IN TRANSIT

Transportation Loss Prevention & Security Association February 2004

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Transportation Loss Prevention & Security Association

THE CONFERENCE IS COMING... THE CONFERENCE IS COMING !!

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FROM THE EXECUTIVE DIRECTOR...

WHERE'S THE PROFIT?

They say the economy is recovering. They say that carriers are now lean and "mean". They say that productivity is high. So why aren't carriers making any money? Where's the profit?

WHAT IS PROFIT

Ah! There's the rub. Profit can be defined as the money made in a business venture after expenses. Usually in the freight business, expenses are driver's salaries; upkeep of vehicles; rent or costs of real estate; insurance; taxes etc., what any normal business would pay to keep its doors open. These expenses are somewhat predictable and can be factored into the sales price in order to produce a profit.

Unfortunately not so in the transportation business. Just when carriers were adjusting to deregulation, market pricing, increased competition and higher gas charges, and just as carriers were on the verge of increasing prices to obtain that illusive "profit", along came a new union contract; new hours of service rules; inordinate pass throughs from the TSA and other security costs; higher tolls; and a shortage of drivers and equipment. Together with these unpredictable expenses, carriers still must face the "800 pound shippers" who demand lower prices; full liability and extraordinary work schedules. The profit we had at that lemonade stand when we were kids must be looking pretty good just about now.

COMPANIES FALL BY THE WAY-SIDE

These financial burdens have caused more than a few "unbelievable" bankruptcies or outright closings. My office is decorated with truck replicas of once proud names such as Preston, Brown, CF, APA, Carolina & St. Johnsbury to mention but a few. I had friends at all of them. These companies are gone because they could not make a profit.

My office is decorated with truck replicas of once proud names such as Preston, Brown, CF, APA, Carolina, & St. Johnsbury to mention but a few. I had friends at all of them. These companies are gone because they could not make a profit.

I have heard more than once that America needs trucks. Everything that you touch, wear or eat has at one time been on a truck. Trucking accidents are down. Trucks themselves are safer and more efficient. The trucking industry must be allowed to flourish and be profitable.

RECOMMENDATIONS

So what can be done? Well, the dissemination of information is key. Our Trade Organizations and our Trade Publications must let the public know of our plight. Profit (or no profit) comparisons should be drawn with other industries to demonstrate the imbalance. We must seek a voice through the general media. Both news and feature articles must be sought to explain to the public the value of the transportation industry.

We must maintain and increase our relationships with the shipping community and the logistics providers so that our customers can appreciate not only a reasonable rate but the value added that carriers bring to the table. Price can not be the only factor to consider. Reliability, timeliness, dependability, and trustworthiness are important considerations. What good is a low price if there is delay, damage, loss and the inability to address loss prevention?

Carriers themselves must reach out to their customers and potential customers and educate them about released rates, declared values and limitations of liability. Shippers should understand that these concepts are designed to save them money by allowing them to ship at a low freight rate while giving them the opportunity to obtain their own insurance at the most reasonable premium possible.

Whether the law requires it or not, carriers must make every effort to reach out to the shipping public via letters, email, web sites and sales calls to explain the rules and regulations that govern our industry. Through transparency, every shipper will become a "sophisticated shipper". As the advertising slogan goes "An educated consumer is our best customer".

Finally, carriers must consider redrafting their tariffs so that they are customer friendly. Because of government regulation, the transportation industry was saddled with unbearably technical and complicated tariffs. Those days should be gone forever. Tariffs have an important role to play when a negotiated contract does not exist. We should want our customers to easily understand the rules under which their goods travel. Carriers have made strides in this direction, but more must be done. TLP&SA has been a leader in this regard. Through educational seminars and conferences we have sought to advise shippers as to the transportation contract. Our NEWSLETTERS seek to describe how a bill of lading agreement functions. Our joint meetings with shipper's groups such as TCPC demonstrates our commitment to working closely with our customers. Even when claims arise, TLP&SA and their individual members have walked customers through the claims process so that their claims will receive the appropriate consideration in an effort to resolve claims quickly, fairly and without unnecessary litigation.

