

of the \$390.00 charge paid for delivery of the vehicle on a breach of contract theory; and (3) attorneys' fees, costs, and interest.

On March 9, 1998, Prime and Driveaway, a common carrier, entered into a contract and executed a bill of lading whereby Prime paid Driveaway \$390.00 to transport a car owned by Prime from the East Coast to Seattle, Washington. The bill of lading executed by the parties stated that the actual cash value of the car was \$10,000.00.

Ultimately, the car was not delivered to Seattle as it was destroyed while in the care and custody of Driveaway. The amount of damage to the car was assessed at \$11,342.00 although the parties' contract fixed the value of the car at \$10,000.00. Prime and Federal, as subrogee of Prime, sued Driveaway to secure the relief heretofore reported. Plaintiffs seek summary judgment pursuant to Federal Rule of Civil Procedure 56(c).

II. LEGAL STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). The party moving for summary judgment has the initial burden of showing the basis for its motion. See Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986). Ultimately, the moving party bears the burden of

showing that there is an absence of evidence to support the nonmoving party's case. See id. at 325. Once the movant adequately supports its motion pursuant to Rule 56(c), the burden shifts to the nonmoving party to go beyond the mere pleadings and present evidence through affidavits, depositions, or admissions on file to show that there is a genuine issue for trial. See id. at 324. A genuine issue is one in which the evidence is such that a reasonable jury could return a verdict for the nonmoving party. See Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986). A fact is "material" only if it might affect the outcome of the suit under applicable rule of law. See id.

When deciding a motion for summary judgment, a court must draw all reasonable inferences in the light most favorable to the nonmovant. See Big Apple BMW, Inc. v. BMW of N. Am., Inc., 974 F.2d 1358, 1363 (3d Cir. 1992), cert. denied, 507 U.S. 912 (1993). Moreover, a court may not consider the credibility or weight of the evidence in deciding a motion for summary judgment, even if the quantity of the moving party's evidence far outweighs that of its opponent. See id. Nonetheless, a party opposing summary judgment must do more than rest upon mere allegations, general denials, or vague statements. See Trap Rock Indus., Inc. v. Local 825, 982 F.2d 884, 890 (3d Cir. 1992). The court's inquiry at the summary judgment stage is the threshold inquiry of determining whether there is need for a trial--that is whether the evidence presents a

sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. See Anderson, 477 U.S. at 250-52. If there is sufficient evidence to reasonably expect that a jury could return a verdict in favor of plaintiff, that is enough to thwart imposition of summary judgment. See id. at 248-51.

III. DISCUSSION

Plaintiffs seeks summary judgment on their Carmack Amendment claim. The Carmack Amendment states in relevant part as follows:

(a) General liability--

(1) Motor carriers and freight forwarders--A carrier providing transportation or service . . . shall issue a receipt or bill of lading for property it receives for transportation That carrier and any other carrier that delivers the property and is providing transportation or service . . . are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed . . . is for the actual loss or injury to the property

49 U.S.C. 14706(a)(1). Plaintiffs must demonstrate the following to prevail on their statutory claim: (1) Prime delivered the vehicle to Defendant in good shape; (2) the vehicle was damaged before it was delivered to its final destination; and (3) the amount of damages it suffered. See Conair Corp. v. Old Dominion Freight Line, Inc., 22 F.3d 529, 531 (3d Cir. 1994). As a threshold matter, however, it must be shown that Defendant is a "common carrier" for liability to attach pursuant to the Carmack Amendment.

Defendant admits the following : (1) it is a common carrier; (2) at the time of shipment, Prime's vehicle was undamaged and in good condition; and (3) Prime's vehicle was destroyed during shipment. (See Def.'s Opp. to Summ. J. Mot. at ¶¶ 4, 7, & 8). Pursuant to Plaintiffs' theory of the case and in light of Defendant's admissions, Defendant's liability under the Carmack Amendment is established and the sole issue remaining for the Court's resolution is the amount of damages which may be awarded pursuant to the statute.

Defendant argues that the Carmack Amendment is irrelevant as the Prime/Driveaway contract contained a "benefit of insurance" clause which disposes of the federal statutory claim.¹ The clause provides as follows:

Should [Defendant] be liable on account of loss or damage, it should have the full benefit of any insurance that may have been in effect on said property, so far as this shall not void the policies or contracts of insurance, provided that [Defendant] reimburses the claimant for the premium paid thereon applicable to the time during which the vehicle is in [Defendant's] care, custody, and control.

