

IP 08-0375-C K/B Transcorr v Chaler  
Magistrate Tim A. Baker

Signed on 12/19/08

**NOT INTENDED FOR PUBLICATION IN PRINT**

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

TRANSCORR NATIONAL LOGISTICS,	)	
LLC,	)	
	)	
Plaintiff,	)	
vs.	)	NO. 1:08-cv-00375-TAB-SEB
	)	
CHALER CORP.,	)	
	)	
Defendant.	)	

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

TRANSCORR NATIONAL LOGISTICS, LLC,)

Plaintiff,

vs.

CHALER CORP.,

Defendant.

)  
)  
) 1:08-cv-375-TAB-SEB  
)  
)  
)

**ORDER ON PLAINTIFF'S MOTION TO REMAND**

**I. Introduction.**

Plaintiff TransCorr National Logistics, LLC filed this action in state court on January 25, 2008, which Defendant Chaler Corporation removed to federal court on March 21, 2008.

Plaintiff filed a motion to remand on the ground that this Court has no subject matter jurisdiction. [Docket No. 12.] For the reasons set forth below, Plaintiff's motion to remand [Docket No. 12] is granted.<sup>1</sup>

**II. Background.**

Plaintiff is a licensed transportation broker that contracted with Defendant, the carrier, to provide transportation services for Plaintiff's customers. The one-year contract dated May 9, 2006, requires a "uniform (standard) Bill of Lading" for each shipment and requires that Defendant "shall transport all shipments provided under this Agreement without delay, and

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<sup>1</sup> Defendant filed a motion to dismiss [Docket No. 10] on the ground that Plaintiff's sole remedy is under the Carmack Amendment, 49 U.S.C. § 14706, which Plaintiff did not plead. Because the Court does not have jurisdiction over this case, it does not address Defendant's motion.

CARRIER shall immediately communicate all occurrences, which would be probable or certain to cause delay, to BROKER.” [Docket No. 1, App. B at ¶ 3.] The contract further provides: “CARRIER shall defend, indemnify, and hold BROKER harmless from and against all loss, liability, damage, claim, fine, cost or expense . . . arising out of or in any way related to the performance or breach of this Agreement by CARRIER.” [Id. at ¶ 6.]

Plaintiff alleges that on December 15, 2006, Defendant agreed to deliver a load from Strongsville, Ohio, to Columbus, Indiana, by 7 a.m. on December 18, 2006. [Docket No. 1, App. A at ¶ 7.] On December 20, Plaintiff was notified by its customer that the load was never delivered. [Id. at ¶ 10.] Plaintiff notified Defendant who ultimately informed Plaintiff that the load was still on its lot in Richmond, Indiana. [Id. at ¶¶ 11-13.] Plaintiff’s customer informed Plaintiff that the load must be at its plant in North Carolina by that afternoon or the plant would have to shut down, so Plaintiff’s customer made arrangements for the load to be transported by air. [Id. at ¶¶ 14-15.] Plaintiff alleges it then gave Defendant the option of paying for the air transport—approximately \$37,200—or paying the costs associated with shutting down the plant, which would be considerably more. Defendant purportedly opted to pay the \$37,200 but later refused to pay the freight charges, which ultimately totaled \$32,698.44. [Id. at ¶¶ 21-24.]

### **III. Discussion.**

The issue before the Court is whether it has jurisdiction over Plaintiff’s claims or if, as Plaintiff argues, this case should be remanded to state court. Defendant removed this action pursuant to 28 U.S.C. §§ 1331 and 1337. The well-pleaded complaint rule provides that the Court is to look only to the complaint to determine whether there is federal question jurisdiction. *Franciscan Skemp Healthcare, Inc. v. Cent. States Joint Bd. Health and Welfare Trust Fund*, 538

F.3d 594, 596 (7th Cir. 2008). The claims Plaintiff alleges in the complaint are all based on state law: breach of written contract, breach of oral contract, equitable subrogation, promissory estoppel, and negligent misrepresentation. Thus, Plaintiff argues that this action should be remanded to state court.

However, one exception to the well-pleaded complaint rule is where a federal statute completely preempts the state law on which the claims in the complaint are based. *Id.*; *see also Nelson v. Stewart*, 422 F.3d 463, 466-67 (7th Cir. 2005). Defendant argues that the allegations in this case are governed exclusively by the Carmack Amendment, 49 U.S.C. § 14706, and therefore this Court has jurisdiction over the case. Thus, the key question is whether the Carmack Amendment preempts the state law on which Plaintiff's claims are based.

Plaintiff contends the Carmack Amendment does not apply to this case. Plaintiff argues it is a broker, not a shipper; the breach in question has to do with a brokerage agreement not a bill of lading; and the claim is not for loss or damage to property. [Docket No. 13 at 6-10; Docket No. 15 at 4-5.]

