Daniel W. Raab

California court denies insurer the right to sue for cargo loss

The Montreal Convention is a U.S. treaty governing international movement of cargo. Therefore, it is the supreme law of the land. By its own terms, the Montreal Convention replaces a country's own laws, and several countries have adopted the convention.

Many airway bills for international cargo shipments state that the terms of the Montreal Convention apply to the shipment, bringing some consistency to international law. It makes it easier for shippers and carriers, who must know one set of rules rather than worrying about the laws of different countries.

The Montreal Convention's standing clause, which is the clause dealing with who has the right to sue on a claim, gives this right only to the consignee and the shipper/consignor on the AWB.

Accordingly, courts have strictly construed the standing provision of the Montreal Convention. QBE Ins. LTD. v. Eva Airways Corp., 2013 (U.S. District Court for the Northern District of California) has a strict interpretation of the law on the right to bring a lawsuit. This case deals with insurance subrogation, which is the right of an insurer to bring a lawsuit against a potentially liable party after it has paid its own insured on a claim.

In QBE Ins. Ltd. v. Eva Airways Corp., QBE was the insurance company for Flexstar Technology Inc., who contracted with freight forwarder Nippon Express to transport electronics from San Francisco to Shanghai. Nippon then assigned the consignment to EVA Airways Corporation for further handling.

When the cargo was unpacked at its destination, it was determined to be damaged. As Flexstar's insurer, QBE claimed that it was the subrogated insurer of Flexstar and brought suit on its own behalf, claiming that it suffered damages because it had paid for the damaged cargo.

The court held that QBE did not have standing – the right to sue – under the Montreal Convention, because it was not listed on the AWB. The court stated that QBE did not prove that a party who does not appear on the AWB as shipper/consignor or consignee has standing to sue on behalf of the consignor or consignee.

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Additionally, the court cited the plain language of the Montreal Convention to support its finding that QBE lacked standing to sue. The convention states that the consignor and consignee are only granted the right to sue "each in its own name," rather than through a third party.

Because QBE was not listed as the consignor or consignee on the AWB, it did not have standing to sue.

Therefore, the provision regarding the right to sue under the Montreal Convention is narrowly written as interpreted by this California court. In order to have the right to bring suit under the Montreal Convention, a plaintiff according to this court, must be listed on the AWB as the consignor or the consignee of a shipment.

This case is a narrow interpretation of the law. The court indicated that the lawsuit should be brought in the name of the insured, who was already reimbursed for the loss and therefore had no interest in the cargo.

I do not know if this will be binding authority in all courts, but it is there for carriers to refer to in their defense of subrogation lawsuits. The lawyers who brought the lawsuit did what many lawyers have done – sue in the name of the party that suffered the loss – but in this instance, it resulted in a dismissal.

(Editor's note: Daniel W. Rabb is a Miami-based attorney specializing in transportation issues. He is the author of Transportation Terms and Conditions, Chapter 47 of the New Appleman Practice Law Guide, Chapter 5 of the Benedict on Admiralty Desk Reference Book, and a contributing author to Goods In Transit. Madiha Merchant, a 2013 graduate of the Florida International College of Law, assisted with this article.)