

CASE NOTE: *IKON Transportation Services, Inc. v. Texas Made Truckin, LLC a/k/a Alfredo Rodriguez d/b/a Freddy's Freight et al.*:

"If it Looks Like a Duck, Swims Like a Duck, and Quacks Like a Duck, Then it Probably is a Duck"— Except Perhaps When Pleading a Carmack Amendment Claim



David M. Buffo*

As the case of *Freddy's Freight* teaches us, however, when making a Carmack Amendment claim, at least one court believes that at the very least the complainant should reference the Carmack Amendment in its complaint!

Brief Background of the Freddy's Freight Case

In *IKON Transportation Services, Inc. v. Texas Made Truckin, LLC a/k/a Alfredo Rodriguez d/b/a Freddy's Freight*, the United States District Court for the Western District of Wisconsin held that IKON Transportation Services, Inc. ("IKON") forfeited its Carmack Amendment claim against defendant *Texas Made Truckin, LLC a/k/a Alfredo Rodriguez d/b/a Freddy's Freight* ("Freddy's Freight") for failing to plead or otherwise put Freddy's Freight on notice of its Carmack Amendment claim prior to IKON filing summary judgment.³ As the Court held, IKON's one count complaint for "negligent breach of contract" and the paragraphs discussing the claim, "made it clear that the crux of [IKON's] claim was Freddy's Freight's alleged breach of the broker-agreement" and "IKON didn't raise the Carmack Amendment claim until its summary judgment brief."⁴

The case concerns a shipment of two "containment systems" in interstate commerce that were damaged when the containment systems fell off Freddy's

Freight's flatbed truck while Freddy's Freight was still on the property of the manufacturer and shipper of the goods, Advanced Containment Systems, Inc. ("ACS").⁵ Freddy's Freight was an interstate motor carrier licensed under the Federal Motor Carrier Safety Administration ("FMCSA") and IKON was the transportation broker that arranged for the shipment of the containment systems.

In 2017, IKON retained Freddy's Freight to transport freight for IKON's customers. IKON and Freddy's Freight executed a broker-carrier agreement, pursuant to which Freddy's Freight generally agreed to assume liability for loss or damage of freight while it was in Freddy's Freight's custody or control.⁶ There were exceptions to this general agreement which were set forth in the broker-carrier agreement; but generally speaking, Freddy's Freight accepted liability for loss or damage to the freight tendered to it by IKON as a motor carrier, under the Carmack Amendment.

The shipment at issue was to be picked up by Freddy's Freight at ACS's facility in Houston, Texas and delivered to a Department of Defense ("DOD") site in Kentucky.⁷ ACS's employees placed the freight on Freddy's Freight's flatbed truck and the driver, Freddy Rodriguez, signed the bill of lading on behalf of Freddy's Freight. After signing the bill of lading, Rodriguez began the process of securing the freight to the trailer; however, before

Since 1938, the Federal Rules of Civil Procedure have allowed notice pleading. Notice pleading refers to a system of pleading requirements that only emphasizes pleadings as a way to notify parties of general issues in a case. This allows parties drafting pleadings to state their claims in general terms without alleging detailed facts to support each claim and without worrying about pleading every specific detail of a claim.

In *Twombly*, the Supreme Court stated, "Federal Rule of Civil Procedure 8(a)(2) requires only 'a short and plain statement of the claim showing that the pleader is entitled to relief,' in order to 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'"¹ But "a Plaintiff's obligation to provide the 'grounds' of his 'entitle[ment] to relief' requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do Factual allegations must be enough to raise a right to relief above the speculative level"²

* Dysart Taylor Cotter McMonigle & Montemore, P.C. (Kansas City, MO).

he could finish securing the freight, someone from ACS directed him to move the truck to another location on the premises.⁸ Rodriguez objected, asserting he needed to secure the load before moving the truck. ACS insisted Rodriguez move the truck.⁹ After he moved the truck, and while at still on ACS's property, the load slipped off the trailer and was damaged.¹⁰

ACS filed a claim with the DOD and recovered the value of the cargo from the government.¹¹ The government, in turn, issued a claim against IKON for \$91,615.00. IKON paid that sum to the government and then attempted to recover from Freddy's Freight and ACS.¹² When those attempts failed, IKON filed suit against Freddy's Freight and ACS in state court in Rock County, Wisconsin. ACS removed the case and moved to have the claims against it dismissed for lack of personal jurisdiction.¹³ The Court granted the motion and ACS was dismissed from the case which only left a one-count complaint by IKON against Freddy's Freight for negligent breach of the broker-carrier agreement.¹⁴

IKON moved for summary judgment against Freddy's Freight on two grounds: (1) liability under the Carmack Amendment; and (2) breach of the broker-carrier agreement. The Court denied IKON's motion as to both grounds.¹⁵

