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Freight Claims, Liability and Risk Management

The Importance of Federal Preemption Regarding Cargo Claims

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Federal preemption over state causes of action in regards to cargo claims remains one of the most important principals of transportation law. Its history is rooted in the United States Constitution.

The Constitution provides that federal law "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." [1] To the extent state laws conflict with federal law, they are preempted and without effect. [2]

In 1906, Congress enacted the Carmack Amendment to the Interstate Commerce Act of 1877. [3] The Carmack Amendment spells out rights, duties, and liabilities of shippers and carriers when it comes to cargo loss or damage. In *Adams Express Co. v. Croninger,* [4] the Supreme Court recognized that the purpose of the Carmack Amendment was to bring uniformity to a chaotic area of varying state law.

The Carmack Amendment, as federal law, preempts all state and common law claims and remedies for cargo damages in interstate commerce. A state or common law claim can survive this preemption only if it is a separate and independently actionable harm that is distinct from the loss of, or the damage to the goods. [5]

The landmark case regarding federal preemption subsequent to the Interstate Commerce Termination Act of 1995 is *Rini v. United Van Lines, Inc*. After discussing the United States Supreme Court's decision in *Adams Express Co. v. Croninger*, the court of appeals in *Rini* went on to explain: 'The preemptive effect of the Carmack Amendment over state law governing damages for the loss or damage of goods has been reiterated by the Supreme Court and is well stablished.' … In other words, *Rini* stands for the proposition that the Carmack Amendment impliedly preempts state regulations related to damages for the loss or destruction of property during the course of interstate shipment. [6]

Maintaining federal preemption is critical to the protection of motor carriers in cases involving cargo loss or damage. Here are some recent cases preserving that right.

> *1. Secura Insurance Mutual Co. v. Old Dominion Freight Line, Inc.*, 2019 WL 1114887, 2019 U.S. Dist LEXIS 38153 (W.D. Ky. Mar. 11, 2019)

Kiel Thomson purchased custom glass windows from Zeluck Architectural Windows & Doors in Brooklyn, NY. Thomson then contracted with Old Dominion to have those windows shipped to his construction site in Louisville, Kentucky. Upon arrival, the windows were found to be broken and

unusable. Thomson filed a claim with his insurer, Secura, who in turn sued Old Dominion as subrogee of Thomson, asserting claims under the Carmack Amendment, common law bailment and breach of contract. Old Dominion filed a motion to dismiss or alternatively for judgment on the pleadings to strike the bailment and breach of contract claims as preempted by the Carmack Amendment.

At issue was the question as to whether or not the bailment and breach of contract claims arose from "separate and independently actionable harms that are distinct from the loss of, or the damage to, the goods" and so as to avoid preemption under the Carmack Amendment.

The court concluded that the broad preemptive scope of the Carmack Amendment encompasses the bailment and breach of contract claims. Claims survive preemption only when they are based on "separate and independently actionable harms that are distinct from the loss of, or the damage to, the goods." Because the bailment and breach of contract claims arise from the same incident as the Carmack Amendment claim, that is, the alleged damage to the custom glass windows, the claims are preempted by the Carmack Amendment. Therefore, Old Dominion's motion for judgment on the pleadings was granted.

2. Val's Auto Sales & Repair, LLC v. Garcia, 367 F.Supp.3d 613 (E.D. Ky. Feb. 4, 2019)

Val's Auto Sales filed suit in state court against carrier Ezee Trans and its employee driver Roberto Garcia, alleging negligence, vicarious liability, and negligent entrustment for damage to a Mercedes Benz Sprinter Van caused by a collision with a railroad bridge. Val's later added insurance company Progressive Northern Insurance Company as a defendant, asserting an Unfair Claims Settlement Practices Act ("USCPA") violation. Defendants Garcia and Progressive removed the case to federal court under both diversity and federal question jurisdictions. Ezee Trans and Garcia then filed a motion to dismiss, arguing that plaintiff's claims against both the motor carrier and its employee driver were preempted by the Carmack Amendment.

Val's moved to remand, asserting that neither Progressive nor Garcia, the only removing parties, had a right to remove; that neither could establish the amount in controversy requirement for diversity jurisdiction; and that Ezee Trans missed its deadline to participate in removal.

At issue were two questions: (1) Does the Carmack Amendment preempt state law claims for cargo damage against both the motor carrier and its driver? Was removal by the driver and the motor carrier's insurer proper?

As for the first question, the court noted that, while Val's is correct that there exist state law claims that are not preempted by the Carmack Amendment (claims unrelated to the loss of, or damage to, goods in interstate commerce), Val's claims that Garcia negligently operated the vehicle carrying the van and that Ezee Trans negligently entrusted Garcia with the vehicle are not distinct from the damage to the van. Such claims are therefore preempted. Moreover, Garcia cannot be held liable because he is not a carrier, and the Carmack Amendment preempts claims against individual employees who are acting within the scope of their employment when the goods are lost or damaged. The driver was thus dismissed from the case and Val's was granted leave to file an amended complaint to state a Carmack count only against Ezee Trans.

