

HIRED TRUCK CRASHES, TRUCK IS TOWED, TOWING COMPANY CLAIMS LIEN ON TRUCK AND CARGO. NOW WHAT?

Occasionally a truck hired by a broker is involved in an accident, and occasionally the disabled truck is towed, and the towed truck, along with the freight, is held subject to a lien asserted by the towing company. Tempers flare and unkind words are exchanged when the towing company refuses to release the freight (as opposed to the truck) for an outrageous amount of money. There are few reported cases on the subject matter. However, a recent case from the U.S. District Court in the Western District of Louisiana addressed the issue. Mountain Movers Transportation & Logistics, LP v. Continental Trans Express, Inc., 2012 U.S. Dist. LEXIS 182814, decided December 27, 2012. The underlying facts are as follows:

Independent Pipe shipped a load of plastic pipe, pursuant to a bill of lading, brokering the load to Mountain Movers. The value of the load was alleged to be in excess of \$41,000. Mountain Movers in turn brokered the load through Continental, who in turn brokered the load to Napoles. The pipe was transported pursuant to a Carrier Rate Confirmation and Contract between Mountain Movers and Continental. Napoles, on whose truck the load was actually transported, had mechanical problems and became disabled. A police dispatcher called Despino's to tow the truck and trailer. Despino's was unable to make the tow and called Northside to assist at the scene. Napoles truck and the load of pipe were towed to Northside's tow yard. It remained there for approximately four years, where the parties argued about responsibility for the freight.

Finally, Independent Pipe, the shipper, accepted a check of \$20,000 from Mountain Movers, and Mountain Movers subsequently brought this action on its own behalf and as subrogee of Independent Pipe as the owner of the pipe. Mountain Movers asserted recovery for damages under the Carmack Amendment, and alternatively under Louisiana state tort law for conversion of the pipe. Mountain Movers sought the loss of the value of the pipe, legal interest from the date of the alleged illegal seizure, cost of transferring the pipe, and attorney's fees.

Despino's and Northside both argued that they were not subject to the Carmack Amendment and not liable to Mountain Movers. Both towing companies further asserted that they had a privilege or lien over the truck, trailer and pipe under Louisiana law.

The Court first examined whether Continental and Napoles were liable as "carriers" under the Carmack Amendment. The Court indicated that since Continental and Napoles were involved in interstate transport, they were liable as carriers under the general provisions of the Carmack

Amendment. On the other hand, the two towing companies whose services were intrastate were found to be not liable under Carmack because they were providing “emergency towing services” exempt under 49 USC §13506(b)(3), which provides for emergency towing to be exempted unless otherwise necessary to carry out transportation policy under 49 USC §13101. Transportation policy under §13101 relates to the setting of reasonable rates for transportation across state lines and according to the Court, emergency tows within a single state was not contrary to that policy. Therefore, the Court found that Despino’s and Northside (the towing companies) were not liable under Carmack.

According to the Court, 49 USC §14501(c)(2)(c) allows states in their political subdivisions to enact laws relating to non-consensual towing services. That section states: “...(c) does not apply to the authority of a state or political subdivision of a state to enact or enforce a law, regulation, or other provision relating to the price of for-hire motor vehicle transportation by a tow truck, if such transportation is performed without the prior consent or authorization of the owner or operator of the motor vehicle.” The Court found that based on testimony at trial, that the towing in this case was consensual, that is performed with the prior consent of the operator of the truck. Plaintiffs argued that because the towing services were consensual, state laws relating to services were preempted by federal authority relating to interstate transportation. The Court rejected Plaintiff’s claims stating that the Carmack Amendment at §14706 specifically refers to §13506 which excludes emergency towing from the Amendment’s jurisdiction. Citing 49 USC §13506(b)(3) and §14706(a)(1). Interestingly, 14706(a)(1) makes no such reference. However Section 13506(b)(3) says, “Miscellaneous Motor Carrier Transportation Exemptions, (b) exempt unless otherwise necessary, except to the extent the secretary or board as applicable, finds it necessary to exercise jurisdiction to carry out the transportation policy of Section 13101, neither the secretary nor the board has jurisdiction under this part over, (3) the emergency towing of an accidentally wrecked or disabled motor vehicle.” The facts of this case seem to indicate that the truck which was transporting the freight was not in an emergency situation, was not accidentally wrecked but had mechanical problems. According to this court those mechanical problems apparently qualified as “disabled” under the statute. In any event, the Court concluded that there was no federal jurisdiction over this matter.

After this analysis, the Court found that only the two motor carriers, Continental and Napoles were liable to the Plaintiffs under the Carmack Amendment. By further analysis, the Court stated that the towing companies asserted they had a privilege over the truck, trailer and pipe which

enabled them to maintain possession over the items until the towing and storage charges were paid. After analyzing the Louisiana statute, the Court determined that the towing companies, Despino's and Northside, having provided towing and storage services for the Plaintiffs, were within their legal rights to keep the truck, trailer and pipe until they were paid for their services. Thus, the Court concluded that towing companies did not commit conversion (or civil theft) as alleged by the Plaintiffs. In order to support its decision, the Court referred again to §14501(c)(2)(a) which provides an exemption from federal jurisdiction when the tow is performed without the consent of the carrier. Facts in the opinion only state that a police dispatcher called for the tow truck. Apparently the court thought that made the towing non-consensual so that the statutory exemption applied.

If there is any good news about this decision, it flows from the courts reduction in the amount of storage fees allowed as damages. While there was much dispute over the amount of damages, the \$100-per-day storage fees asserted by Northside were reduced by the Court as excessive, the Court allowing only \$5 per day as the appropriate storage charge. The Court allowed Despino's to recover from Mountain Movers and Independent Pipe the amount of \$3,800. The Court allowed Northside to recover in excess of \$13,000 from Mountain Movers and Independent Pipe.

The essential holding of the case is that the interpretation of the federal statutes by this Court allows state statute to provide liens over the truck, trailer and the freight as a priority over claims of the owners of the tractor trailers and owners of the freight. Thus the towing companies were not liable for "conversion" of the freight. In the final analysis, in order to determine whether conversion has occurred, one must review carefully the state statutes and case law applicable to the facts concerning the shipment.

Respectfully Submitted,

Ronald H. Usem, Esq.
Huffman, Usem, Crawford & Greenberg, PA
5101 Olson Memorial Highway, Suite 1000
Minneapolis, MN 55422
763-545-2720