

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BETA SPAWN, INC.	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
FFE TRANSPORTATION SERVICES, INC.	:	
Defendant.	:	NO. 99-0815
	:	

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND ORDER

YOHN, J.

March 16, 2000

Beta Spawn, Inc. brought this action against FFE Transportation Services, Inc. to recover the value of its goods which were shipped by the defendant and allegedly damaged during transport. FFE has filed a counterclaim to recover its shipping costs which were never paid by Beta Spawn.

The issue in this case is whether Beta Spawn can demonstrate that it is entitled to recover under the Carmack Amendment for the damage caused to its goods transported by FFE. The plaintiff contends that it has made out a prima facie case under the Carmack Amendment because it has proven that the goods were in good condition upon delivery to the defendant, they were damaged during delivery to their final destination, and Beta Spawn suffered damages as a result. In response, FFE argues that Beta Spawn can not make out its prima facie case because it can not establish that the goods were in good condition when they were picked up by FFE in California. Furthermore, FFE contends that it was not at fault for any damage to the goods because it

maintained the goods at a temperature provided for in its published tariff. The court conducted a bench trial to resolve these issues.

Having considered all of the testimony and exhibits offered at trial, I now, pursuant to Fed. R. Civ. P. 52(a), make the following findings of fact and conclusions of law:

A. FINDINGS OF FACT

1. Beta Spawn is a Pennsylvania corporation licensed to do business within the Commonwealth of Pennsylvania. See Plaintiff/Defendant Agreed Proposed Findings of Fact (“Agreed Findings”) ¶ 1.
2. Beta Spawn is in the business of supplying mushroom spawn to the mushroom industry. See Testimony of Harry Testa (“Testa Test.”). Spawn are the “fragments of mycelia used to start a mushroom culture.” The American Heritage Dictionary of the English Language 1239.
3. Spawn is a “living, breathing” organism that must be maintained at a temperature of approximately 36 degrees Fahrenheit to prevent damage to the spawn. See Testa Test.; see also Exh. P-16. When spawn is exposed to higher temperatures, it begins to generate its own heat and to ferment. See Testa Test.; see also Exh. P-16. Spawn that has begun to ferment is damaged and has lost its viability. See Testa Test. Damaged spawn has a characteristic odor that is similar to a vinegar smell. See Testa Test.; see also Exh. P-16. Once spawn is exposed to heat, an attempt to re-cool the spawn will not be successful because the spawn will already have begun generating heat. See Testa Test.

4. Beta Spawn is the exclusive distributor of a variety of spawn from Italy known as Italspawn. See Testa Test.
5. The box in which Italspawn is packaged says explicitly that the spawn should be maintained at a temperature of 2 degrees Celsius (which is approximately 36 degrees Fahrenheit). See Testa Test.
6. Italspawn is packaged in plastic bags. See Testa Test. The plastic bags are then placed into cardboard boxes, with each box containing three plastic bags. See id. Each cardboard box contains holes that permit air to circulate in the box. See id.
7. FFE is a corporation that regularly conducts business within the Commonwealth of Pennsylvania and has its principal place of business in Dallas, Texas. See Agreed Findings ¶ 2.
8. FFE is a common carrier engaged in interstate and intrastate commerce. See Amended Answer, Affirmative Defenses and Counterclaim of Defendant FFE Transportation Services, Inc. (“FFE’s Amended Answer”) ¶ 3.
9. FFE operated as a common carrier during the time relevant to this lawsuit, that is, from June 12, 1997, through September 29, 1997.
10. In June, 1997, Beta Spawn reached an agreement with Peterson’s Ranch in Camarillo, California, in which Peterson’s Ranch agreed to purchase approximately 35,200 units¹ of spawn from Beta Spawn. See Agreed Findings ¶ 5. Peterson’s Ranch, which is a mushroom farm, was going to use this spawn to grow mushrooms for resale. See id.

¹One unit of spawn is equal to approximately one pound of spawn. At trial, witnesses used both “unit” and “pound” to refer to the amount of spawn at issue here.