What good is a low price if there is delay, damage, loss and the inability to address loss prevention?

CONCLUSION

Have we created a perfect world, of course not. But I suggest that in today's perilous environment when our country requires a healthy and viable transportation industry, the transportation industry must be allowed to make a reasonable profit. Shippers need responsible carriers. Freight rates must be allowed to rise to acceptable levels before the rest of the truck replicas in my office cease to represent viable entities and merely become objects for sale on ebay!

SUPREME COURT OF THE UNITED STATES TO HEAR TLP&SA

For the first time in its long history, TLP&SA will be filing an Amicus Curia brief with the United States Supreme Court.

On Friday January 15, 2004 the United States Supreme Court announced that it would hear the appeal of the Eleventh Circuit opinion in Norfolk Southern Railway V. Kirby. This will be the first cargo claim case heard by the High Court since its decision in the Elmore and Stahl case forty years ago. TLP&SA and the Association of American Railroads filed Amicus Curiae briefs last spring urging the Court to take the case. No other organizations, including ATA , did so.

NO LIMITATION OF LIABILITY FOR INLAND CARRIER

The case involves the ability of a railroad to avail itself of the $500 limitation of liability in an ocean carriers bill of lading if that bill of lading contains a clause that extends the ocean carrier's limitation of liability to subsequent inland carriers. The Eleventh Circuit adopted the erroneous view that inland carriers cannot do so when the original shipper makes the shipping arrangements through an overseas freight forwarder.

POSSIBLE CATASTROPHIC LOSSES

TLP&SA's board has determined that even though the Kirby case involves a railroad, that the ruling also has an impact on motor carriers who are hauling import freight and exposes them to unanticipated unforeseeable catastrophic losses. In Kirby, the loss was one and one half million dollars. TLP&SA will be filing another brief with the Court on February 20,2004 urging the Court to reverse the decision and to highlight the negative impact the ruling will have upon our industry and to underscore that the decision as it stands is contrary to the national transportation policy outlined in the Interstate Commerce Act. James Attridge, Esq., a member of the Board of Directors of TLP&SA, had written the initial brief and will author our Associations brief before the Supreme Court.

TRANSPORTATION LOSS PREVENTION & SECURITY ASSOCIATION

(TLP&SA)

2004 SPECIAL BOARD OF DIRECTORS' AWARD

The Officers and Board of Directors of TLP&SA have authorized a 2004 SPECIAL BOARD OF DIRECTORS' AWARD to be given to an outstanding member of our organization who has demonstrated leadership above and beyond the call of duty. This award recognizes an individual who has devoted enormous effort to our Association as well as the Transportation Industry as a whole. This year's recipient was required to take on unique challenges in the face of enormous odds and accomplished his task with a sure and steady hand.

TLP&SA presents this award for exemplary professionalism, achievement and contribution to the association and it's membership. Without this recipient's willingness to devote substantial amounts of time in addition to his own demanding work schedule, TLP&SA would not be the viable force it has become.

During a period in the transportation industry when Trade Groups are disbanding and membership is dwindling, our award winner has encouraged our organization to stay the course .Therefore, this year's recipient of the 2004 SPECIAL BOARD OF DIRECTORS' AWARD richly deserves this unique recognition from his associates, peers and friends.

The name of the recipient will be announced and the award will be presented during our Conference.

Congratulations to TLP&SA long time Board member, Tom Rotunda, who has been selected as the Director, Cargo Claims, Yellow Roadway Enterprise Corporation.

DIRECTOR TO RETIRE

Bob Fredere, WML claims payment director and long time TLP&SA Director, will retire on March 21 after completing 37 years of service with the company.

Bob was originally hired in 1967 as the office manager in Greenville, SC,which at that time, was the division headquarters for Watkins-Carolina Express. His duties were mainly in the accounting area working with division budgets, financial statements and cost analysis. After two years, he entered the claims arena as the claims and security supervisor, and he has stayed in that field ever since. Moving up to manager, Bob first relocated to Atlanta in 1973 when the headquarters moved there; then again in 1975 when it moved to Lakeland. As the company has grown, so has the claims function. In 1975, the entire department consisted of four employees; when Bob was promoted to director in 1985 there were eight; and today the department has 25 employees.

