



Walters Metal Corporation v. Hendrix et al

2015 | Cited 0 times | S.D. Illinois | April 23, 2015

IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF ILLINOIS
WALTERS METAL CORPORATION,

Plaintiff, vs. CARLA HENDRIX, ED HENDRIX, EMERALD EQUIPMENT ESCORTS, LLC,
SLIDE-N-RIDE- TRUCKING, INC., J & D TRUCKING, INC., CAREN RUTH VINSON, J.D.
DELANCY, MELINDA HILLENBERG and CURTIS WELLS,

Defendants.

Case No. 15-cv-51-SMY-DGW

MEMORANDUM AND ORDER This matter comes before the Court on Defendants Slide-N-Ride
Trucking, Inc., J & D

Dismiss (Doc. 9). Plaintiff filed a response (Doc. 16) to which Defendants replied (Doc. 19). For the
following reasons, the Court GRANTS the motion.

This matter arises out of a shipment of over-dimensional goods. Plaintiff is a metal fabrication
company located in Granite City, Illinois, and sought to transport its product, pipe spools, to a
customer located in Mont Belvieu, Texas. On December 29, 2012, the driver o the underside of the
Herrin Road Bridge on Interstate Highway 57 causing damage to the load. Plaintiff alleges the
following causes of action: Count I Negligence against Ed Hendrix and Carla Hendrix, Count II
Negligence against Emerald Equipment Escorts, LLC, Count III - Negligence 1

against J & D Trucking, Inc., Count IV - Negligence against Caren Ruth Vinson, Count V Negligence
against J.D. Delancey, Count VI Negligence against Slide-N-Ride Trucking, Inc., Count VII
Negligence against Melinda Hillenberg and Curtis Wells, and Count VIII Breach of Contract against
Emerald Equipment Escorts, LLC. Defendants argue that the negligence claims in Counts III
through VI must be dismissed pursuant to Rule 12(b)(6) because they are preempted by the Carmack
Amendment which preempts all state law claims based upon the contract of carriage, in which the
harm arises out of the loss of or damage to goods. Plaintiff argues the Carmack Amendment does not
preempt its claims because they sound in tort for incidental harms associated with the loss or
damage of cargo. Plaintiff also argues that because its claims souand in tort, it is not barred from
pursuing them under Contribution Act. Finally, Plaintiff asserts that the instant claims are not the
same as its previous claims and therefore, it is not estopped by this . negligence claims against



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Defendants, it

It is well established that the Carmack Amendment bars a shipper from seeking any other remedy either state statutory or common law provides against a carrier for damages to the . Gordon v. United Van Lines, Inc., 130 F.3d 282, 288-89 (7th Cir. 1997). However, the Carmack Amendment does not preempt those state law claims that allege liability on a ground that is separate and distinct from Gordon, 130 F.3d at 289. In that regard, the Seventh Circuit has

1 It appears that Plaintiff omitted its negligence allegations in Count III. In its Response, however, Plaintiff does not Count III as a negligence claim. shipper under a statute prohibiting deceptive trade practices, or a bailor might be able to recover from a bailee in tort if the claim for relief does not depend on the existence of a contrac Id.

Here, Plaintiff resulting the following damages: the replacement cost of cargo,

late penalties for failing to deliver cargo on time, and a fee for the second shipment and handling. remedies sought arise directly from, and as a result of

the damage to Plaintiff . claims against Defendants are preempted by the Carmack Amendment.

For the foregoing reasons, the Court GRANTS motion (Doc. 9) and DISMISSES Counts III, IV, V and VI of Plaintiff . IT IS SO ORDERED. DATED: April 23, 2015 s/ Staci M. Yandle STACI M. YANDLE DISTRICT JUDGE

