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ONE AND DONE- SKYREEFER MOTION GROUNDED BASED ON RESULTING VIOLATION OF COGSA'S LIABILITY FLOOR

Following a shipboard fire, a vessel owner, Hapag Lloyd, filed a Petition to Limit Liability in the Southern District of New York, prompting cargo interests to file claims for losses and damages against the bill of lading carriers, including ONE. ONE brought a motion to dismiss based on the Singapore forum selection clause in its bill of lading.

The Magistrate recommended that the motion be denied on the basis that the Singapore Court would enforce the 1976 Convention on Limitation of Liability for Maritime Claims ("Limitation Convention"), to which the U.S. is not a party. Application of the Limitation Convention would cap cargo interests' recovery potential to an amount that was less than otherwise recoverable under the Carriage of Goods by Sea Act ("COGSA").

In so doing, the magistrate judge cited Section 3(8) of COGSA, which voids any maritime contractual provision that limits liability below the limits provided in Section 4 of the COGSA, i.e., $500 per package. limitation. As the parties agreed the Singapore Court would

apply the Limitation Convention limits, the magistrate concluded that COGSA rendered the forum-selection clause null, and void based on public interest considerations.

ONE objected to the Magistrate's recommendation to the District Court Judge that ONE's motion to dismiss be denied. It argued that the Magistrate errantly based its recommendation on private interest factors, even though (as ONE contended) cases required consideration of only public-interest factors.

The District Court Judge rejected ONE's argument, explaining the provisions of COGSA reflect public policy, and applying COGSA's provisions to the parties' dispute did not mean the Magistrate was basing his recommendation on private factors. Instead, the recommendation was simply consonant with public and private factor considerations.

ONE further argued that in the seminal *Sky Reefer* case, the Supreme Court distinguished between substantive and procedural limitations on liability, holding that substantive limitations were against public policy but that procedural limitations were not subject to public policy considerations.

The District Court rejected this argument, distinguishing Sky Reefer—which, as it noted, enforced the foreign forum selection clause because the objection was focused on the "inconvenience and costs of proceeding" abroad, a procedural objection.

Here, applying the Limitation Convention would result in a violation of COGSA's limitation floor, a substantive issue, notwithstanding the fact that the vehicle for getting to that violation was a procedural one, i.e., motion based on a forum selection clause.

The Court denied ONE's motion to dismiss the cargo claims.

In the Matter of the Complaint of Hapag-Lloyd Aktiengesellschaft a/k/a Hapag-Lloyd AG As Owners and Operators of the M/V Yantian Express, No. 19-cv-5731 (S.D.N.Y. Nov. 29, 2021)(Judge Gregory H. Woods)

MOTOR CARRIER'S DEFENSES GENERATE HARSH CRITIQUE UNDER THE CARMACK AMENDMENT

In *Thompson Tractor Co. v. Daily Express*, the district court considered cross-motions for summary judgment stemming from alleged in-transit damage to a commercial generator. Plaintiff, a dealership, purchased and agreed to deliver the generator to a third-party purchaser. The unit was shipped from Caterpillar in Illinois, which issued the bill of lading used by Daily Express Inc., the defendant motor carrier. The delivery was to Alabama, so the Carmack Amendment governed.

The truck driver signed the bill of lading with no notation of damage, which the court determined was sufficient to establish the cargo's good order and condition upon the motor carrier's receipt.

While in transit, the rig left partially left the roadway, requiring use of a tow truck to get the trailer back onto the road. At destination, the receiver signed off on the bill of lading with no exception, and a third-party inspector likewise did not note any damage. Some days later, the Plaintiff's personnel found damage and sent a notice of claim to the carrier via email.

The carrier argued 1) Plaintiff lacked standing to sue because it was neither the named shipper nor consignee under the bill of lading and because it had been compensated by its insurer, 2) the notice of claim was electronically submitted in violation of implementing regulation (49 C.F.R. 1005.2 (b), and 3) the initial inspection demonstrated the generator was not damaged while in the carrier's custody.

The Court determined that Plaintiff's status as the purchaser of the generator gave it sufficient standing to sue and that an objection to real-party status is properly made under Fed. R. Civ. P. 17, which allows a claimant time to cure a deficiency. It also noted that because the

Defendant was the party required to issue an accurate bill of lading, it could not rely on technical failures in the bill of lading to defeat Plaintiff's claim.