Bob and his wife Zelda have been married for 45 years. They plan to spend their retirement enjoying their children and grand children and splitting their time between their home in Florida and their farm in North Carolina.

Bob will truly be missed by his friends in the industry. Farewell and Bon Voyage.

MOTOR CARRIER CLAIMS SURVEY

One of the many benefits of being a member of TLP&SA is the ability to network with your peers and compare how your company is doing as compared to the rest of the transportation industry when it comes to claims and claim prevention.

The TLP&SA has gathered claims data from its member carriers, which includes most of the major LTL carriers in the industry. We consider these figures and percentages to be representative of the LTL carrier industry and to be more accurate than figures provided from any other source to date. Carriers can use these figures to compare with their own performance against the performance of the LTL industry as a whole.

The figures and percentages will show each carrier how they compare with the rest of the industry in each claims category and will indicate to each carrier which segment of their business needs the most attention.

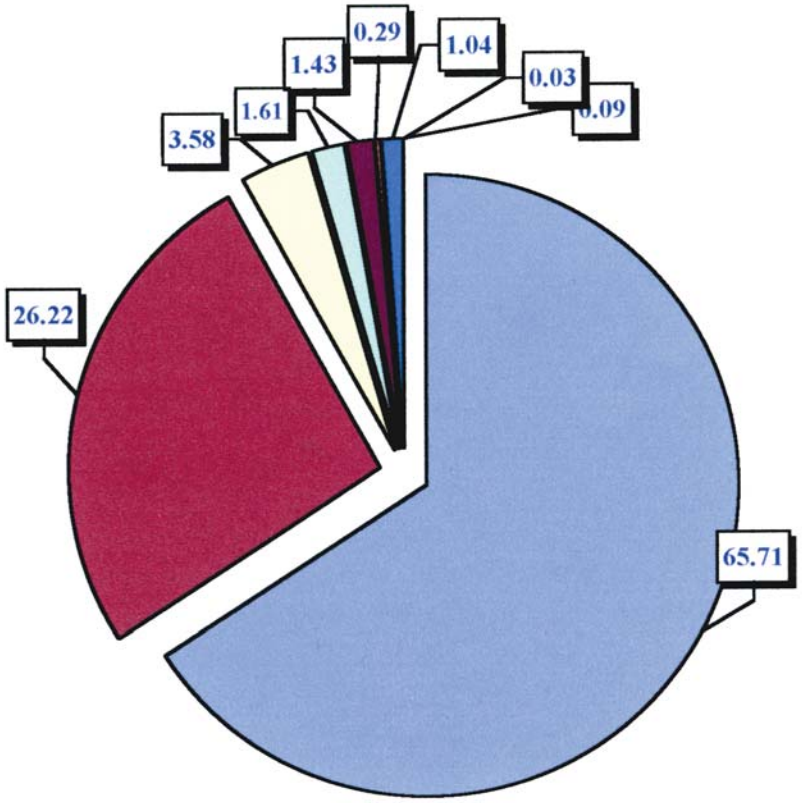
The TLP&SA is also available to assist its member carriers in these endeavors along with cargo claim and security problems. Contact us through our website at www.tlpsa.org or by phone at 201-343-1652 (T, W, Th 10am-2pm).

