BURR ALERT 2018

Eleventh Circuit Issues Important Carmack Amendment Opinion for Logistics and Transportation Companies

By Al Teel March 2018

What is the proper test for distinguishing brokers from carriers under the Carmack Amendment?

On March 28, 2018, the Eleventh Circuit Court of Appeals addressed this question in *Essex Ins. Co. v. Barrett Moving & Storage, Inc.*, No. 16-11526, 2018 WL 1407067 (11th Cir. Mar. 21, 2018), a case of first impression within the Circuit. This opinion offers guidance for transportation and logistics companies on when the Carmack Amendment actually applies to a particular shipment because the Carmack Amendment's strict liability provisions apply to motor carriers but not to brokers.

The facts of the case followed a typical scenario within the industry. Nationwide, a company that buys and sells used medical equipment, contracted with Barrett Moving & Storage, Inc. ("Barrett") to transport an MRI machine from Chicago, Illinois to Dallas Texas. Barrett arranged to transport the components of the MRI machine in two separate shipments, one using its own truck and the other via a third party, Landstar Transportation Logistics, Inc. ("Landstar"). While the components shipped on the Barrett truck arrived intact, the components shipped on the Landstar truck were damaged in transit, rendering the entire MRI inoperable.

Nationwide and its insurer, Essex, brought suit under the Carmack Amendment against both Barrett and Landstar in the United States District Court for the Middle District of Florida. , Nationwide moved for summary judgment against both defendants, arguing that Barrett held itself out as the sole party assuming responsibility to ship the MRI. Nationwide argued that Barrett fell within the definition of a "motor carrier" under the Carmack Amendment's strict-liability provision. Nationwide further claimed it was completely unaware that Landstar would participate in the shipment. In response, Barrett contended that it acted as a broker and not a carrier under the Carmack Amendment's definitions and was therefore not subject to the Amendment's strict-liability provision. The trial court granted Nationwide's motion for summary judgment against both Barrett and Landstar, finding as a matter of law that Barrett acted as a carrier with regard to the shipment and entered judgment against both companies in the amount of $560,000, the full value of the lost MRI.

The Broker vs. Carrier Distinction

On appeal, the Eleventh Circuit stated the primary issue succinctly: "If Barrett was a "motor carrier," the Carmack Amendment applies, state-law claims are preempted, and Barrett is strictly liable for the damage sustained by the magnet during transportation from Illinois to Texas. If Barrett was a "broker," the Carmack Amendment does not apply and any claims Nationwide might have against it are beyond the four corners of this appeal." *Id.* at *4.

In making this determination, the Court looked to the Department of Transportation's definitional guidance in 49 C.F.R. § 371.2(a), which states that "motor carriers are not brokers within the meaning of this section when they arrange or offer to arrange the transportation of shipments which they are authorized to transport **and which they have accepted and legally bound themselves to transport.**" 49 C.F.R. § 371.2(a) (emphasis added). Applying the DOT's guidance, the Court observed that the key distinction is whether the disputed party accepted *legal* responsibility to transport the shipment. *Id.* at *5.

According to the Court, this determination—whether the party accepted legal responsibility—boils down to a case-specific analysis, and as a result, summary judgment might not be appropriate in many cases. For example, the Court determined that a genuine factual dispute existed as to whether Barrett accepted legal responsibility to transport the MRI or communicated to Nationwide that it was brokering the shipment to a third-party.

The parties setup the Nationwide shipment through a series of emails in which they never named or even referenced Landstar. However, because Barrett's website specifically discussed Barrett's affiliation with Unigroup which provided access to tractor-trailers beyond Barrett's fleet, the Court found that the website could be interpreted to mean that Barrett could broker shipments through its Unigroup affiliation. Likewise, the prior course of dealings between Nationwide and Barrett suggested that Barrett often referred some Nationwide shipments to its "logistics department," which in the shipping industry generally refers to finding alternative transportation. This reference to the term "logistics" could potentially signal to Nationwide that Barrett was acting as a broker. Thus, the Eleventh Circuit reversed the Magistrate Judge's grant of summary judgment in Nationwide's favor due to the existence of factual issues. *Id.* at *7.

Am I Acting as a Broker or a Motor Carrier?

The Court offered a practical solution for companies like Barrett, which hauls some shipments and brokers others. Specifically, the Court suggested that these companies can insulate themselves from strict liability with respect to a particular shipment if they make clear in writing that they are merely acting as a go-between to connect the shipper with a suitable third-party carrier. *Id.* at *6.

However, if a writing does not exist, whether a carrier may be acting as a broker depends upon the following:

(a) how the party held itself out to the world,

(b) the nature of the party's communications and prior dealings with the shipper, and

(c) the parties' understanding as to who would assume responsibility for the delivery of the shipment in question.

Ultimately, the operative inquiry in the Eleventh Circuit following the *Essex* opinion is this: pursuant to the parties' agreement, with whom did the shipper entrust the cargo? *Id.* at *6.

Limitation of Liability:

Additionally, the Eleventh Circuit touched on another important aspect of the shipping arrangement involving Landstar—the ability for a carrier to limit its liability. The Court reversed the trial court's judgment against Landstar and upheld a liability limitation in the bill of lading and Landstar's agreement with Barrett that capped Landstar's liability for the shipment at $1.00 per

pound. The Court found the trial court incorrectly grounded his findings in generic contract principles which do not apply in the shipper-broker-carrier context. Instead, the Court looked to well-established precedent which provides that a cargo owner's recovery against the motor carrier is limited by a limitation of liability to which the broker/intermediary and motor carrier agreed. *See Norfolk Southern Railway co. v. Kirby*, 543 U.S. 14 (2004); *Werner Enterprises, Inc. v. Westwind Maritime Intern., Inc.*, 554 F.3d 1319, 1325 (11th Cir. 2009).

Upholding Landstar's limitation of liability, the Court noted that, while the rule might seem harsh to "a shipper left in the dark," it is primarily for the benefit of the downstream carrier, who otherwise could be subjected to expanded liability by a later surfacing agreement between the shipper and the intermediary. In this case, the downstream carrier, Landstar, was entitled to the $1.00 per pound liability limitation.

To discuss further, please contact:

John Kavanagh in Mobile at jkavanagh@burr.com or (251) 345-8246
Ken Bryant in Nashville at kbryant@burr.com or (615) 724-3240
Al Teel in Birmingham at ateel@burr.com or (205) 458-5389
or the Burr & Forman attorney with whom you regularly work.