. Code § 14501(b)(1)

[x] 49 U.S. Code § 14101(b)(1)

[xi] 49 U.S. Code § 13102(2)

[xii] 49 U.S.C. § 14501(c)(1)(2006).

[xiii] Mecca & Sons Trucking v. White Arrow 2016 WL 5859018 (D.N.J. 2016) on appeal to the Third Circuit.

[xiv] Nature's One, Inc. v. Spring Hill Jersey Cheese, Inc. , v. WD Logistics, L.L.C. et al, 2017 U.S. Dist. LEXIS 160888

[xv] Georgia Nut Company v. C.H. Robinson Company 2018 WL 2009499, 2018 U.S. Dist. LEXIS 71806 (N.D. Ill. Apr. 30 2018)

[xvi] 49 U.S.C. § 14706

[xvii] Mecca & Sons Trucking v. White Arrow 2016 WL 5859018 (D.N.J. 2016) on appeal to the Third Circuit.

[xviii] Nature's One, Inc. v. Spring Hill Jersey Cheese, Inc. , v. WD Logistics, L.L.C. et al, 2017 U.S. Dist. LEXIS 160888

[xix] The court relied on AIG Europe Ltd. v. Gen. Sys., Inc., WL 3671566 (D. Md. July 22, 2014) Ameriswiss Tech. LLC v. Midway Line of Ill., Inc., 888 F. Supp. 2d 197 (D.N.H. 2012) and Huntington Op. Corp. v. Sybonney Express, Inc., WL 1930087 (S.D. Tex. May 11, 2010)

[xx] Nature's One, Inc. v. Spring Hill Jersey Cheese, Inc. , v. WD Logistics, L.L.C. et al, 2017 U.S. Dist. LEXIS 160888

[xxi] Georgia Nut Company v. C.H. Robinson Company 2018 WL 2009499, 2018 U.S. Dist. LEXIS 71806 (N.D. Ill. Apr. 30 2018)