CLAIM CATEGORY	TOTAL GROSS % OF $ PAID		% OF CLAIMS PAID VS FILED	
	2002	2003	2002	2003
Shortage	29.54%	26.22%	20.04%	18.29
Theft/ Pilferage	1.55%	1.43%	.10%	.04%
Visible Damage	60.08%	65.71%	42.66%	49.18%
Concealed Damage	4.10%	3.58%	5.13%	5.13%
Wreck/ Catastrophe	2.17%	1.61%	.14%	.11%
Delay	.49%	.03%	.02%	.02%
Water	.55%	.29%	.18%	.06%
Heat/ Cold	.31%	.09%	.01%	.01%
Other	1.21%	1.04%	.48%	1.29%

	2002	2003
Total number of Claims Paid vs. Number of Claims Filed	71.23%	74.14%
Total Dollars Paid vs. Total Dollars Filed	38.70%	47.24%
Net Claim Dollars Paid vs. Total Dollars Filed	33.43%	41.56%
Percent of Claims Filed to Total Number of Shipments Made	.82%	.88%
Total Company Claim Ratio	1.07%	1.12%

	2002	2003
Percentage of Claims Resolved Less than 30 days	79.31%	82.35%
Percentage of Claims Resolved 31-120 days	16.90%	16.22%
Percentage of Claims Resolved more than 120 days	1.97%	1.43%

TLP &SA
CLAIMS SURVEY CHART



Visible Damage - 65.71%
Shortage - 26.22%
Concealed Damage - 3.58%
Wreck/Catastrophe - 1.61%
Theft/Pilferage - 1.43%
Water - 0.29%
Other - 1.04%
Delay - 0.03%
Heat/Cold - 0.09%

FREIGHT CLAIM CASE UPDATE—FEBRUARY 2004

The following are summaries of recent decisions involving carrier liability for interstate freight loss and damage claims.

1. Berlanga v. Terrier Transportation, Inc., 2003 WL 21500320 (N.D.Tex. 2003).

Berlanga contracted with Three Flags Transportation to transport his family's household belongings from Mexico City, Mexico, to Plano, Texas. The goods were transported by Three Flags to Nuevo Laredo, and after the goods passed through customs, a contractor for Terrier Transportation transported the goods from Laredo to Plano. Upon arrival, when plaintiff opened the trailer, his goods were strewn about, broken, crushed, and damaged. Berlanga sued Three Flags and Terrier in U.S. District Court, pleading under the Carmack Amendment, diversity jurisdiction, and the Texas Deceptive Trade Practices Act. At origin, Three Flags issued a Mexican through bill of lading, which purported to cover shipping over the entire route. No evidence was submitted to the Court indicating that a domestic bill of lading was issued for the domestic leg of the shipment. The Court ruled that the Carmack Amendment applied to this shipment, even though it originated outside the United States, holding that "the applicability of the Carmack Amendment no longer depends upon the point of origin, so long as the shipment is between a point in United States and a point in the United States or elsewhere". After finding that the Carmack Amendment applied to the case, the Court ruled that all of defendant's common law and state statutory cause of action were barred, specifically including the DTPA claims.

2. Abro v. Federal Express Corporation, 233 F.Supp. 2d 861 (E.D. Mich. 2002)

FedEx accepted a C.O.D. check for $30,130, payable to the plaintiff-shipper. The check subsequently bounced, and the plaintiff sued FedEx to recover the full amount of his loss. The plaintiff claimed that the check at issue was "facially invalid" due to the misspelling of the word "official" as "official" and argued that it was unreasonable for FedEx to have accepted the check (which he characterized as "Monopoly money"). The Court, granting FedEx's motion for summary judgment, held that the terms of contract between the plaintiff and the defendant are set forth on the FedEx airbill and in its service guide, which provided that C.O.D. checks would be "collected at shipper's sole risk, including but not limited to, all risk of non-payment, fraud and forgery, and we will not be liable upon any such instrument." The Court held that the FedEx's only duty was to collect a facially valid cashier's check and found that although a close examination of the check would reveal the misspelling of the word "official", the Court did not believe that spelling error rendered the check facially invalid.