Then, the court found that the Carmack Amendment does not, itself, include a mandatory nine-month notice of claim provision. Following the Fourth Circuit's precedent, it also found that ensuing regulations only require a written claim before making a voluntary payment, which does not extend to litigated claims.

Finally, the Court reiterated that a *principal* must undertake acts to confer apparent authority on an apparent agent, and it held that Defendant allowed a third party to inspect the unit upon delivery—thus robbing the Plaintiff of its chance to inspect the cargo pursuant to the bill of lading's inspection provisions. The appropriate remedy for this breach was the carrier's inability to rely on the inspection report to prove the cargo's condition at delivery.

As a result, the court denied the trucker's motion to summary judgment, granted the claimant's motion, in part, and ordered the case tried on the issue of the generator's condition at delivery.

Thompson Tractor Co. v. Daily Express Inc., 2-20-cv-02210 (JBM), 2022 U.S. Dist. Lexis 33409 (CD IL Feb. 25, 2022)(District Judge Joe Billy McDade)

THERE'S NO SUBSTITUTE FOR BEING FIRST—DISTRICT COURT REJECTS FORUM-SELECTION CLAUSE IN FAVOR OF FIRST-TO-FILE RULE AND TRANSFERS DECLARATORY JUDGMENT DISPUTE

This case addressed a direct conflict between a contractual forum-selection clause in a second-filed declaratory judgment action and the "first-to-file" rule, which holds that the first federal court seized of a controversy should be the one to hear any case that substantially

overlaps the controversy. The court that the first-to-file rule supersedes a forum-selection clause, and that the court initially seized of the controversy should decide any venue or forum defenses arising from the parties' contract.

On July 8, 2021, Fluence Energy, the shipper of containerized chemicals, filed suit for cargo damage against the carrying vessel, in rem, in the Southern District of California which was the discharge port. The vessel owner posted security and answered, asserting its liability was limited or eliminated under the Carriage of Goods by Sea Act ("COGSA"), related federal statutes and bill of lading defenses.

The following day, the vessel's charterer, BBC Chartering, filed a declaratory relief action in the Southern District of Texas seeking a determination that it was not liable for the cargo damage pursuant to the terms of the ocean bills of lading which included a forum selection clause mandating suit in Texas.

The companies involved in the transaction were declaratory-judgment plaintiff BBC Chartering, a German company, defendant Fluence, a Delaware company, defendant Schenker, Inc., a Texas company, and defendant Schenker Deutschland, a German company.

BBC issued the Booking Note to Schenker Deutschland in March 2021, acknowledging a planned shipment containing dangerous goods. A little over a month later, BBC issued the Bills of Lading, which contained this forum selection clause:

> (iv) Whenever the U.S. COGSA applies, whether by virtue of carriage of cargo to or from the US or otherwise, any dispute arising out of or in connection with the Contract of carriage evidenced by this Bill of Lading shall be exclusively determined by the United States District Court for the Southern District of Texas, and in accordance with the laws of the United States. Merchant further agrees to submit to the jurisdiction of the Southern District of Texas and to waive any and all objections to venue.

Fluence's goods were damaged in transit, and, as above, Fluence filed a separate (and first filed) *in rem* action against the BBC's transporting vessel in the Southern District of California. The vessel's owner asserted defenses and defended the suit.

A day after the in-rem action was filed, BBC filed a declaratory judgment complaint in the Southern District of Texas, seeking to eliminate or limit its liability for damage to the cargo. Intermediaries, Schenker and Schenker Deutschland, filed crossclaims against Fluence, seeking to limit their liability to Fluence. Fluence moved to transfer the Texas declaratory action to California.

The Texas court acknowledged that ordinarily, the court where a controversy is initiated should be the one to decide it. Thus, under the "first-to-file" rule, the second federal court to receive a related set of facts may refuse to hear it if the issues substantially overlap. That second court could stay or transfer its pending case to the first court seized of the similar controversy. Perfect overlap is not required to trigger the rule's operation, rather, "substantial overlap" is sufficient—and declaratory actions are particularly subject to the rule.

BBC did not dispute that substantial overlap existed here; rather, it argued that the forum-selection clauses in the Bills of Lading trumped the first-to-file rule. The Texas court rejected that argument, based both on existing Fifth Circuit precedent (*Gateway Mortgage Group, L.L.C. v. Lehman Brothers Holdings, Inc.*, 694 F. App'x 225, 227 (5th Cir. 2017)) and general principles of comity and avoiding duplicative judicial rulings. As it held, even if the forum-selection clause could eventually overcome the first-to-file rule, it was the place of the first-to-file court (here, the California court) to decide issues related to the forum-selection clause's operation. To allow otherwise would invite piecemeal litigation. It accordingly transferred the case.