11. Peterson's Ranch is also known by the name "Mushroom's Etc." See Testimony of Louis Peterson, June 17, 1999, Arbitration Hearing ("Peterson Test.") (Exh. P-21) at 73.²
12. On June 12, 1997, Beta Spawn delivered approximately 35,200 units of spawn to FFE with the agreement that FFE would ship the spawn to Peterson's Ranch in California. See Agreed Findings ¶ 3. At the time of the delivery from Beta Spawn to FFE, the spawn was in good order and condition for shipment in interstate commerce. See id.
13. On June 23, 1997, Peterson's Ranch accepted delivery from FFE of approximately 880 boxes of spawn. See Agreed Findings ¶ 4. Some of the boxes delivered to Peterson's Ranch had been damaged, but the contents of the boxes were unharmed. See id.

²At trial, the defendant objected to Plaintiff's Exhibit 21, which contains Louis Peterson's testimony from the June 17, 1999, arbitration hearing. The defendant objected on the ground that this former testimony does not meet the hearsay exception found in Federal Rule of Evidence 804(b)(1). I disagree with the defendant and will admit Peterson's testimony from the arbitration hearing.

"In order for former testimony to be admissible as an exception to the hearsay rule: (1) the declarant must be unavailable; (2) testimony must be taken at a hearing, deposition, or civil action or proceeding; and (3) the party against whom the testimony is now offered must have had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination." See Kirk v. Raymark Indus., 61 F.3d 147, 164 (3d Cir. 1995) (citing Fed. R. Evid. 804(a)(5), (b)(1)), cert. denied, 516 U.S. 1145 (1996). In this case, the second and third prongs of the test were not at issue. The only contested issue was whether Peterson was "unavailable" within the meaning of the rule. I find that the plaintiff made every effort possible to bring Peterson to court to testify in this trial. The plaintiff offered to pay his travel expenses, lodging, transportation, and even offered to pay for lost wages. See Testa Test. Peterson apparently did not want to travel to Pennsylvania for the trial, however, because he did not want to jeopardize his position in his new job. Thus, I find that Peterson was unavailable and the plaintiff was not responsible for procuring his absence. Accordingly, I will admit in evidence Peterson's testimony from the arbitration hearing.

Moreover, I find that the testimony from the arbitration hearing is also admissible under Federal Rule of Civil Procedure 32, because the arbitration testimony is the functional equivalent of deposition testimony.

14. Peterson's Ranch used the spawn over the summer of 1997, and during that time, made no complaints to Beta Spawn about the condition or quality of the spawn. See Testa Test.
15. The spawn was refrigerated in a cooler the entire time it was kept at Peterson's Ranch. See Peterson Test. at 76, 82.
16. Peterson used approximately 8,000 to 12,000 of the units of spawn that he received from Beta Spawn. See Peterson Test. at 75. Peterson was satisfied with this spawn and used it successfully in his mushroom-growing operation. See id.
17. During the summer of 1997, a strike in Italy caused Beta Spawn to have a shortage of inventory of Italspawn. See Testa Test. As a result, Harry Testa, the Vice-President of Beta Spawn contacted Louis Peterson of Peterson's Ranch to ask whether Beta Spawn could purchase some of the unused spawn from the shipment that had gone to Peterson's Ranch in June, 1997. See id. Peterson agreed.
18. On September 15, 1997, Beta Spawn agreed to purchase approximately 16,000 units of spawn from Peterson's Ranch. See Testa Test.; Agreed Findings ¶ 6. The spawn was packaged in approximately 400 boxes, which were to be shipped in interstate commerce from California to Pennsylvania. See Agreed Findings ¶ 6.
19. Testa contacted Michael Conn of FFE to arrange for the shipment of the spawn from California to Pennsylvania. See Testa Test. During this conversation, Testa informed Conn that the spawn had to be transported in a trailer maintained at 34 degrees Fahrenheit. See Testa Test. Testa and Conn agreed that FFE would transport the spawn at a temperature of approximately 34 degrees Fahrenheit. See id.
20. FFE had shipped spawn for Beta Spawn before and there had never been a problem with