3. Edwards Bros. Inc., v. Overdrive Logistics, Inc., 581 S.E.2d 570 (Ga.Ct.App. 2003)

Overdrive Logistics, a licensed transportation broker, hired Edwards Bros., a motor carrier, to transport a shipment of processed chicken from Georgia to California for Robinson and Harrison Poultry Company. The shipment arrived too hot and Robinson suffered a loss of $21,552. Robinson submitted a claim to Edwards for the loss but Edwards paid Robinson only $16,876. Because Robinson had not been fully compensated for its loss, it then withheld the balance from its July 2000 payment to Overdrive. Overdrive then sued Edwards for breach of contract and bad faith. The trial court granted Overdrive=s motion for summary judgment on its breach of contract claim against Edwards. On appeal, the Court of Appeals of Georgia rejected Edwards' claim that Overdrive's breach of contract claim was preempted by the Carmack Amendment and held that Overdrive may recover damages against Edwards pursuant to its brokerage agreement with Edwards. The Court found that Overdrive was not seeking damages under a bill of lading but that it incurred a loss due to Edwards' breach of the brokerage contract and affirmed the summary judgment for Overdrive.

4. Thyssen, Inc., v. Norfolk Southern Corp., 2003 WL 21660039 (E.D.Pa. 2003)

Shipper filed suit for damage to steel coils that rusted in carrier's rail car. Carrier filed a motion for summary judgment, arguing that shipper's lawsuit was barred because, although shipper had filed Notification of Claim, it never filed a claim sufficient to satisfy the requirements of 49 U.S.C. ' 1005.2(b) (i.e., facts sufficient to identify the shipment, a claim for liability for the alleged loss, and a demand for payment of a specified or determinable sum).

The court granted carrier's motion, rejecting shipper's estoppel argument.

5. Kvaerner E & C (Metals) v. Yellow Freight Systems., Inc., 266 F.Supp.2d 1065 (N. D.Cal. 2003).

Yellow Freight transported a series of shipments of industrial pumps which all arrived damaged at destination. Liability was not disputed.

Yellow Freight prevailed by establishing its affirmative defense that plaintiff failed to file a claim within nine (9) months of loss. The last shipment arrived on January 12, 2000 and plaintiff sent a letter to Yellow's terminal manager on February 8, 2000, which met all the criteria of a valid claim except a demand for a specified or determinable sum. Plaintiff also promised to follow-up with a more exact claim when the actual loss was ascertained. Plaintiff did not do so until, at best, December even though he admittedly possessed sufficient information to have compiled a claim by March.

Plaintiff relied heavily on INA v. G.I. Trucking to argue that the February 8, 2000 letter sufficed under the Ninth Circuit's substantial performance standard. The Court ruled in Yellow's favor, however, holding that the substantial compliance standard would not absolve plaintiff from failing to file a complete claim where plaintiff knew its damages well within the nine months but lollygagged. The Court relied heavily upon the policy rationale behind the rule, as stated in its conclusions of law.

6. King Jewelry, Inc. v. Federal Express Corporation. 316 F.3d 961 (9th Cir. 2003)

Plaintiff sent a shipment of candelabra from Florida to California via Federal Express, declared a value of $37,000 on the airbill and paid an extra $185 for the declared value. The candelabra were damaged in transit but FedEx offered only $500, the limitation of its liability under the airbill, notwithstanding the shipper's declaration of value, because the candelabra were "items of extraordinary value". The Ninth Circuit affirmed the District Court=s grant of summary judgment to FedEx, holding that (1) the candelabra were items of extraordinary value based on the definition contained in FedEx's Service Guide and the testimony of the plaintiff's own witness, (2) that federal common law governed the application of the limitation of liability in FedEx's airbill, and (3) that FedEx satisfied the released valuation doctrine through the plain language in the airbill and the Service Guide. The Court also held that the released valuation doctrine requires only a fair opportunity to purchase a higher liability, "not necessarily up to the full value of the item".

7. Medtronic, Inc. v. U.S. Xpress, Inc., 341 F.3d 798 (8th Cir. 2003)

Plaintiff Medtronic filed suit against U.S. Xpress ("USX")-a contract carrier-after USX denied its claim for damages to three bundles of medical equipment shipped via Federal Express. Medtronic tendered the medical equipment to FedEx for shipment, but did not declare a value on the airbills. The terms of the airbills indicated the liability for each shipment would be $100, unless stated otherwise. FedEx tendered the shipment to USX for truck shipment. USX provides "through shipping services" to FedEx. No contractual relationship exists between Medtronic and USX. During shipment a fire destroyed Medtronic's goods. Medtronic brought this suit against USX under the Carmack Amendment. USX successfully argued in its motion for summary judgment that because it was a contract carrier, Medtronic is limited to FedEx's limitation amount of $100 per shipment.

