The Use of "Pro-Stickers" to Limit Carrier Liability

by Ron Usem, Esq. Huffman, Usem, Crawford & Greenberg PA

Motor carriers frequently attach "Pro-Stickers" to bills of lading which purport to insert the carrier's tariffs, rules, terms and conditions into the transaction, and frequently the tariffs include limits of liability to which the shipper is unaware. The Hisense case deals with this sticky issue. Hisense USA Corp. vs. Central Transport LLC, US District Court Northern District of Illinois, Case No. 14-C-7485. August 6, 2015.

Hisense is a manufacturer and seller of electronic goods in the US selling to box stores including Walmart. Walmart discovered four (4) pallets of computer tablets that were defective and made arrangements to return them to Hisense. Walmart hired Central Transport, a motor carrier which accepted the goods under a bill of lading which Walmart prepared, identifying the goods as electronics and specifying that "All shipments are hereby released to the value at which the lowest freight charges apply." Consistent with Central's practice, the driver placed a "Pro-Sticker" on the bill of lading and signed it acknowledging receipt. The Pro-Sticker stated that the carrier was receiving the goods "Subject to NMSC100 CTII Rules of Tariff (49 USC 14706 & 14 CFR 370). After the carrier attached the sticker Walmart signed the bill of lading. When the shipment arrived at the Consignee, Hisense alleged that one pallet containing 715 tablets weighing 822.25 pounds was missing and signed a delivery receipt. This shortage was noted on the delivery receipt. The delivery receipt contained an image of the bill of lading and the Pro-Sticker. Central, the carrier, alleged that limited liability of $.10 a pound as stated in its tariff, controlled. The Rules Tariff set forth the procedure by which the Shipper could request a higher liability level, but neither Hisense nor Walmart ever requested a liability higher than the carrier's standard maximum for restricted commodities.

The central issue in the case is whether Central obtained Hisense's "agreement" to the restrictions of limited liability contained in the tariff. The carrier argued that the liability limitation was incorporated into the bill of lading by reference in the Pro-Sticker and in addition, the language in the bill of lading stated, "Subject to the classifications in lawfully filed tariffs in effect." Hisense argued that actual notice of the liability limitation was required in order for the limitation to be enforceable. The Court analyzed numerous cases which included distinctions between shipper prepared bills of lading and carrier prepared bills of lading. After a long analysis, the Court explained that some cases hold that shipper's signature on a shipper prepared bill of lading after the carrier had attached the sticker referring to a tariff, which subjected the shipper to a limit of liability, made the limitation enforceable.

Other cases cited by the Court indicated that *actual notice* of the carrier's liability limitation was required citing Temple Steel Corp. vs. Landstar Inway Inc. 211 F3rd1029, 1030 (7th Circuit 2000). According to the Court "It is clear from the above cited cases that even though a carrier's tariff can be incorporated into a bill of lading, evidence of actual notice and agreement is required under Temple." In Temple, id, undisputed facts indicated that, (1) The bill of lading stated that the shipment was received subject to tariffs in effect, (2). Landstar's driver affixed the sticker indicating the rules tariff applied (3). Both parties signed the bill of lading. Continuing on, the Hisense Court stated that "Never the less under Temple, a mere reference to the tariff is insufficient to limit liability. Instead, the bill of lading must contain additional language that demonstrates notice and agreement. Here the bill of lading makes no mention of a limitation liability and contains no blank in which to declare value."

In Hisense, the Court indicated that Central, the carrier, had not provided sufficient evidence to show that Hisense, the defendant, had notice of and consented to the liability limitation, and thus denied the summary judgment motion filed by Central. This decision is consistent with a line of cases that provides that a carriers attempt to limit liability must be supported by evidence that the shipper was given a choice of rates, and agreed to one or the other. An agreement is required. See for example, ABB Inc v CSX Transportation Inc 721 F 3rd, 135, (4th Cir. 2013).

Ron Usem Esq., Huffman, Usem, Crawford & Greenberg PA, 5101 Olson Mem. Highway, Minneapolis, MN 55422 Phone: 763-545-2720 Email:ron@usems.com