CURRENT DEVELOPMENTS IN MULTIMODAL TRANSPORTATION: THE LIMITS ON LIMITATIONS OF LIABILITY

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OVERVIEW

Three separate strands of history are woven into the development of transportation law and impact the allocation of liability for loss or damage to goods as between shippers and all of those employed in the task of that movement. The convergence of these strands creates significant issues regarding contractual and statutory limitation of liability, and the reach of such limitations beyond the contracting parties

The first strand is that historically, each mode of transport has generated its own body of common law relating to the allocation of liability for loss or damage to goods. Because of the differences in each mode of transportation, whether by water, land or air, the law with respect to each has developed differently to one degree or another.

The second strand consists of laws passed by various political entities intent on meeting the need for predictability in the outcome of disputes regarding loss or damage to goods, generated both by and between states and nations. This strand includes federal legislation, such as the Interstate Commerce Act (and more specifically the Carmack Amendment), treaties between nations, such as the Warsaw Convention, and the development of federal common law. Such laws and treaties are intended to encourage trade on a national and international level by providing certainty

The third strand is technological development in all methods of transportation. Whether characterized as "intermodal" or "multimodal," the fact is that in response to customer needs and the development of containerized shipments, what once may have been considered a series of independent segments in the movement of goods, each with their own set of laws regarding the allocation of risk, has become seamless and blurs the historical distinctions between modes of carriage. The law needs to catch up with the real world. This paper will generally examine developments in the law resulting from the intersection of these strands

By way of background, the compromise between the rights of cargo owners and the carriers that serve them has made the carrier an insurer of cargo safety, but allowed the carrier, by contract, to limit the amount of liability. Regardless of the mode of transportation, the fundamental requirements of any limitation of liability by a carrier are notice and choice. Dual requirements of notice and choice have been applied at common law to all modes of carriage and all methods of transport. Choice, in this context, means the opportunity for the owner to contract for a higher amount of liability on the carrier by the payment of a higher shipping charge.

The historic common law requirements of notice and choice have since been incorporated into statutes, treaties and regulations. It is now applied, with some modification, to all modes of carriage, requiring that before a cargo carrier can limit its liability for loss or damage it must give adequate notice of the limit and advise the shipper of its right to choose a higher limitation of liability by paying a higher freight rate.[1]

It is against the backdrop of this history that the expansion of the scope of a carrier's limitation of liability to third parties involved in the carriage of goods should be examined

DEVELOPMENTS IN THE LAW REGARDING MOTOR CARRIERS

In the early 1900's rail and motor carriers attempted to eliminate all exposure to liability by contract. Congress reacted with passage of the Interstate Commerce Act ("ICA"), making carriers absolutely liable, but allowing them, as well as freight forwarders, to limit their liability by agreement, if the agreement was reasonable (as determined by the Department of Transportation) and contained adequate notice and opportunity of choice with respect to obtaining higher limits of liability in exchange for higher freight.

The Carmack Amendment, 49 *U.S.C.* § 14706 provided that the carrier's absolute liability could be waived, but only in part, by the shipper, leaving carrier liability based on a pre-established value. That value had to be set out in a written or electronic declaration or agreement and had to be "reasonable under the circumstances surrounding the transportation." Although "notice" remains a requirement, *§ 14706* suggests that so long as the carrier provides its rates and practices in written form to the shipper "upon request" (such as in its service manual or book of rates, classifications, rules and practices), that "constructive" notice is adequate. In practice, prudent carriers put a notice of their limited liability and choice of higher limits conspicuously on the front of their bill of lading. Statutes exclusively applicable to rail carriers similarly provide for absolute liability, allowing the same right to limit their liability by written declaration of the shipper or by written agreement between the shipper and carrier.[2]

The ICA does not apply to a limited amount of surface carriage, including air cargo carried by motor truck, so long as it is part of a continuous movement by air or is in lieu of air carriage made impossible by adverse weather, air traffic control problems, air craft failure or other circumstances beyond the carrier's control.[3] The ICA also exempts surface transportation in terminal areas or in contiguous commercial zones adjacent to the port.[4] In these limited situations, contract law applies.

Generally, the scope of the liability of third party intermediaries involved in surface transportation is the same as if they had contracted directly with the shipper to

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1 *Hart v. Pennsylvania Railroad* 112 U.S. 331 (1884); *Adams Express v. Croninger* 226 U.S. 491; *Readrite v. Burlington* 186 F.3d 1190, 1198 (9th Cir. 1999)

2 49 *U.S.C.* § 11706

3 49 *U.S.C.* § 10526 (a)(8)(B).