On appeal, Medtronic argued that the FedEx contract is ambiguous and must be read to exclude contract carriers. The Court of Appeals disagreed, finding the contract language did not exclude contract carriers. Motion for Summary Judgment was affirmed.

8. United States Aviation Underwriters, Inc. v. Yellow Freight System, Inc., 2003 WL 22998848 (S.D. Ala.)

Insurer brought state court subrogation action against motor carrier to recover insurance proceeds paid to its insured for damage to jet engine occurring during transport, alleging breach of contract , negligence, and wantonness. Carrier removed action to federal court. Cross motions for summary judgment were made before the trial court . The court granted Yellow's motion as to state-law claims, and such claims were dismissed as preempted by the Carmack Amendment. The court denied Yellow's motion and held it was not entitled to the benefit of the insured's insurance. The court provides an excellent discussion of evidence to be used to prove a prima facie case as to how damage occurred.

Membership Additions

The TLP & SA wishes to welcome three new members:
Richard Lang - ABF Freight Systems,
Ronald & Robert Bavagnoli - Bavagnoli & Bavagnoli
David Schneider Esq. - Schneider & Labarthe

WHY FREIGHT CHARGE CLAIMS BELONG IN FEDERAL COURT: RESISTING JUDICIAL ASSAULT

Transportation lawyers and many knowledgeable transportation managers would likely say that this is not an issue. We have always brought our freight charge claims in federal court unless there was a compelling reason to use the state courts. Nevertheless, we knew we had a right to bring those freight charge claims in federal court. Recently, some federal judges are maintaining an assault on carrier rights in federal courts. From opinions holding that a shipper can file a "well pleaded" cargo claim complaint in state court which would prohibit the carrier from removing the matter to federal court under Carmack, to rulings stating that carrier freight charge claims do not present a "federal question" to be heard in federal court, certain federal judges are attempting to erode carrier rights under the Interstate Commerce Act (presently ICCTA).

COURTS ASSERT LESS IS BETTER

What is behind this movement? Well, there are many possibilities. First, most freight charge cases are for amounts well below the court's general jurisdictional amount of $75,000.00. Federal judges sometime feel that cases for such "small" amounts are beneath the "majesty" of the federal court so they are anxious to find a way of dismissing them. Second, federal judges are always under increased pressure to pear down their dockets and to dispose of cases as quickly as possible. Therefore, if the court can find a lack of federal jurisdiction, the case is subject to dismissal on the judge's own motion. This is one of the easiest ways of getting rid of a pending matter. Third, as the reasons for deregulation fade into the past, many judges are not familiar with the legislative history behind the current Act. They either misread the intention of the statute or focus on their own interpretation of a narrow portion of the Act without understanding how the Act must be read as a whole. In this regard, some courts misunderstand the difference between individually negotiated contracts which may waive ICCTA control and may not be cognizable in federal courts, and bill of lading "contracts" which are subject to ICCTA. Fourth, there is a portion of the judiciary who feel that their interpretation of legislation is superior to that of the Legislature itself. Finally, some judges are just flat out wrong.

In a continuing effort to assist and educate our members, we thought it would be beneficial to review why we feel that freight charge claims are entitled to be brought in federal court.

FEDERAL JURISDICTION

Initially, it should be noted that a federal court is a court of limited jurisdiction. That means a federal district court may only take cases authorized by the Constitution or Congress. Therefore, the court must determine its jurisdiction in every case. The court is obligated to review its authority to hear a case before it can proceed to the merits. Even the parties themselves cannot agree or stipulate to federal jurisdiction where none exists and the issue of lack of subject matter jurisdiction can be raised at any time by a party or the court itself. If the court determines that subject matter jurisdiction does not exist, the case must be dismissed no matter how far the matter has proceeded.