BBC Chartering Carriers Gmbh v. Fluence Energy, LLC, H-21-2235, 2021 U.S. Dist. Lexis 229756 (S.D. Tex. Dec. 1, 2021)(District Judge Sim Lake)

DONE DEAL: DEFENDANT SHIPPER'S SUMMARY JUDGMENT MOTION GRANTED WITH PLAINTIFF'S CASE WEAK ON FACTS, LAW, AND DILIGENCE

On January 5, 2022, Judge Dora Irizarry of the Eastern District of New York granted summary judgment for defendants Carlo Shipping International ("CSI") and Carlos Feliu ("Feliu") (collectively, "Defendants"), dismissing all claims asserted by plaintiff Susan Osagiede ("Plaintiff").

Plaintiff hired Defendants to ship Plaintiff's goods, consisting of four vehicles and two pallets of personal items, from New York to Lagos, Nigeria. One of Plaintiff's vehicles, a Toyota Camry, was delivered to Defendants without title. CSI loaded Plaintiff's goods into a container to be presented to the United States Customs and Protection Agency ("US Customs") for clearance.

On October 16, 2018, the container was randomly selected for further screening. US Customs discovered that the title for the Camry was never presented and assessed a $10,000 penalty against CSI.

On November 8, 2018, after Plaintiff provided the title which CSI presented to US Customs. CSI informed Plaintiff she would need to pay any penalty imposed by Customs. CSI also petitioned US Customs for relief from the penalty.

Defendants withheld the release of Plaintiff's goods pending Plaintiff's payment of the penalty or U.S. Customs cancellation of the penalty. U.S. Customs eventually cancelled the penalty. Defendants then released Plaintiff's goods, which were ultimately delivered later than anticipated.

On January 7, 2019, Plaintiff filed suit against Defendants, asserting claims for breach of contract, intentional infliction of emotional distress, fraud, breach of duty of good faith and fair dealing, detrimental reliance, misrepresentation, fraudulent conversion, unjust enrichment, and violation of New York State General Business Law Section 349 (prohibiting deceptive acts and practices).

In support of their summary judgment motion and pursuant to court rules, Defendants submitted a statement of purportedly undisputed facts. Plaintiff failed to submit a statement in response. The court nevertheless reviewed defendant's submission to ensure their position was supported by admissible evidence.

The court dismissed Plaintiff's breach of contract claim on the grounds that Defendants fully performed, that Plaintiff did not identify a particular provision that had been breached, and that Plaintiffs failed to offer proof of an agreed upon delivery date. The conversion claim was dismissed because, under New York law, conversion does not occur until the owner demands return of the property and the person in possession refuses return, and no such demand was made by Plaintiff. Plaintiff failed to address the remaining claims in her opposition, so the court dismissed them as abandoned.

Osagiede v. Carlo Shipping Int'l Inc, 18-cv-07358 (DLI) (SJB), 2022 WL 43750 (E.D.N.Y. Jan. 5, 2022) (District Judge Dora L. Irizarry)

DROP IT LIKE IT'S HOT: COURT DENIES MOTION TO TRANSFER HOT SAUCE CARGO DAMAGE CASE

This case arises from damage to a shipment of Tabasco hot sauce. The shipper, McIlhenny Company, contacted a freight forwarder to arrange carriage to Japan. The shipment was picked up from McIlhenny's facility in Avery Island, Louisiana and transported to the

Defendant, Union Pacific Railroad Company's ("UP") facility in Avondale, Louisiana. The sealed and containerized shipment and arrived at UP's facility in apparent good condition. UP then railed the load to Long Beach, California for ocean carriage to Tokyo, Japan.

Upon the shipment's arrival in Japan, McIlhenny's customer discovered that the cargo had been damaged. Investigation showed that while the shipment was in a UP storage area, some of the cargo and packaging became damaged or missing, and a replacement seal was applied to the container.

McIlhenny filed an insurance claim with its insurer, Starr Indemnity and Liability Company ("Starr"), which paid $123,199.85 for the cargo loss. Starr then filed a subrogation action against UP seeking recovery of the amount paid to McIlhenny.

Suit was initiated in state court in Louisiana, and UP removed the action to federal court. Then, pursuant to 28 U.S.C. § 1404(a), UP filed a motion to transfer venue to the U.S. District Court for the District of Nebraska, citing a forum-selection clause contained in its freight bill and Confidential Rail Transportation Contract. In response, Starr contended that neither it nor its insured were privy to the contract with UP.

