I hope you all getting ready to enjoy the first holiday of the season and take time to enjoy family. We here at CAB are thankful for you and for the new basketball game that was installed in the office. Come visit and play a game.

This month we report:

CSA SCORES - The Commercial Vehicle Safety Alliance (CVSA) has joined the bandwagon calling for a withdrawal of CSA scores from public view. In August, 10 vehicle trade associations, including American Trucking Associations, petitioned the DOT to stop posting the scores for public view. We will follow this as it moves through a system and possible decisions are made on the release of the scores.

CARGO THEFT - A paper released by FreightWatch International reports last year truck cargo theft activity spiked in the final quarter of the year, with a total of 242 reported incidents. It points to the fact that driver theft has increased 76% over 2012 and a 389% over 2011. The report also states that driver complicit theft is typically a crime of opportunity, taking place either directly by the driver, the driver's voluntary collusion or complicity in the crime, or a deceptive criminal posing as a legitimate carrier resource.

DRIVER HARRASSMENT - The FMCSA released a survey on the issues of driver harassment. Ten percent of truckers surveyed on the topic of electronic logging devices and driver harassment by motor carriers say their companies ask or force them to drive while fatigued, falsify their logs, and break other rules at least twice a month. The survey denies that these forms of harassment are tied to the use of e-logs. Approximately 19 percent of drivers said carriers asked them to meet unrealistic load schedules, while 19 percent said carriers interrupted their off-duty time by messaging them at least twice per month. A third of drivers considered it harassment when asked to drive while fatigued, falsify logs, or delay a break – while 20 percent of drivers considered it harassment if they were asked or forced to wait more than two hours at the docks without pay.

FMCSA RULE MAKING - The FMCSA has advised that the anticipated rule for electronic logging has been pushed back even further. The FMCSA does not expect to publish its final rule mandating the use of electronic logging devices for carriers until September 30, 2015. Once put into place it would have a 2 year period for finalization. The FMCSA also plans release of carrier safety fitness determination rule to OMB in late December and publish its proposed rule April 2, 2015. The rule would replace the current SafeStat system using CSA data to rate carriers as satisfactory, conditional or unsatisfactory. FMCSA expects to issue its final drug and alcohol clearinghouse rule October 30, 2015, and a final rule prohibiting the coercion of drivers by carriers and brokers on September 10, 2015 and most importantly we are still waiting for the advanced notice of proposed rulemaking that will explore whether to raise the current $750,000 insurance minimum for carriers.

INTERMODAL TRANSPORT - Domestic intermodal transportation has finally exceeded international intermodal cargo for the first time on a seasonally adjusted basis. Domestic intermodal freight has been gaining ground in recent years because of the driver shortage, a long-term rise in diesel prices and tight highway capacity. A report last month by Larry Gross, intermodal specialist at consulting firm FTR, said that domestic intermodal set a record for market share for all shipments more than 550 miles in length in the third quarter. That mark was 18.7% of all freight last month, an improvement of 1.5 percentage points over the 2013 quarter.

CURRENT CASES

AUTO

A truck driver avoided summary judgment despite a rear end collision with the plaintiff's vehicle. The Court of Appeals in Georgia held that there were factual issues as to the exercise of reasonable care by a truck driver who struck the plaintiff as a result of a chain of accidents. (D ogan v. Buff
, 2014 WL 5784498)

The Court of Appeals in Maryland held that the failure of a trucking company to confirm that its drivers had liability insurance was only relevant to a negligent hiring claim if the failure to have insurance was a proximate cause of the injuries, which it was not. It was negligent driving that caused the loss. (Asphalt & Concrete Services, Inc. v Perry , 2014 WL 5490591)

Punitive damages are difficult to get against a trucking company. The District Court in Nevada held that there was no reasonable basis for a claim for punitive damages against a trucking company arising from a vehicular accident where there was no evidence of improper training. The claim against the driver however was a different issue, with the Court concluding that there was a reasonable basis for a jury to find that the driver acted with reckless disregard, allowing the punitive damage claim to proceed. (Wright v. Watkins & Shepard Trucking , 2014 U.S. Dist. LEXIS 160301)

Over in Indiana the Southern District evaluated whether coverage would be provided under a lessor's policy to a lessee and the driver when the policy was endorsed to exclude as an insured anyone to whom the equipment was leased under a trailer interchange agreement. The Court concluded the endorsement was plain on its face, denying coverage under the policy. (Great West Casualty Company v. Lakeville Motor Express , 2014 U.S. Dist. LEXIS 163935)