- these past shipments. See Testa Test. FFE had always transported the spawn in a trailer maintained at 34 degrees Fahrenheit. See id.
21. On September 23, 1997, FFE entered into a bill of lading contract of carriage with Mushrooms, Etc. to deliver the 16,000 units of spawn from the Mushrooms, Etc. facility in Camarillo to the Beta Spawn facility in Pennsylvania. See Agreed Findings ¶ 7. Beta Spawn, as consignee, agreed to pay FFE \$2,685.36 for that shipment upon delivery. See id.
 22. The bill of lading called for the transport of 16,000 units of spawn, packed in 400 boxes. See Agreed Findings ¶ 9. The boxes were loaded on 10 pallets (40 boxes to a pallet). See id. Each box weighed approximately 40 pounds and contained three plastic bags. See id.
 23. Mushrooms, Etc. requested that FFE provide it with “less-than-truckload” (“LTL”), “chilled” service for the spawn. See Agreed Findings ¶ 10. Mushrooms, Etc. also requested that the spawn be transported at a temperature of 34 degrees Fahrenheit. See Testa Test.; see also Exh. P-9 (bill of lading for shipment from California to Pennsylvania).
 24. William Forbito, a driver from FFE, picked up the spawn at Peterson’s Ranch. See Agreed Findings ¶ 8; see also Testimony of William Forbito (“Forbito Test.”).
 25. Peterson checked some, but not all, of the bags of spawn before they were loaded onto the FFE truck. See Peterson Test. at 105-06. Peterson visually examined and smelled the spawn. See id. He was convinced by the sight and smell of the spawn that it was in good condition at the time it was loaded onto the FFE truck for transport to Pennsylvania.

See id.

26. Some of the boxes containing spawn were crushed at the time that Forbito picked up the spawn in California. See Forbito Test. Forbito indicated that the boxes were torn and crushed by writing “Boxes Troned (sic) Crushed” on the bill of lading. See id.³
27. Forbito did not notice any torn bags or loose spawn and did not recall any unusual odor emanating from the spawn. See Forbito Test. There was no evidence that any of the plastic bags containing the spawn which were packed in the boxes were torn or damaged.⁴
28. Peterson wrote the number “6” on his copy of the bill of lading to indicate that 6 of the boxes were torn or crushed. See Peterson Test. at 97. Thus, I find that at the time FFE took control of the shipment in California, between 6 and 100 boxes were either crushed or torn, but none of the plastic bags were torn or damaged.
29. I find that on September 23, 1997, when FFE’s driver picked up the spawn from Peterson’s Ranch, it was in good condition and the temperature of the spawn was proper.
30. Forbito wrapped the boxes of spawn, as stacked, in plastic shrink wrap. See Agreed Findings ¶ 8; Forbito Test.⁵

³Forbito testified that his notation on the bill of lading meant that all 400 boxes were torn and crushed. See Forbito Test. I do not find this testimony credible, however, because FFE’s representatives in Chicago indicated that only 80 or 100 boxes were crushed when the shipment arrived in Chicago en route to Pennsylvania. See Ex. P-13, P-14.

⁴The plaintiff presented testimony that even if the boxes were torn, it still was possible that the bags, and the spawn within the bags, could have been in good condition and free from any damage. See Peterson Test. at 109. Thus, evidence that some of the boxes were torn and crushed at their original delivery to FFE is not inconsistent with a finding that the spawn was in good condition at the time FFE took control of the spawn.