TWO TYPES OF JURISDICTION

For our purposes, there are two types of federal jurisdiction for a freight charge claim; 1) "arising under" jurisdiction where it is argued that a claim for freight charges arises under the Constitution, the laws of the United States and/or treaties made by the United States. This is often termed "federal question" jurisdiction. There is no minimal amount necessary for federal question jurisdiction. 2) "diversity jurisdiction" is provided for under the Constitution whereby controversies between a state, or citizens thereof, and foreign states, citizens or subjects are allowed to be brought in federal court. The present minimal amount necessary under diversity jurisdiction is $75,000.00. The burden of proof to establish federal jurisdiction is with the party asserting jurisdiction. The initial federal complaint must clearly set forth how the court has jurisdiction over the matter.

DIVERSITY

Diversity jurisdiction is simple and straight forward. There must be complete diversity between plaintiffs and all defendants. If any one defendant is a citizen of the same state as any one plaintiff, diversity of citizenship is destroyed. As indicated above, the amount in controversy must be in excess of $75,000.00. Meeting these two requirements qualifies a freight charge claim to be heard in federal court.

FEDERAL QUESTION

The more troublesome issue is whether freight charge claims based on interstate shipments can still be brought in federal court based on "arising under" or federal question jurisdiction. This appears to be the latest battleground for carriers. The case of Transit Homes of America v. Homes of Legend, Inc., 173 F. Supp 2d 1192 (N.A. Ala. 2001) raises some of the problem issues as it concludes (we believe misguidedly) that the contract claim for unpaid freight charges does not "arise under" federal law for the purposes of jurisdiction in federal court.

It is interesting that the court in Transit Homes does not cite the legal position taken by Sorkin nor does the Judge deal with any of the cases in the Sorkin treatise . It occurs to us that the Transit Homes court has a fundamental confusion between negotiated individual private contracts which waive ICCTA protections and the bill of lading contract which we believe creates "arising under" federal question jurisdiction since the court states:

Therefore, the great majority of transportation of property by motor carrier in this country must, of necessity, occur pursuant to the terms of private contract of one form or another, be they receipts, bills of lading, or otherwise, between individual carriers and shippers. Transit Homes at 1195.

REASONS TO BE IN FEDERAL COURT

TLP&SA agrees with the Sorkin position for a number of important reasons which are summarized as follows:

1. ICCTA Sections 13706- entitled Liability for the payment of rates and Section 13707-entitled Payment of rates directly regulate which party is responsible for the payment of freight rates and the carriers obligation to give up possession of goods when payment is made. These specific sections taken together with Section 14705 which provides for actions by and against carriers regarding freight charges clearly demonstrate Congressional intent to preserve federal control over the trucking industry with regard to freight charges.

2. Substantial regulation of the motor carrier industry still remains as evidenced by the entire Part B of the Interstate Commerce Act which contains approximately 70 pages of Congressionally mandated motor carrier regulations.

3. Congress was aware that uniformity of result is still desirable in dealing with a nationwide industry. There is an important difference between resolving a contract problem arising out of an individually negotiated contract wherein the only two affected parties have anticipated their issues beforehand and resolving a standard bill of lading contract which may effect the entire industry. The parties should have a right to have the latter decision made in federal court in order to eliminate adverse state parochial concerns and as a guide to the industry as a whole.

4. Both practical and public policy reasons militate strongly in favor of finding subject matter jurisdiction for freight charge claims.

CONCLUSION

Based on the above, and because we have observed the federal courts tend to be more knowledgeable concerning federally regulated industries (the Transit Homes court notwithstanding), and in light of the fact that federal judges have the ability to spend more time analyzing complex issues, and understanding that state court decisions have no precedential value out side the state, TLP&SA concludes that federal jurisdiction for freight charge claims exists and should be utilized wherever possible.

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MARCH 21—MARCH 24, 2004

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