In another trucking case the same court held that an auto liability carrier would be responsible for an accident when a driver pulled away too quickly, allowing a forklift to slid off and pin the plaintiff who was unloading the cargo. The Court held that it was not a loss caused by the movement of property by mechanical device. (National American Insurance Co. v. Harleysville Lake State Ins. Co. , 2014 U.S. Dist. Lexis 160593)

The District Court in New Jersey spent a considerable amount of paper evaluating the coverage and priorities of coverage arising from an accident which injured a driver during the unloading process. The Court ultimately concluded that the motor carrier's policy provided primary coverage for the construction contractor who had hired the motor carrier, together with the contractor's own policy. The Court considered the application of the NJ Omnibus statute, as well as the issue of whether the loss arose out of the use of the auto and nexus between loading and use. (Carolina Casualty Insurance Co. v. Travelers Property Casualty Company , 2014 WL 5410643)

The failure of a trucking company defendant to respond to discovery and produce a corporate designee was not enough to warrant dismissal of a third party action against other parties who may have created a dangerous condition which resulted in an accident. The Middle District in Pennsylvania held that the defendant would not be permitted produce a corporate witness at trial and all admissions which were unanswered were deemed admitted due to the failure to respond. (Baran-Gonzalez v. Fritz , 2014 U.S. Dist Lexis 161889)

A shipper was foiled in its efforts to obtain contribution and indemnity from a trucking company for damages paid to a driver who was injured during the unloading process. The Court held that FMCSA safety regulations which require that drivers have adequate training in securing loads had no application to unloading procedures and that the carrier had complied with its obligations under the rules. The Court ultimately concluded that the carrier owed no indemnity to the shipper. (Amerigas, Inc. v. Landstar Ranger, Inc. , 2014 WL 5408653)

A motor carrier was successful in obtaining dismissal of a suit brought against it in the Court of Appeals in Texas. The Court held that the applicable statute of limitations, 2 years, had run before the plaintiff served the defendant. Where the plaintiff failed to establish that it had exercised due diligence in attempting service the action was dismissed. (Jackson v. SAIA Motor Freight , 2014 WL 5492806)

The Appellate Court in Illinois affirmed a trial court ruling that CH Robinson was not responsible for an accident involving an independent contractor who was not an agent of CH Robinson. The Court found no evidence of control by the broker, or negligence in the hiring or supervision of the contractor. (Hayward v. CH Robinson , 2014 WL 5487748)

CARGO

If you have been reviewing the bits cases over the last few months you may notice a trend of cases addressing the obligations of a carrier under broker contracts where those contracts impose greater liability than generally exists under the Carmack Amendment. The Southern District of Texas held that it had no jurisdiction over the obligations of a motor carrier to indemnify a broker for a cargo loss as it was a claim outside the scope of the Carmack Amendment. (Haulmark Services v. Solid Group Trucking , 2014 WL 5768685)

A default judgment entered against a Mexican carrier for a shipment which was transported from Mexico to the U.S. was vacated this month in the Southern District of California. The Court held that the plaintiff had failed to properly establish service on the Mexican carrier and that as there was a possible defense depending upon whether there was a through bill of lading and/or the shipment was improperly loaded, a default was not warranted. (Royal & Sunalliance Insurance v. Castor Transport

, 2014 U.S. Dist LEXIS 159901)

A plaintiff's efforts to defeat the preemptive effect of the Carmack Amendment failed in the Western District of Pennsylvania. The Court held that the failure to pay replacement cost for damaged household goods was insufficient to defeat the preemptive effect of the Carmack Amendment. (Irene J. Kendrick v South Hill Movers , 2014 WL 5685680) On the other side of the country, the Northern District in California held that Carmack Amendment did not preempt a claim against a broker for improper claims practices. (Anderson v. Mandana Pour , 2014 WL 5699646) While in the Western District in North Carolina the Court decided that Carmack did not preempt a breach of contact action against a carrier, clearly contrary to the law everywhere else. (RPM Plastics, LLC v. Joe Tex Xpress, Inc. , 2014 U.S. Dist. LEXIS 163153)

Interesting issue addressed in the Eastern District of Pa this month which reflects the inherent issue with the business needs of a motor carrier which wishes to have a claim paid. The Court upheld that provision of a policy which covered property of others, but for no more than the insured's liability. When there was an applicable limitation of liability which protected the insured the insurer had no obligation to pay the full amount of the loss, even when the insured wanted to protect his customer. (Daniel F. Young v. Seneca Ins. Co. , 2014 WL 540810)

Happy Holidays to One and All. See you next month.