⁵At trial, both parties agreed that placing shrink wrap around spawn could injure the spawn because it would cut off necessary air circulation. A limited number of the boxes were

31. FFE transported the spawn from California to Chicago, Illinois, and then from Chicago to Beta Spawn's facility in Pennsylvania. See Agreed Findings ¶ 11.
32. The spawn arrived in Chicago on September 25, 1997. See Exh. P-13. When the spawn arrived in Chicago, the temperature was 34 degrees Fahrenheit. See id.
33. When the boxes of spawn arrived in Chicago, approximately 100 boxes were crushed. See Exh. P-13. When the boxes left Chicago, approximately 20 of the boxes were leaking spawn because one or more of the plastic bags containing the spawn had been torn. See Exh. P-14.
34. From September 23, 1997, until delivery of the spawn to Beta Spawn on September 29, 1997, the spawn was in the sole and exclusive control and possession of FFE. See Agreed Findings ¶ 12.
35. The shipment of spawn arrived at Beta Spawn's facility in Pennsylvania on September 29, 1997. See Testa Test.
36. Testa was present when the spawn arrived. See Testa Test. Testa testified that the boxes of spawn were not on pallets and the spawn was loaded in the trailer with several other products, including cream cheese and diet products. See id. Testa described the shipment of spawn as a "big mess." See id.
37. Testa checked the temperature of approximately 10 boxes and found the temperature to be between 48 and 58 degrees Fahrenheit. See Testa Test. Ernest Leone, the President of

wrapped with such shrink wrap. Beta Spawn's original complaints about the spawn spoilation did not include any reference to the shrink wrapping and there was no proof offered at trial that the spawn was damaged due to this wrapping. Accordingly, I find that the temperature, not the wrapping, was the cause of any damage to the spawn.

Beta Spawn, was also present when the spawn arrived. See Testimony of Ernest Leone (“Leone Test.”). Leone also testified that the temperature of the spawn was between 46 and 60 degrees upon arrival at Beta Spawn. See id.

38. Testa told the FFE driver, Charles Hawkins, that the spawn was unacceptable. See Testa Test. Testa refused to accept the delivery and instructed Beta Spawn’s secretary to write “load not acceptable” on the bill of lading. See Testa Test.; see also Exh. P-10. Hawkins then signed the bill of lading. See Testa Test.; see also Exh. P-10.
39. I find that the entire shipment of spawn was destroyed or rendered useless because it was exposed to temperatures between 48 and 58 degrees Fahrenheit. See Testa Test.; Leone Test.; Exh. P-16 (expert opinion on viability of spawn exposed to heat). Thus, I find that the spawn was of no value when it was received by Beta Spawn.⁶
40. I find that this damage occurred en route from California to Pennsylvania, while the spawn was within the custody and control of the defendant.
41. The spawn had a market value of \$1.25 per unit. See Peterson Test; Testa Test. Because I have found that the entire shipment of 16,000 units was destroyed, I find that Beta Spawn suffered monetary damages of \$20,000.
42. At the time of the attempted delivery by FFE to Beta Spawn, Beta Spawn notified FFE of the damage to its product. See Agreed Findings ¶ 13.
43. Because Beta Spawn alleges that FFE damaged the spawn during shipment from California to Pennsylvania, Beta Spawn has refused to pay the \$2,685.36 bill for

⁶There was no evidence that the crushed boxes caused the damage, or if so, the extent of that damage. Moreover, even if the crushed boxes did cause damage, the high temperatures caused all of the spawn to be destroyed or rendered useless.

shipment costs. See Agreed Findings ¶ 7.

44. FFE publishes a tariff that applies to the shipment of some goods and provides rules and regulations for, among other things, goods that are shipped with protective services.⁷ According to the tariff, there are three types of protective service shipments: (1) truckloads; (2) mixed truckloads; and (3) less-than-truckloads (“LTL”). See id. The tariff provides that a LTL shipment of “frozen” commodities must be maintained at an air temperature between 0 degrees Fahrenheit and 14 degrees Fahrenheit. See id. A LTL shipment of “cooler” commodities must be maintained at an air temperature between 35 degrees Fahrenheit and 60 degrees Fahrenheit. See id. A LTL shipment of “mixed shipments of frozen and other than frozen commodities” must be maintained at the temperature directed by the shipper and stated on the bill of lading.⁸ See id.
45. I find that the parties agreed that the temperature of the trailer transporting the spawn from California to Pennsylvania would be approximately 34 degrees Fahrenheit. This finding of fact is supported by the following facts: (1) the parties had prior business

⁷Protective services are services that protect perishable commodities against heat or cold. See Exh. P-17.