A party seeking to enforce a forum-selection clause has the burden of establishing that the clause: (1) is valid; (2) has a scope that covers the claims; and (3) is mandatory. As such, the threshold issue was whether a valid contract existed between McIlhenny and UP. UP submitted a heavily redacted freight bill and an excerpt of the alleged Confidential Rail Transportation Contract that contained the forum-selection clause. However, the submitted evidence failed to identify who the shipper was or what party signed the contract with UP. In fact, the shipper's name was redacted on both the freight bill and the contract itself. Considering that UP could not provide evidence to support its position that McIlhenny (or Starr) was a party to the contract, the district court concluded there was no contract between the parties; the proper parties to the

contract were UP and the undisclosed freight forwarder.

Nonetheless, the court then turned its inquiry to whether McIlhenny (and Starr) could be bound by the contract between UP and the freight forwarder acting as McIlhenny's agent. A freight forwarder may act as either an agent for the shipper or the carrier or as an independent contractor, depending upon the specific facts of the case. In the Fifth Circuit, a key factor in determining agency is whether the shipper controlled the forwarder's performance of its duties.

Here, McIlhenny never contracted with UP and never saw the freight bill or the alleged contract. Rather, McIlhenny contacted a freight forwarder which, in turn, contacted UP. Even further, UP did not issue the bill of lading to McIlhenny and did not list McIlhenny as the shipper. The court determined that McIlhenny had no knowledge of how the freight forwarder performed its duties and did not control the freight forwarder's performance. Considering the foregoing, the freight forwarder did not act as McIlhenny's agent, and, as such neither McIlhenny nor Starr was bound by the contract between UP and the freight forwarder. With Starr not bound to the forum-selection clause, the district court denied the rail carrier's motion to transfer.

Starr Indemnity & Liability Ins. Co. v. Union Pacific Railroad Co., cv-21-1640 (District Judge Ivan L. R. Lemelle) (E.D. La. Dec. 7, 2021)

CLOSING THE DOOR ON SUBROGEE'S COGSA CLAIM

On November 10, 2021, following a bench trial, District Judge P. Kevin Castel of the Southern District of New York entered an order denying the subrogation claim of Hartford Fire Insurance Co. ("Hartford") in connection with damage to a shipment of glass doors and windows. Hartford failed to make a *prima facie* case because it did not show that the damage

occurred during Maersk's leg of the shipment and by applying COGSA's insufficient packaging exception.

On February 2, 2017, two cargo containers supplied by Maersk were packed and loaded with glass windows and doors at Munster Joinery and were loaded onto a vessel by Maersk in Cork, Ireland. Following discharge and loading onto another vessel in Rotterdam, the containers were transported to the Port of Newark, where they were discharged. On March 1, 2017, the containers left the Port of Newark for trucking to the Klearwall facility in Connecticut, where they arrived the next day in damaged and unusable condition.

In support of its subrogation claim, Hartford submitted testimony from three witnesses. First, the dispatch manager of international orders at Munster Joinery testified to his presence during the packing and loading of the containers at issue and stated that they were in good order and condition. Second, Klearwall's service manager testified to Klearwall's general shipping practices without firsthand knowledge of the particular shipment and with language that appeared "lifted nearly word-for-word" from the dispatch manager's declaration. A third witness, a consultant engaged by Klearwall in 2011, offered "example photographs" of how a container would be loaded. In defense, Maersk's head of claims in North America testified that the containers were loaded and sealed prior to delivery to Maersk and out of Maersk's presence. Maersk also introduced a report prepared by Bruno, a surveyor retained by Klearwall, stating that the cargo was damaged due to shifting within the containers as a result of inadequate bracing, lashing, and securing, and concluding that the containers "endured extreme movements and forces while in transport," resulting in cargo damage.

It is the shipper's burden to show that the cargo was in good condition at the time of delivery to the carrier and that the cargo was in bad condition at the time of outturn by the carrier. In ruling that Hartford failed to meet this burden, the court discredited Hartford's

witness testimony, noting, among other things, that the dispatch manager did not testify to his supervision, management, or personal involvement with securing the subject items. Further, the court ruled that even if Hartford had made a *prima facie* claim, Maersk triggered a COGSA exception by proving with the Bruno report that the cargo was insufficiently packed. Notably, Maersk put the containers back into use immediately after their return, suggesting that the damage was caused by deficient packing and loading rather than defective containers themselves.