The Carmack Amendment

The Carmack Amendment, 49 U.S.C. § 14706, provides a nationally uniform scheme of carrier liability for goods lost or damaged in interstate commerce.¹⁶ "It was enacted in 1906 to supersede 'the disparate schemes of carrier liability that existed among the states, some of which allowed carriers to limit or disclaim liability, other that permitted fully recovery.'"¹⁷ Indeed, the "Carmack Amendment establishes a

default rule making carriers of an interstate shipment 'liable to the persons entitled to recover under the receipt or bill of lading,' who may bring suit in state or federal court against the carrier for the 'actual loss or injury to the property' sustained in the course of interstate transportation."¹⁸ "Under this regime, a shipper can be 'confident the carrier will be liable for any damage that occurs to its shipment,' and 'a carrier can accurately gauge, and thus insure against any liability it may face when it agrees to carry something.'"¹⁹

IKON's Motion for Summary Judgment Under the Carmack Amendment


The parties' summary judgment arguments focused exclusively on whether Freddy's Freight was negligent in driving across ACS's freight yard with unsecured cargo. The facts submitted were largely undisputed and undoubtedly established a claim under the Carmack Amendment. Freddy's Freight, however, argued that IKON forfeited the Carmack Amendment claim by failing to plead it or otherwise provide notice that it intended to seek relief under the Carmack Amendment. Although IKON cited 28 U.S.C. § 1404(b) in the "Facts Related to Jurisdiction" section of its amended complaint, IKON did not mention or allude to any federal statutory claim in enumerating the five counts it purported to assert against the two defendants, all of which were state-law causes of action. As mentioned above, IKON only asserted a single cause of action against Freddy's Freight, which IKON styled as "negligent breach of contract."²⁰ IKON did not mention the Carmack Amendment, until its summary judgment motion.²¹

The Court stated that although a

complaint need not identify specific legal theories, "pleading is still vitally important to inform the opposing party of the grounds upon which a claim rests; a complaint is adequate only if it fairly notifies a defendant of matters sought to be litigated."²² Despite IKON's contention that Freddy's Freight had adequate notice of the Carmack Amendment claim because the broker-carrier agreement was "entirely consistent" with the Carmack Amendment and contained no express waiver, the Court held that this was insufficient.²³ The Court reached this conclusion because when IKON pled a breach of contract claim, Freddy's Freight would have no reason to know that IKON was also contemplating a claim under the Carmack Amendment.²⁴ As such, IKON did not provide Freddy's Freight with "fair notice of the Carmack Amendment claim, so that claim [was] not properly in the case."²⁵

IKON also sought leave to amend to add the Carmack Amendment claim; however, the Court denied this request, stating that IKON's claim, "comes far too late" and that IKON "forfeited any claim to relief under the Carmack Amendment by failing to provide notice of it until summary judgment."²⁶

Conclusion

Although the Federal Rules of Civil Procedure contemplate "notice pleading" and pleading in general terms without alleging detailed facts to support each claim, as *Freddy's Freight* teaches us, even if a claim looks like a Carmack Amendment claim and would appear to include facts to put a defendant on notice of a Carmack Amendment claim - the best practice is to actually include a count under the Carmack Amendment - or at the very least mention the Carmack Amendment! 

Endnotes

¹ *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (internal citations omitted).

² *Id.*

³ *IKON Transportation Services, Inc., v. Texas Made Truckin, LLC a/k/a Alfredo Rodriguez d/b/a Freddy's Freight*, 2020 WL 3488435 *3 (W.D. Wis. June 26, 2020).

⁴ *Id.*

⁵ *Id.* at 1.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

TLA Feature Articles and Case Notes

⁹ *Freddy's Freight*, 2020 WL 3488435 at *1.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ This Case Note only discusses the Carmack Amendment claim.

¹⁶ *Freddy's Freight*, 2020 WL 3488435 at *2; see also 49 U.S.C. § 14706.

¹⁷ *Freddy's Freight*, 2020 WL 3488435 at *2 (citing *REI Transp., Inc. v. C.H. Robinson Worldwide, Inc.*, 519 F.3d 693, 697 (7th Cir. 2008) (internal citations omitted)).

¹⁸ *Id.* (citing 49 U.S.C. § 14706(a)(1), (d)(3)).

¹⁹ *Id.* (citing *REI Transp.*, 519 F.3d at 697).

²⁰ *Id.*

²¹ *Id.*

²² *Id.* at 3 (citing *Conner v. Ill. Dep't of Natural Res.*, 413 F.3d 675, 679 (7th Cir. 2005)).

²³ *Freddy's Freight*, 2020 WL 3488435 at *3.

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