Defendant cites numerous cases in support of the proposition that “[i]t is well-established that the Carmack Amendment governs all causes of action that arise from interstate shipments.” [Docket No. 16 at 3.] A recent Seventh Circuit case demonstrates that Defendant's characterization of the law is overbroad. In *REI Transp., Inc. v. C.H. Robinson Worldwide, Inc.*, 519 F.3d 693, 697 (7th Cir. 2008), the Seventh Circuit determined the Carmack Amendment does not preempt all state claims by a *carrier* against a *shipper* because the Carmack Amendment was created to address carrier liability. *Id.* The Court explained:

Since its enactment, a carrier of an interstate shipment is “liable to the person entitled to recover under the receipt or bill of lading,” plain and simple. The “person entitled

to recover” can bring suit against either the delivering carrier or the originating carrier for the “actual loss or injury to the property caused” by any carrier in the course of the interstate shipment.

*Id.* (citations omitted). Similarly, many courts have held that the Carmack Amendment does not apply to claims brought against brokers. *See Oliver Prods. Co. v. Foreway Mgmt. Servs., Inc.*, No. 1:06-CV-26, 2006 WL 2711515, \*1 (W.D. Mich. May 24, 2005) (“While federal courts, including the Supreme Court, have applied preemption to carrier cases because the Carmack Amendment intended uniform liability in such cases, they have not applied this doctrine to transportation brokers.”); *Delta Research Corp. v. EMS, Inc.*, No. 04-60046, 2005 WL 2090890, \*5 (E.D. Mich. Aug. 29, 2005); *Chubb Group of Ins. Cos. v. H.A. Transp. Sys., Inc.*, 243 F. Supp. 2d 1064, 1068-69 (C.D. Cal. 2002) (“[T]he Carmack Amendment does not apply to brokers.”). Of course unlike these cases, the broker in the case at bar is the plaintiff, not the defendant. Nonetheless, these cases—together with *REI Transp.*—illustrate that the Court must more carefully determine the applicability of the Carmack Amendment than Defendant suggests.

The cases cited by Defendant do not address the situation of a broker suing the carrier under a brokerage agreement, but rather of a shipper suing the carrier under a bill of lading. Defendant argues that the focus should be on the obligations of Defendant, against whom the cause of action is asserted. [Docket No. 16 at 5.] However, Defendant’s focus only on its own status ignores the explicit language of the statute. The Carmack Amendment provides that a “carrier providing transportation or service subject to jurisdiction . . . [is] liable to the person entitled to recover under the receipt or bill of lading.” 49 U.S.C. § 14706(a)(1). Plaintiff claims that it “is not entitled, and is not seeking, to recover under a receipt or the bill of lading because it is not the shipper, is not a party to the bill of lading or receipt, and did not receive an

assignment from a party to the bill of lading.” [Docket No. 17 at 4.]

Furthermore, Plaintiff cites two cases that explicitly hold that the Carmack Amendment does not apply where a broker (rather than a shipper) is suing a carrier under a brokerage agreement. In *Intransit, Inc. v. Excel N. Am. Rd. Transp.*, 426 F. Supp. 2d 1136, 1139 (D. Or. 2006), the court addressed whether the plaintiff-broker qualified “as a shipper or some other party to whom Carmack gives standing.” The court found that while the case law was not clearly developed on this question, Congress did not intend to preempt a broker’s claims against a carrier by way of the Carmack Amendment. *Id.* at 1141. Rather, “[t]he purpose of the Carmack Amendment is to prevent carriers from being placed in the untenable position of having to determine what their liability may be in many jurisdictions with differing laws.” *Id.* Liability issues under broker-carrier contracts do not raise the same concern because parties to the contracts may reasonably expect that their contracts will be interpreted consistently by the law of the jurisdiction in which the contract was made. *Id.* The court in *Edwards Bros., Inc. v. Overdrive Logistics, Inc.*, 581 S.E.2d 570, 572 (Ga. Ct. App. 2003) similarly held that the purpose of the Carmack Amendment was to protect the rights of shippers suing under a bill of lading, not the rights of brokers, and therefore the dispute between the broker and the carrier was governed by their brokerage agreement.