4 49 *U.S.C.* 13503 and 49 *U.S.C.* § 13506)

carry and safely deliver the cargo.[5] However, where the third party provider simply arranges transportation as the "shippers' agent" or "brokers" the load to another carrier (and does not hold itself out as a carrier) that third party provider is considered the shipper's agent, liable only for its own negligence. As the shipper or cargo owner's agent, he cannot take advantage of any limitation provision in the carriers contract. On the other hand, such agents do not have carrier responsibility and would not normally be liable to the shipper unless they themselves were negligent. In cases where the broker or shipper's agent contractually provides for a limitation of liability provision in their agreement with the shipper, such limitations have been held enforceable, even if they only appear on the agent's invoice.[6]

Legal issues regarding the movement of goods have historically tended to be analyzed differently depending on the mode of transportation involved; however, the trend is toward bringing the same analytical framework to all modes and is clearly seen in expansion of the limitation of liabilities clauses between carrier and shipper to third parties that are not parties to the carriage agreement.

For example, in *Kemper Insurance Companies v. Federal Express* (D.C. Ma) 2000 U.S. Dist. Lexis 14114, Plaintiff suffered the theft of eight shipments of jewelry booked by air but which traveled by truck. The shippers used the FedEx's Powership System which permitted self-invoicing and generation of shipping labels by FedEx's customers. None of the shippers declared a value for any of the shipments Fed Ex's service guide allowed. The receipt provided a limitation of liability of $100, unless a higher value declared and a greater charge paid.

Kemper paid the assured's loss and then claimed in subrogation, inter alia, that for four of the shipments, which traveled by truck, and not air, FedEx's limitation of liability was invalid under the Carmack Amendment because the notice and opportunity requirements of the statute were not met. The Court agreed that Carmack applied to those four shipments, and that the statute required notice and opportunity (". . only by granting its customers a fair opportunity to choose between higher or lower liability by paying a correspondingly greater or lesser charge can a carrier lawfully limit recovery to an amount less than the actual loss sustained. . ."). The court continued:

> ". . . the independent [fair opportunity] requirement of the Carmack Amendment has, however, the same contours as the "released value" doctrine under federal common law . . . . . which has been held to apply not only to motor carriers (which are bound by the I.C.A.), but to all common carriers, including airlines. Therefore, for present purposes, it does not matter whether the Carmack Amendment or the APA applies. In either circumstance, federal law applies, and the released

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5 *Travelers v. Alliance Shippers* 654 F. Supp. 840 (N.D. Cal. 1986).

6 *Byrton Dairy Products v. Harborside Reefer Services* 991 F.Supp. 977 (N.D. IL 1997); *Fabulous Furs v. UPS* 664 F.Supp. 694 (E.D.N.Y. 1987).

> value doctrine, or its functional equivalent, controls. The plaintiffs claim that if the Carmack Amendment applies, the Defendant's limitation of liability is "void ab initio," is simply incorrect." [7]

Another case involving multimodal transportation of goods, *Atlantic Mutual v. Yasutomi*[8], demonstrates some of the problems that result from technological development, and is also significant with respect to expansion of the availability of the limitation of liability defense to a carrier, even in the absence of a bill of lading.

Defendant Yasutomi Warehousing used identical bills of lading for each of approximately 100 containers. Unirex, the shipper, never declared a value. A container and tractor were stolen from Defendant's facility and Unirex made a claim for the full value of the stolen cargo. Yasutomi defended, claiming the benefit of the limitation provision in the ocean bill of lading.

The Court first held that the Carmack Amendment applied to the inland leg of the overseas shipment, even if that leg was entirely intrastate, citing *Chubb Group of Insurance cos. v. H.A. Transp. Sys. Inc.*,[9], and that the ocean bill limitation terms would still be enforced if they met the Carmack requirements. The carrier could limit its liability by entering into a contract with the shipper to limit the carrier's liability under 49 *U.S.C.* § 14101(b)(1)l. However, in order to do so, the carrier must: (1) obtain an agreement with the shipper based on a choice of liability; (2) give the shipper a reasonable opportunity to choose between levels of liability; and (3) issue of bill of lading prior to shipment. The court found that the carrier had met these requirements.