⁸At trial, and in a supplemental letter brief submitted to the court post-trial, FFE argued that the tariff provision regulating the transportation of LTL shipments of “cooler” commodities applied and therefore, permitted it to transport the spawn in a trailer maintained at a temperature between 35 degrees Fahrenheit and 60 degrees Fahrenheit. FFE argues that the inclusion of the word “chill” on the bill of lading means that the parties agreed that this shipment would be transported according to the requirements set forth in FFE’s tariff for a LTL shipment of “cooler” commodities. I disagree with the defendant. The word “chill” is not found anywhere in the defendant’s tariff, and there was no evidence presented at trial that the word “chill” is synonymous with the word “cooler.” Thus, I decline to find that the inclusion of the word “chill” on the bill of lading means that the tariff for LTL “cooler” commodities governs the shipment at issue here.

dealings in which the defendant transported the plaintiff's spawn and kept the temperature at approximately 34 degrees Fahrenheit; (2) Testa of Beta Spawn and Conn of FFE had a verbal agreement that FFE would transport the spawn at a temperature of approximately 34 degrees Fahrenheit; (3) Forbito, FFE's driver, wrote the word "chill" and noted the temperature of 34 degrees explicitly on the bill of lading when he originally picked up the spawn in California; and (4) the temperature of the trailer was 34 degrees when it arrived in Chicago on September 25, 1997.

46. I find that FFE did not provide the requisite services under the agreement between the parties.

B. CONCLUSIONS OF LAW

1. Section 14706 of Title 49 of the United States Code, also known as the Carmack Amendment to the Interstate Commerce Act governs the plaintiff's claim in this action.⁹
2. To state a prima facie case against a common carrier under the Carmack Amendment, a shipper must prove the following three elements: "(1) delivery of the goods to the initial carrier in good condition, (2) damage of the goods before delivery to their final

⁹In its proposed conclusions of law, the plaintiff states that "[b]oth federal and state law (Pennsylvania Public Utilities Code, 66 Pa.C.S. § 2304(a)) provide that common carriers are absolutely liable to the owner of property for any loss, damage, or injury to such property while the property is in the carrier's possession." See Plaintiff's Proposed Conclusions of Law at ¶ 2. I disagree, however, that the state statute cited by the plaintiff applies in this case. The state statute cited by the plaintiff governs damage to property in intrastate, not interstate, commerce. See 66 Pa. Cons. Stat. Ann. § 2304(a) (mandating requirements for "[e]very common carrier that receives property for transportation between points within this Commonwealth"). The goods at issue here were transported via interstate commerce. Thus, the state statute does not apply and the Carmack Amendment is the controlling law for this action.

destination, and (3) the amount of damages.” Conair Corp. v. Old Dominion Freight Line, Inc., 22 F.3d 529, 531 (3d Cir. 1994) (citations omitted); see also Missouri Pacific R.R. Co. v. Elmore & Stahl, 377 U.S. 134, 138 (1964) (listing elements for prima facie case under Carmack Amendment); Pharma Bio, Inc. v. TNT Holland Motor Express, Inc., 102 F.3d 914, 916 (7th Cir. 1996) (same); Blue Bird Food Prods. Co. v. Baltimore & Ohio R.R. Co., 474 F.2d 102, 103-4 (3d Cir. 1972) (same).