Defendant does not address these cases at all, but argues that the Carmack Amendment applies by way of the brokerage agreement. [Docket No. 14 at 7 (“Therefore, under Transcorr’s own agreement, the alleged loss and/or damage of goods occurred pursuant to a bill of lading and all state law claims are preempted by the Carmack Agreement.”).] Defendant first points to a provision addressing the Defendant’s liability:

***CARRIER assumes the liability of a common CARRIER (i.e. Carmack Amendment liability) for loss, delay, damage to or destruction of any and all of Customer's goods or property while under CARRIER's care, custody or control. CARRIER shall pay to BROKER, or allow BROKER to deduct from the amount BROKER owes CARRIER, Customer's full actual loss for the kind and quantity of commodities so lost, delayed, damaged or destroyed. CARRIER shall be liable to BROKER for all economic loss, including consequential damages that are incurred by BROKER or the Customer for any freight loss, damage, or delay claim.***

[Docket No. 16 at 4; Docket No. 1, App. B at ¶ 8.] The second provision Defendant points to pertains to receipts and bills of lading:

***Each shipment hereunder shall be evidenced by a uniform (Standard) Bill of Lading naming CARRIER as the transporting receipt showing the kind and quantity of product delivered to the consignee of such shipment at the destination specified by BROKER or the Customer, and CARRIER shall cause such receipt to be signed by the consignee. Any terms, conditions and provisions of the bill of lading, manifest or other form of receipt or contracts shall be subject and subordinate to the terms, conditions and provisions of this Agreement. CARRIER shall notify BROKER immediately of any exception made on the bill of lading or delivery receipt.***

[Docket No. Docket No. 14 at 7; Docket No. 1, App. B at ¶ 4.]

The provision indicating that the carrier assumes Carmack Amendment liability does not necessarily mean that the carrier assumes only Carmack Amendment liability. More likely this provision is simply an acknowledgment that the carrier assumes Carmack Amendment liability as to the shipper-customer. A separate sentence discusses the liability of the carrier to the broker: "CARRIER shall be liable to BROKER for all economic loss, including consequential damages that are incurred by BROKER or the Customer for any freight loss, damage, or delay claim."

Likewise, that Defendant has agreed to be named the carrier in a bill of lading when it provides services for Plaintiff's customers does not necessarily mean that Plaintiff is the holder

of the bills of lading. If very loosely construed, the language stating that a bill of lading is “subject and subordinate to the terms, conditions and provisions” of the brokerage agreement could imply that Plaintiff could be a holder of the bills of lading that Defendant provides to Plaintiff’s customer-shippers. The likely meaning and purpose of this provision is to clarify that Defendant may not limit or rescind its guarantees to Plaintiff under the brokerage agreement by way of bills of lading it provides to Plaintiff’s customers. Interpreting this language to mean that Plaintiff is a holder of the bills of lading is too much of a stretch, particularly since Plaintiff does not own the property being shipped. It would be problematic indeed if a contract between Plaintiff and Defendant could endow upon Plaintiff “a document of title” to goods owned by Plaintiff’s customers. *See* Black’s Law Dictionary 176 (8th ed. 2004) (one definition of “bill of lading”).

It is possible that a broker might bring a claim against a carrier under the Carmack Amendment on behalf of the shipper under a bill of lading, such as by subrogation. However, based on the allegations set forth in the complaint, it was Plaintiff, not the shipper, that experienced losses, and therefore the shipper has no claim for Plaintiff to take over. [*See* Docket No. 1, ¶¶ 14-28.] While the Plaintiff does have an equitable subrogation claim, the entity assigning Plaintiff all rights is Air Care, the carrier that replaced Defendant to promptly ship the goods so that the shipper-customer did not sustain any losses. As Plaintiff correctly argues, the claim at issue in this action is not for loss or damage to property. Thus, Plaintiff’s subrogation claim does not arise under the Carmack Amendment because it is not the subrogation of the shipper’s claim.

Because Plaintiff could not reasonably be the holder of the bill of lading, nor is Plaintiff

suing on behalf of or taking over the claim of its shipper-customer, Plaintiff has no claim against Defendant under the Carmack Amendment. Therefore, Plaintiff's claims against Defendant must arise under the brokerage agreement.

Because Plaintiff's claims against Defendant are governed by the brokerage agreement rather than the Carmack Amendment, Defendant has failed to prove that federal preemption applies in this case. *See Vill. of DePue v. Exxon Mobil Corp.*, 537 F.3d 775, 786 (7th Cir. 2008). Since the federal preemption exception does not apply to the well-pleaded complaint rule in this case, this Court does not have subject matter jurisdiction over Plaintiff's claims.

#### **IV. Conclusion.**

For the foregoing reasons, Defendant has failed to establish that this Court has jurisdiction over Plaintiff's claims. Accordingly, Plaintiff's motion to remand [Docket No. 12] is granted. This matter is remanded to the Marion Superior Court. The Clerk of this Court shall mail a certified copy of this order to the clerk of the state court pursuant to 28 U.S.C. § 1447(c).

Dated: December 19, 2008

/s/ Tim A. Baker  
Tim A. Baker  
United States Magistrate Judge  
Southern District of Indiana

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