The court further ruled that plaintiff's objections to removal were misguided. The court explained that, upon a conclusion that one claim is completely preempted under a federal statute, there is no need for additional examination for other claims' removability. With plaintiff's state law causes of action against the driver and the motor carrier completely preempted by the Carmack Amendment, the court held that removal jurisdiction was established for the entire case and did not see any need to determine whether the USCPA claim against the insurance company also arose under federal law or whether the driver or the insurance company established diversity jurisdiction.

3. Crypto Crane, LLC v. FedEx Ground Package Systems, Inc., 2018 WL 6816104 (E.D. Mich. Nov. 7, 2018)

Crypto Crane LLC sold $124,000 worth of cryptocurrency mining equipment to a customer in Canada and hired FedEx Ground Package Systems, Inc. ("FedEx") to transport the shipment. The consignee signed as receiving the shipment, but alleged it was never delivered. In response, Crypto Crane contacted FedEx customer service, where a customer service representative allegedly instructed Crypto Crane to reimburse its customer the total purchase price of the order and to submit a claim to FedEx. Crypto Crane refunded its customer $124,000 and filed a claim with FedEx. FedEx, relying on its limitation of liability, offered Crypto Crane $1,985.

Crypto Crane sued FedEx, claiming that it was entitled to recover the full value of the order because the customer service representative had created an oral contract. FedEx filed a motion to dismiss under Rule 12(b)(6), asserting that the Carmack Amendment preempts breach of contract and promissory estoppel claims.

Citing *Rini v. United Van Lines, Inc.*,[7] the court held that the Carmack Amendment preempts state law claims including "all liability stemming from damage or loss of goods, liability stemming from the claims process, and liability related to the payment of claims."

Because Crypto Crane's claims arouse out of delivery of goods by FedEx, they are preempted by the Carmack Amendment and FedEx's motion to dismiss was granted.

4. Security USA Services, Inc. v. United Parcel Service, Inc., ___ F.Supp.3d ___, 2019 WL 1051017 (D. N.M. Mar. 5, 2019)

Security USA contracted with UPS to transport two boxes to a security convention in Dallas. Security USA selected the three-day delivery option on the shipping contract so that the packages would arrive in Dallas prior to the convention. The combined total value of the shipped items was $ 13,500. Only one of the packages arrived, and it was damaged. Security USA repurchased the contents of the missing package, rebuilt a missing computer server, and paid an employee to drive those items to Dallas, paying for that employee's travel and lodging costs over two days. When the missing package was found and delivered, it was open, mangled, and vandalized.

Security USA sued UPS in New Mexico state court for breach of contract and bad faith claim denial. After UPS removed the case to federal court, Security USA amended its complaint to state a Carmack claim, but continued to maintain its common-law bad faith claim, eventually seeking leave of court to add claims for violations of the New Mexico Unfair Practices statute. UPS moved to dismiss, arguing Carmack preemption, FAAAA[8] preemption and preemption under federal common law.

The court wrote a detailed analysis of Carmack preemption, holding that the broad sweep of Carmack preemption barred Security USA's claim for common-law bad faith. In denying Security USA's motion to add a claim under New Mexico's Unfair Practices Act, the court cited *Rini*, *Gordon*[9] , and *Margetson v. United Van Lines*[10] in ruling that the state statutory claim was preempted.

Federal preemption remains alive and well.

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[1] U.S. CONST. art. VI, cl. 2.

[2] Altria Grp., Inc. v. Good, 555 U.S. 70, 76 (2008)

[3] Carmack is currently codified at 49 U.S.C. §14706.

[4] Adams Express Co. v. Croninger, 226 U.S. 491, 505 (1913)

[5] Gordon v. United Van Lines, Inc., 130 F.3d 282, 289 &7th Cir. 1997).

[6] It is accepted … that the principal purpose of the Carmack Amendment was to achieve national uniformity in the liability assigned to carriers. *Rini v. United Van Lines, Inc.*, 104 F.3d 502, 504 (1st Cir. 1997)

[7] *Rini v. United Van Lines, Inc.*, 104 F.3d 502, 504 (1st Cir. 1997)

[8] Federal Aviation Administration Authorization Act of 1994, 49 U.S.C. § 41713(b)(4)(A)

[9] *Gordon v. United Van Lines, Inc.,* 130 F.3d 282, 289 (7th Cir. 1997)

[10] *Margetson v. United Van Lines, Inc.,* 785 F.Supp 17 (D.N.M. 1991)