

Transportation Update: Court of Appeals Affirms Tanker Cleaning Is Subject To Carmack

ATTORNEYS

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On January 30, 2017, the U.S. Fifth Circuit Court of Appeals in the case *Heniff Transportation Systems, LLC v. Trimac Transportation Services, Inc.*, affirmed a ruling that dismissed a contaminated cargo suit filed against a tanker washer by a motor carrier. This opinion illustrates that a company that does not physically transport goods may be protected by the Carmack Amendment 49 U.S.C. § 14706, *et seq.* ("Carmack").

A. Background

In November 2011, Heniff Transportation Systems, LLC ("Heniff") was hired by Huntsman Corporation ("Huntsman"), a chemical producer, to transport chemicals from Texas to Lambent Technologies Corp. ("Lambent") in Illinois. To avoid contamination of its product, Huntsman required Heniff to thoroughly clean, or "Kosher" wash, the inside of the tanker trailer prior to use.

Heniff contracted with Trimac Transportation Services, Inc. ("Trimac") to wash the tanker. The tanker did not receive a Kosher wash, and the load of chemicals was contaminated. Upon delivery, the cargo contaminated other Lambent chemicals and damaged Lambent's equipment. Heniff paid \$30,394 for the spoiled cargo and \$208,516 for damages to Lambent's equipment.

B. Procedure

In February 2015, Heniff filed suit against Trimac in federal court in Illinois, asserting several state law claims relating to the cargo contamination and a federal claim for liability apportionment under Carmack. The case was transferred to the U.S. District Court for the Eastern District of Texas. Trimac moved to have Heniff's state law claims dismissed, maintaining that they were preempted by Carmack. The District Court agreed and dismissed Heniff's state law claims. Heniff appealed, and the Fifth Circuit agreed with the lower court

C. Discussion

The issue on appeal was whether Heniff's state law claims against a tanker washer were preempted by Carmack. The Carmack Amendment establishes the standard for imposing liability on a motor carrier for the actual loss or injury to property transported through interstate commerce. Carmack generally preempts state law claims arising out of the shipment of goods by interstate carriers. The Fifth Circuit held that the service that Trimac provided -- cleaning Heniff's tractor trailer so that it could be used to transport chemicals from Texas to Illinois -- was a service related to the movement of passengers or property in interstate commerce. Thus, Trimac was a "carrier" subject to Carmack even though it did not handle or transport the cargo. As such, Heniff's state law claims pertaining to the damage of goods caused by these services were preempted by Carmack.

D. Why is this important?

1. Liability under Carmack extends beyond the carrier who actually provides the transportation.
2. Courts have assigned a broad reach to Carmack to maintain a uniform liability regime for causes of action stemming from the loss or damage arising from the interstate transportation of the goods by a common carrier.
3. Spotting facts that support the application of Carmack is critical when evaluating limits of liability, preemption and procedure.