(See Pls.' Mot. for Summ. J., Ex. A). Defendant believes that this clause shields it from liability for Prime's loss. Defendant contends that by signing the contract which contained this clause, Prime and Federal, as the subrogee of Prime, forfeited the right to make a claim for damages to the vehicle. Defendant refers the

¹ While Defendant argues in its response to Plaintiffs' instant Motion that The Carmack Amendment is inapplicable to Plaintiffs' claim, Defendant has not moved for summary judgment.

Court to United States v. Auto Driveaway Co., 464 F.2d 1380 (7th Cir. 1972), presumably in the belief that either its position is bolstered or Plaintiffs' position is weakened by the Seventh Circuit's holding therein.

In United States v. Auto Driveaway Co., the Seventh Circuit considered whether a carrier's use of a clause giving it the benefit of the shipper's insurance, so long as it would not void the shipper's insurance policy, was an improper attempt by the carrier to limit the liability imposed upon it under 49 U.S.C. § 20(11) and § 316(d), the predecessors of 49 U.S.C. § 11707.² The circuit court found no violation of the statute so long as the carrier did not "require" its customers to obtain insurance for its benefit and as long as the carrier reimbursed the customer for the premium if the company actually benefitted from the insurance policy. See id. at 1383. Even though the court found the "benefit of insurance" clause to be valid, it recognized that, practically speaking, the clause would have little effect, because "the insurer is, or can be, protected by a policy endorsement which would [effectively] conflict with the clause." Id.

Defendant's reliance on the Seventh Circuit's analysis is misguided as the issue here is not whether the "benefit of insurance" clause conflicts with the Carmack Amendment but rather

² The Carmack Amendment now appears at 49 U.S.C. § 14706 but previously was codified at 49 U.S.C. § 11707.

is whether Defendant may be held liable for Prime's loss pursuant to the federal statute. As the Seventh Circuit adeptly predicted, and as is the case here, where a "benefit of insurance" clause is facially valid, the clause has little practical effect where the insurer protects itself with a policy endorsement which effectively conflicts with the clause in the carrier's contract. Prime's insurance contract contains the following clause: The Insurer "will not recognize any assignment or recognize any coverage for the benefit of any person or organization holding, storing, or transporting property for a fee regardless of any other provision of this" insurance contract. (See Pls.' Mot. for Summ. J., Ex. K). This clause of Prime's insurance contract expressly states that Federal does not recognize coverage for the benefit of any organization transporting property for a fee. As Driveaway was transporting Prime's vehicle for a fee, Prime's insurance policy does not shield Driveaway from liability occasioned by its agent's negligence. Therefore, Prime's vehicle was not insured as to Driveaway while it was in Driveaway's possession.³ Thus, Driveaway's reliance on the benefit of insurance clause is misplaced as said clause is operative only with regard to "any insurance that may have been in effect on said property." (See Pls.' Mot. for Summ. J., Ex. A). Because Driveaway's argument does

³ Driveaway argues that Prime's vehicle must have been insured against this loss as Federal paid Prime for the vehicle after it was destroyed. This argument is inapposite in light of the well-established and long-standing subrogation doctrine.

not dispose of Plaintiff's Motion for Summary Judgment, the Court turns to the measure of Plaintiff's damages under the Carmack Amendment.\⁴

Plaintiffs argue that the Carmack Amendment imposes strict liability on Defendant for the actual loss to property occasioned by its negligence. Plaintiffs therefore ask for damages for actual loss of the vehicle in the amount of either \$10,000.00 or \$11,342.00. They also seek reimbursement of the "useless" \$390.00 shipping charge that Prime payed to Driveaway. Defendant argues that summary judgment is inappropriate as there exists a genuine issue of material fact concerning the appropriate measure of damages.

Plaintiffs argue that their actual loss totals \$11,342.00--\$10,700.00 actual cash value plus 6% Pennsylvania sales tax--and that this sum should be awarded under the federal statute. Nonetheless, the parties' contract states the vehicle's value as \$10,000.00. As the parties do not contest the validity or enforceability of their contract, the Court finds that the contract controls the issue of damages. Therefore, Plaintiffs may recover \$10,000.00 for the loss of the vehicle and \$390.00 for the shipping charge Prime paid to Driveaway. As no genuine issue of material

⁴ As discussed above, Defendant admits that it is a common carrier, that at the time of shipment, Prime's vehicle was undamaged and in good condition, and that Prime's vehicle was destroyed during shipment. (See Def.'s Opp. to Summ. J. Mot. at ¶¶ 4, 7, & 8). Accordingly, Defendant admits to liability under the Carmack Amendment.

facts remains for adjudication, Plaintiffs' Motion for Summary Judgment will be granted.

An appropriate Order follows.