Second, Plaintiff argued the limitation of liability did not apply because it never received a bill of lading for the missing container. The Court disagreed, noting that under 49 U.S.C. § 14706 (a) (1), the failure to issue a bill of lading does not affect the liability of a carrier, and a course of conduct evidenced by past bills of lading that clearly state the limitation and the method of avoiding it are sufficient to impose the limitation of liability.[10]

Multimodal transportation of goods has also created issues regarding the enforceability of provisions of bills of lading because of conflicts between contractual provisions of the bill of lading and applicable statutes. In *Kyodo v. Cosco*[11] refrigerated pork shipped from Mexico via California to Japan was found damaged on delivery due to freezing. The ocean carrier's multimodal bill of lading contained a forum selection clause designating China as the place for trial. Ignoring that clause, Kyodo filed suit in Superior Court Long Beach, California. Defendant Cosco moved to dismiss, based on

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7 2000 U. S. Dist. LEXIS 14114 at *28-29

8 326 F. Supp. 2d 1123 (C.D. Cal. 2004)

9 245 F. Supp. 2d 1064, 1068 n.3 (C.D. Cal. 2002)

10 326 F. Supp. 2d at 6-8

11 2001 U.S. Dist. Lexis 24360 (C.D. Cal. 2001)

the forum selection clause. The Court denied Cosco's motion, underscoring the complexities of multimodal transportation, holding that even where there is a forum selection clause in the billing of lading for an international multimodal movement of goods, if the allegation is that the damage to the goods occurred during the "domestic leg" of international multimodal carriage (in this case, motor carrier, from Mexico to California), the Carmack Amendment applied, and the forum selection provision of the bill of lading was unenforceable, based on its provision in the Carmack Amendment that suit may be brought against a carrier in a forum convenient to the shipper. (*Kyodo, supra*, at *10).

DEVELOPMENTS IN THE LAW REGARDING OCEAN CARRIAGE

The liability of ocean carriers for loss or damage to cargo in the course of transit, as provided for by statute, is from the time the cargo is picked up by the ships tackle until the time it is discharged and delivered at the dock at the port of destination. The controlling statute is the United States Carriage Goods by Sea Act (1936) ("COGSA"), 46 *U.S.C.* § 190 et. seq., which states that upon written notice and agreement, unless a higher value is declared and a higher freight rate paid, the ocean carrier is entitled to limit its liability to $500.00 per package or, for freight not shipped in packages, to $500.00 per customary freight unit.[12]

Most ocean carriers avail themselves of the right to extend the COGSA liability limitation provisions to the period of custody prior to loading and after discharge and extend those time limits for suit and limits of liability to their agents as well.

Unlike surface carriage, where merely consolidating a load can lead to liability as a carrier, in ocean freight the forwarder does not become liable as a carrier, even if he acts as a consolidator, unless the forwarder issues a non-vessel operating common carrier bill of lading (NVOCC) or otherwise promises safe delivery. Where the forwarder acts only as agent in arranging carriage its liability is limited to negligence. Similar to surface carriage, a cargo owner's agent may not take advantage of a limitation of liability provision in the carrier's ocean bill of lading. However, the ocean forwarder may include in its work proposal or invoice, a forwarder's limitation of liability which may, by itself, be enforceable.[13]

COGSA does not apply of its own force to any of the landside activities of a carrier's agents, such as the discharge and storage of cargo, including stevedores, forwarders, dock operators or warehouses, and such agents are treated by the Courts as fully liable independent contractors. In order for such agents to take advantage of the limitation provisions in the ocean bill of lading, the ocean carrier had to specifically describe them as third party beneficiaries.[14]

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12 46 U.S.C § 1304 (5)

13 *General Letcher v. Harper Robinson* 818 F. Supp. 31 (E.D.N.Y. 1943)

14 *Marubeni v. Tokio KKK* 327 F. Supp. 519 (S.D.Tx 1991)

The bill of lading clause used to extend these limitations to third party providers, commonly known as the "Himalaya Clause," is unique among the various modes of carriage in that it is older and has been more restrictively construed than similar clauses used in surface or air transportation. Generally, the Courts have considered surface and air agents carrying out the carrier's promise to be entitled the benefit of the contractual limitation of liability provisions. The requirement of an express extension of limitation terms to third parties in air and motor carriage seems almost nonexistent today

In the most famous "Himalaya Clause" case, *Herd v. Krawill Machinery Corp. 359 U.S. 297* (1959), the United States Supreme Court held that an ocean carriage contractual extension of liability limits under an ocean bill of lading to benefit third parties would be enforced "only if the intent to do so is clearly and unambiguously expressed in the bill of lading." The determination of the intent to extend the limitation was largely an *ad hoc* matter, depending on the facts of the particular case.[15]