Hartford Fire Insurance Co. v. Maersk Line, 18-cv-121 (PKC), 2021 WL 5234853 (S.D.N.Y. Nov. 10, 2021) (District Judge P. Kevin Castel)

BORN TO RUN—BUT NOT WITHOUT PROOF OF THE DELIVERY DATE

On December 1, 2021, District Judge Brian Martinotti of the District of New Jersey entered an order denying the motion to dismiss of Hapag-Lloyd Aktiengesellschaft, et al. (collectively, "Hapag-Lloyd") on the grounds that, despite showing that the one-year statute of limitations under COGSA should apply, Hapag-Lloyd failed to establish the date of delivery when the statute of limitations began to run and the date when it expired.

Hapag-Lloyd is a common carrier by water for the transport of goods in interstate and foreign commerce. Aleph Industries, Inc. a/k/a Aleph Tire Road Services ("Aleph"), contracted with Hapag-Lloyd to transport shipments of its used tires from US ports to ports in India. Hapag-Lloyd issued fourteen bills of lading in connection with these shipments, which departed their ports between May 2019 and March 2020. While the shipments were in transit, India placed restrictions on imported used tires. As a result, Aleph instructed Hapag-Lloyd to change the final destination of the shipments to Pakistan, which Hapag-Lloyd confirmed. However, the shipments were not redirected to Pakistan and instead were delivered to India, where they were

offloaded and held in storage. Aleph claims it incurred storage charges and has been unable to satisfy its customer orders because the tires cannot clear customs in India.

Hapag-Lloyd filed a complaint against Aleph claiming breach of contract for failure to make payments for the shipping services provided. On July 8, 2021, Aleph answered and asserted a counterclaim for breach of contract alleging that by shipping the tires to India instead of Pakistan, Hapag-Lloyd caused more than $100,000 in damages to Aleph. Hapag-Lloyd filed a motion to dismiss the counterclaim on the grounds that COGSA's one-year statute of limitations had expired, and that Aleph failed to state a valid COGSA claim.

Rejecting an argument by Aleph that COGSA's one-year statute of limitations applies only when goods are lost or damaged and not in the case of non-delivery, the court determined that the statute of limitations would begin to run no later than the date notice was provided upon effective delivery. Notwithstanding this determination that the statute of limitations applies, Hapag-Lloyd's statute of limitations defense failed on its motion to dismiss because its motion papers failed to provide the accrual dates to allow the court to assess when the limitations period began running and when it expired. Without said information, the court had no means to determine whether the one-year statute of limitations had expired prior to Aleph's filing of the counterclaim on July 8, 2021. Further, without adjudicating the merits of Aleph's claim, the court ruled that the counterclaim sufficiently states a plausible breach of contract claim to survive the motion to dismiss stage.

Aktiengesellschaft v. Levy, 20-cv-11155 (BRM) (ESK), 2021 WL 5630299 (D.N.J. Dec. 1, 2021) (District Judge Brian Martinotti)

THERE CAN ONLY BE ONE HIGHLANDER: COURT PRIORITIZES ONE CONTRACTUAL FORUM-SELECTION CLAUSE OVER ANOTHER

This case addressed conflicting forum-selection clauses. Maersk and Carew entered a Service Contract under which Maersk would ship Carew's goods. That Service Contract contained a forum selection clause calling for suits in the English High Court of Justice in London, but it allowed Maersk to file suit against Carew at a competent court in one of Carew's places of business. The Service Contract also provided that if any provision in Maersk's Transport Document limiting or governing its liability for damages to persons or property conflicted with the Service Contract, the Transport Document would prevail. Maersk's bill of lading (or sea waybill) qualified as a Transport Document under the terms of the Service Contract.

Maersk and Carew entered a series of Transport Documents for transportation of 73 shipments from various ports in the U.S. to Africa. Their terms and conditions required suit in the Southern District of New York, even though conflicts about all *other* shipments were still to be resolved in the English High Court of Justice.

A dispute arose between Maersk and Carew regarding approximately $150,000 in charges for ocean freight, detention, demurrage, inland haulage, and other expenses. Maersk sought to invoke the forum-selection clause, but Carew contended she could not be hauled into court in the Southern District of New York. The Court noted that a tension did exist between the two forum provisions in the two contractual documents. But it held that the clear primacy of the forum selection provision in the Transport Documents was sufficient to bind Carew. And it made short work of Carew's contrary arguments. To begin, Carew argued that bills of lading were mere receipts, and thus were not contract documents that could supplant the Service Contract. The Court noted, however, that a bill of lading' status as a receipt could be

contractually modified by the parties, which Maersk and Carew had done here. The Court further held that even several of the more collateral, ancillary fees that were the subject of Maersk's suit presented a dispute "relating to" the bill of lading, and thus were within the scope of the Service Contract.