Himalaya Clause limitations were traditionally extended by the courts only to those immediately employed in the discharge and storage of the cargo, including stevedores, terminal operators, ports security services and warehouseman.[16] Recently, following the lead of cases involving other modes of transport, the Courts have started extending those limitations to a growing group of multimodal transport providers and their agents. The trend today is to extend an ocean carrier's multimodal bill of lading benefits to all subcontracts and agents, including connecting rail and surface carriers who assist in delivering the cargo to its ultimate inland destination.[17]

The most recent United States Supreme Court decision in the area seems to expand on the trend that the detailed language requirements of *Herd* are no longer required. In *Norfolk Southern Railway Co. v. Kirby* 125 S. Ct. 385 (2004)) a shipper hired ICC, an Australian freight forwarder, to arrange for delivery of machinery from Sydney, Australia to Huntsville, Ala., by "through" (*i.e.*, end to end) transportation. The bill of lading set ICC's liability limitation lower than the cargo's true value, using $500 per package for the sea leg and a higher amount for the land leg. The bill also contained a "Himalaya Clause," which extended liability limitations to downstream parties, including, "any servant, agent, or other person."

The ocean voyage was uneventful but during overland transport the train derailed, severely damaging the machinery. After noting that the same liability limitation in a single multimodal bill of lading for international intermodal transportation was often applied both to sea and to land transport, the Court concluded that it saw no commercial

15 See, for example, *Aer Lingus v. Dart Orient Services, Inc.* 658 F. Supp. 3 (S.D.N.Y. 1986)

16 *Taisho Marine v M/V "GLADIOULUS"* 762 F.2d 1364 (9th Cir. 1985)

17 *Asain Seickio v. Union Pacific Railroad* 236 F.Supp.2d 343 (S.D.N.Y. 2002) citing *Colgate v. S/S Dart Canada* 724 F.2d 313 (2nd Cir. 1983).

reason why a single Himalaya Clause could not cover both sea and land carriers, downstream, as was agreed by the parties to the ICC bill of lading.

The Court noted that COGSA permitted the ocean carrier, Hamburg Sud, hired by ICC in its bill of lading, to extend the default rule to the entire period during which the machinery would be the ocean carriers responsibility, including the period of inland transport. Hamburg, the ocean carrier that issued the through bill, had in fact hired Norfolk Southern, the rail carrier, to complete the overland portion of its delivery obligation The plain language of the Himalaya Clause, in the ICC bill of lading, indicated an intent to extend the liability limitation broadly – to "*any* servant, agent or other person (including *any* independent contractor)" whose services contributed to performing the contract.

Kirby argued that the decision in the *Herd* case and the rules of agency required that the Defendants show a fiduciary relationship and control of the agent by the principal. The Court rejected the agency theory:

> "It only requires treating ICC as Kirby's agent for a *single, limited* purpose: when ICC contracts with the subsequent carriers for limitation on liability..... [A]n intermediary [can] bind a cargo owner to the liability limitations it negotiates with downstream carriers, " . [because it is commercially useful to] ensure the reliability of downstream contracts for liability limitations."

DEVELOPMENTS IN INTERNATIONAL AIR CARRIAGE

The Warsaw Convention[18] applies to all international air carriage, if the country of origin and destination are both signatories.

The original Warsaw Convention did not define the term "carrier" and did not expressly extend the limitation of liability provisions contained in the airway bill between a shipper and a carrier to third parties. For example, Warsaw did not describe "ground" handlers at the airport as carriers entitled to limit liability. However, some early case law extended the carrier airway bill limitations to include ramp handlers and security agents, considered to be involved in protective custody during the period of "embarkation" and "disembarkation," which was covered by Warsaw.

THE MONTREAL PROTOCOL IV, ARTICLE 25 A. sought to clarify and express the expansion of the carrier's limitation of liability to third parties involved in the international carriage of goods by amending Warsaw to include "....a servant or agent of

18 Treaty of the United States, found at 49 Stat. 3000, the Convention for the Unification of Certain Rules Relating To International Transportation by Air, commonly known as the Warsaw Convention.

the carrier . within the scope of his employment [who] shall be entitled to ... [the carriers] limitation of liability", at least as to signatories to the Protocol.[19]

In those instances where Warsaw does not apply, because not all parties are signatories, the case law has been somewhat unsettled and unsettling to third parties to the airway bill that participate in the international carriage of goods. In the shadow of the United States Supreme Court decision in *Kirby, supra*, and its notion that as a matter of public policy it is useful to ensure the reliability of downstream contracts for liability limitations, court decisions may perhaps become more uniform with respect to the approach to analyzing the concept of agency and its impact on the liability of third parties. In the past, the cases are not so uniform on the applicability of agency concepts.

Hartford Empresa v. Ecuatoriana De Aviacion L.C.[20] is an example of a restrictive view of the scope of a carrier's limitation of liability, based on the Court's analysis of the law of agency. Ecuatoriana's waybill stated: "Any exclusion or limitation of liability applicable to Carrier shall apply to and be for the benefit of Carrier's agents." A shipment of airfreight was lost on its way from Panama to the United States. A ground handler (an employee of a third party, AMR) had left a portion of the cargo outside the warehouse and it was stolen. Because Panama, the country of origin, was neither a signatory to nor an adherent of Warsaw, the Convention did not apply, and the dispute centered on whether AMR was contractually protected by Ecuatoriana's limitation of liability clause

Using an agency analysis, the Court held that a party may be a servant of another but only if that party's physical conduct in the rendering of the service is subject to the actual control or right of control by the master. Since AMR acted independently in performing the work delegated to it by American at JFK, AMR could not avail itself of the protection of the liability limitation clause.

A recent 9th Circuit case, *Dazo v. Globe Airport Security Services, Inc.*[21], also denies the expansion of a carrier's limitation of liability to a third party in a non-Warsaw situation, based, in part, on agency concepts. In *Dazo*, an international flight passenger's carry-on baggage was stolen as she went through the security checkpoint. The Ninth Circuit noted that while Warsaw allows a carrier to cap its otherwise unlimited liability, it does not define the term "carrier." Globe argued that it was a "carrier" under Warsaw, and that the Convention applied, relying on an earlier case which extended a carrier's limitation of liability to a security company on the basis that the passenger was in the

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19 Montreal Protocol No. 4 to Amend the Warsaw Convention, *reprinted in* S. Exec. Rep. No. 105-20, at 21-32 (1998)). Montreal Protocol 4 went into force in the United States on March 4, 1999

20 945 F. Supp. 51 (S.D.N.Y. 1996)

21 295 F.3d 934 (9th Cir. 2002)

course of embarking when going through a security check[22] and the holding in another case to the effect that Warsaw had been extended to agents of carriers.[23]

The Court held that Globe was not a carrier, and Warsaw did not apply. Globe's services, according to the Court, were not "in furtherance of the contract of carriage of an international flight, but were basic security services required at all airports by federal law, regardless of flight destination or whether the person subject to the security check was a passenger.[24]

What distinguished *Dazo* from the prior cases extending Warsaw "carrier" status to agents of the airline providing the international carriage was that Globe was acting as an agent for more than one airline (actually three airlines), whereas the record in the *Baker* and *Kabbani* cases relied upon by Globe indicated that in each the agent was a security company acting exclusively for the carrier involved. The Court found no authority to afford carrier status to a common agent of multiple airlines. As an aside, it is worth noting that the Court held that neither of the other two airlines for which Globe acted as an agent could claim the protection of Warsaw as to Dazo, because neither provided her with international carriage.[25]

For example, consider *Arkwright-Boston v. Great Western Airlines,*[26] the shipper delivered cargo to Federal Express pursuant to its air bill and Federal Express delivered the cargo to an air carrier pursuant to a net lease agreement between Federal Express and the carrier which had no third party benefit provisions. The cargo was lost and the carrier claimed the benefit of Fed Express' limitation of liability as an agent of a Fed Express' connecting carrier. The Court, relying heavily on the holding in *Herd v. Krawill Machinery*, held that since there was nothing in the net lease extending Federal Express' limitation of liability to the carrier, it could not limit its liability and was liable for full value. However, under *Kirby*, it could be argued that it is necessary to extend Federal Express' limitation of liability to the carrier, because of the commercial utility of ensuring the reliability of downstream contracts for liability limitations.