Finally, the Court held that the doctrine of *forum non conveniens* did not mandate a change of forum, because the parties entered a valid forum selection clause, and under those circumstances, the clause should be honored under "all but the most exceptional circumstances." Only a showing that litigating in the forum violates the *public interest* will justify abrogating the forum selection clause. Because nothing implicated the public interest here, there was no reason to depart from the forum that the parties preselected.

***Maersk Line A/S v. Carew*, No. 19 Civ. 4870 (JPC), 2022 WL 602851 (S.D.N.Y. March 1, 2022) (District Judge John Cronan)**

PLEADING ALLEGATIONS SHORT-CIRCUIT 12B MOTIONS TO DISMISS

This case concerns an empty shipping container. The Plaintiff/receiver, Inter Metals Group ("IMG"), was expecting a container of copper wire. Since the container arrived empty, IMG sued the various entities involved in the shipping process. Carmack Amendment and state law cause of action were asserted and became the subject of Defendants' 12(b)(6) pre-answer motions to dismiss.

On November 8, 2018, a shipping container with 20,010 kilograms of copper wire was loaded aboard a ship bound from China to the intermediate consignee, Centrans Marine Shipping ("Centrans"), in Newark, New Jersey. On December 11, 2018, Centrans circulated an "Arrival Notice/Freight Invoice" indicating the cargo weight of the container was 20,010 kilograms. After U.S. Customs cleared the shipping container, an agent of C.J. International, Inc. ("CJ") signed an

"Entry Summary" form noting again that the shipment weight was 20,010 kilograms. The container was allegedly then warehoused under CJ's control over the year-end holidays. On January 3, 2019, the shipping container was removed from the warehouse terminal by Maverick Transport, Inc. ("Maverick") and the cargo weight was noted as "17.81 MT" -- approximately 17,800 kilograms. Later that day, during transfer of the container, an automatic "Equipment Interchange Receipt" indicated that the cargo weight was zero. Despite this reading, the next day, the empty container was delivered to IMG in Pennsylvania.

IMG then submitted an insurance claim to Transatlantic Marine Claims Agency, Inc. ("TMCA"). That claim was denied.

IMG brought suit against Centrans, CJ, Maverick, and TMCA. IMG alleged that each of those defendants was a carrier, and that IMG never received its shipment of copper wires. The defendants then filed various 12(b)(6) motions to dismiss IMG's claims.

Centrans argued that it was not subject to the Carmack Amendment because IMG did not plausibly allege that it acted as an interstate carrier. Instead, Centrans noted that its role was limited to that of an ocean freight forwarder and the notify party under the ocean bill of lading. Maverick joined in Centrans' motion contending that it was only a broker rather than a carrier. Likewise, CJ argued that it simply acted as a property broker, not a carrier.

Turning to the factual allegations of IMG's Amended Complaint, the court noted that regardless of these parties' true role in the shipment, at the 12(b)(6) stage, the court was "bound by" IMG's allegations identifying the defendants as carriers. Moreover, because IMG had plausibly alleged a *prima facie* case against these defendants as carriers and the court could not make any factual determinations regarding "the precise nature of [the defendants'] business status and/or activities," the court denied the defendants' motions to dismiss IMG's Carmack Amendment claims.

The court did dismiss the non- Carmack Amendment claims due to the Carmack's pre-emption of state law claims. [1]

In short, this case illustrates an age-old principle —the plaintiff's allegations control early on in a case. Even if these various defendants did not fall under the Carmack Amendment, the court could not dismiss the claims at the 12(b)(6) stage — evidence and testimony would be necessary.

Inter Metals Grp. V. Centrans Marine Shipping, No. 20-7424, 2022 AMC 58 (D.N.J. Feb. 17, 2022) (Judge John M. Vazquez)

[1] Centrans also argued that IMG's claims filed against it were governed by COGSA and that those claims were time-barred based upon a clause in the bill of lading. Nevertheless, the court again noted that it could not determine from the face of the complaint that any claims were time-barred, and, as such the court could not dismiss IMG's claims on these grounds at this stage of the proceedings.

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