In the shadow of the United States Supreme Court decision in *Kirby, supra*, it is likely that cases with very similar fact patterns to those decided before *Kirby* may now have different outcomes if presented in future litigation

INTERSTATE DOMESTIC AIR CARRIAGE

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22 *Baker v. Lansdell Protective Agency, Inc.* 590 F. Supp. 165 (S.D.N.Y. 1984)

23 *Kabbani v. Int'l Total Servs.*, 805 F. Supp. 1033 (D.D.C. 1992)

24 *Id.*, 295 F.3d at 938-939

25 Id., 295 F.3d at 939-940

26 767 F.2d 425 (8th Cir. 1985)

Domestic interstate air carriage of cargo has been deregulated longer that any other transport mode. Generally, federal common law controls, but the results, subject to a variety of contractual agreements, have been very unpredictable

For example, like *Dazo* and *Baker*, *supra*, in *Gin v. Wackenhut Corporation* 741 F. Supp. 1454 (D.C. Hawaii) 1990), the issue was a security checkpoint in an airport. The plaintiff, flying from Miami to New Orleans. During the screening of plaintiff's carryon bag, which contained $200,000 of jewelry, the bag was lost or stolen The court applied *Florida law* and held that even though the air carrier employed the security service, the service was that of an independent contractor and not an agent of the air carrier. Finding that the carriers' AWB ticket failed to mention the security service, the court found they could not claim the benefit of the carriers air waybill limitation of liability

By contrast, in *Reece v. Delta Airlines 731 Fed. Supp. 1131* (D.C. Maine 1990) the interstate shipment of a casket containing a decedent's body was damaged during a flight from Maine to North Carolina. In this case, the Court applied federal common law, applied the "released value doctrine," which allows carriers to limit their liability if the shipper has reasonable notice of the rate structure and is given the option to pay a higher price for greater protection. The Plaintiffs' argued that their tort cause of action should not be governed by the "released value doctrine." The Court disagreed, stating that generally, a party cannot avoid the liability limitations contained in an air waybill by recasting the form of action as one sounding in tort. The Court also stated that the liability limitations in the air waybill were not meant to only protect the Defendants against the claims of the Plaintiff and the Plaintiffs' agents, but extended to "all parties with an interest in the shipment."

More recently, in *Alpine v. F.W. Meyers 23 F.3d 946* (5th Cir. 1994), the Court was confronted with an interstate shipment of cargo, from Texas to Colorado The Plaintiff shipper contracted with F. W. Meyers and Company ("Meyers") for the shipment. Meyers contracted with FedEx, which delivered some of the cargo, and the balance a few days later. Plaintiff claimed the cargo (microorganisms from the ocean floor) were "time sensitive" and that in the latter shipment, the microorganisms were dead Plaintiff sued Meyers and FedEx. Meyers settled out

The airbill between Meyers and FedEx had a $100.00 per package limitation of liability. Plaintiff's theory was that the Texas Deceptive Trade Practices Act, the limitation of liability clause was void, and FedEx owed a duty Plaintiff The Court sidestepped the issue of preemption of the Texas statute by federal common law, by holding that because Plaintiff's were not a party to the agreement between Meyers and FedEx there was no contractual duty owed by FedEx to Plaintiff The Court also denied any tort duty, finding that because FedEx did not know what was in the packages, the damage was not reasonably foreseeable by FedEx.

Based on these cases, it is fair to say that in the area of the domestic transportation of cargo by air, there is a great deal of uncertainty as to what law will apply, and what analytical framework a Court will use in determining the exposure to and the scope of liability for damage or loss to cargo.

CONCLUSION

From a practical perspective, higher liability limits are of questionable value in a bill of lading. Generally, it costs more to buy higher limits than it does to buy insurance Further, whichever way additional protection is purchased, the claimant must still prove the carrier liable before recovery is allowed.

In other words, if you are a cargo owner, it is generally more cost-effective to insure your cargo. If you are uninsured and suffered a loss or if you are a marine or inland marine underwriter looking to recover for a loss paid, by way of subrogation, it is important to investigate and determine all who participated in the carriage of the goods as well as the direct contracting parties. Depending on the mode of transportation, the terms of the original contract and what legal arguments are persuasive to the court presiding over the litigation, the scope of any liability limitation may be viewed differently when analyzing whether those involved in the carriage, other than the contracting parties, can obtain the benefit.

On the other hand if you are a carrier or a third party logistics' provider, experience suggests that the bill of lading language notify the cargo owner in bold print that your liability is limited and that higher limits are available at higher freight rates. The terms should be drafted as broadly as possible to include as many of the carrier's agents, servants and independent contractors as possible so that they can take advantage of the limitation provisions in your bill of lading.

If you are a third party provider rather than a carrier, while you may be protected by the carrier's liability limitation provisions, the far better practice is to include limitation of liability clauses in your agreements as well, so that you have the ability to interpose your own limitation provision, in the event that you cannot enforce the limitations in the air bill or the bill of lading issued by a third party.