3. I conclude that Beta Spawn met its burden of proof that the goods were delivered to FFE in good condition. As I have found, Peterson’s testimony shows that the spawn was in good condition when loaded onto the FFE truck in California. See supra A-25. The spawn had been stored in a refrigerated cooler all summer and Peterson had himself used some of the spawn with great success. See supra A-14, A-15, A-16. Moreover, Peterson did not notice any torn bags of spawn or detect the distinctive odor of fermenting spawn when he assisted Forbito with the loading of the spawn onto the FFE truck. See supra A-25. At trial, Forbito testified that he did not recall any distinct odor coming from the shipment of spawn when he picked up the shipment from Peterson. See supra A-27. Accordingly, I conclude that Beta Spawn satisfied the first element of its prima facie case.
4. I conclude that Beta Spawn satisfied the second element of its prima facie case because I have found that the spawn was damaged en route from California to Pennsylvania while the spawn was within the custody and control of the defendant. See supra A-29, A-31, A-32, A-33, A-34, A-35, A-36, A-37, A-38, A-39, A-40.
5. Because I have found that the entire shipment of spawn was rendered useless, see supra A-39, I conclude that Beta Spawn has proven damages. Thus, I conclude that Beta

Spawn has satisfied the third and final element of its prima facie case.¹⁰

6. Once the plaintiff has proven its prima facie case, “the defendant carrier will be liable for damage to the goods in question, unless it can show that it was free from negligence and that the damage was caused by ‘(a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (e) or the inherent vice or nature of the goods.’”

Pharma Bio, Inc. v. TNT Holland Motor Express, Inc., 102 F.3d 914, 916 (7th Cir. 1996) (citing Missouri Pacific, 377 U.S. at 137; Joseph Schlitz Brewing Co. v. Transcon Lines, 757 F.2d 171 (7th Cir.), cert. denied, 474 U.S. 848 (1985); S.C. Johnson & Son, Inc. v. Louisville & Nashville R.R. Co., 695 F.2d 253, 256 (7th Cir. 1982)). No such proof was offered at trial.

7. I conclude that FFE’s tariff is inapplicable to the shipment at issue here. See supra A-44 & n.8.
8. Because a claim under the Amendment is essentially a claim for breach of the contract of carriage, the measure of damages derives from common law principles of contract remedy. See, e.g., Hector Martinez and Co. v. Southern Pac. Transp. Co., 606 F.2d 106, 108 (5th Cir. 1979), cert. denied, 446 U.S. 982 (1980); F.J. McCarty Co. v. Southern Pac. Co., 428 F.2d 690, 693 (9th Cir. 1970).

¹⁰At trial, the defendant made a motion for judgment as a matter of law pursuant to Federal Rule of Civil Procedure 52(c). See Defendant’s Motion for Judgment as a Matter of Law on Partial Findings. In that motion, the defendant argued that Beta Spawn failed to prove its prima facie case at trial. Specifically, FFE argued that Beta Spawn did not prove that the goods at issue were in good condition when delivered to FFE for shipment. I disagree for the reasons set forth in these Findings of Fact and Conclusions of Law. Therefore, because I conclude that Beta Spawn did make out its prima facie case, I will deny FFE’s motion for judgment as a matter of law.

9. The general measure of damages for damaged goods under the Carmack Amendment is the difference between the market value of the goods in their original, sound condition and the market value of the damaged cargo. See Hams Express Inc. v. Joseph Land & Co., Inc., 506 F. Supp. 209, 213-14 (E.D. Pa. 1980).
10. Because I have found that the entire shipment of spawn was rendered useless, see supra A-38, A-39, and because I have found that the shipment was worth twenty-thousand dollars (\$ 20,000.00) (16,000 units at \$1.25 per unit), see supra A-41, I conclude that FFE is liable to Beta Spawn in the amount of twenty-thousand dollars (\$ 20,000.00), which was the market value of the damaged spawn.
11. Because I have found that FFE did not provide the requisite services under the contract between the parties, see supra A-46, I conclude that Beta Spawn is not liable to FFE for the shipping charges billed by FFE to Beta Spawn, which totaled \$2,685.

C. CONCLUSION

For the reasons stated above, I conclude that the defendant, FFE, is liable to the plaintiff, Beta Spawn, for the damage caused to its goods transported by the defendant from California to Pennsylvania. I will therefore enter judgment in favor of Beta Spawn in the amount of twenty thousand dollars.

As to the counterclaim brought against Beta Spawn by FFE, I find that the defendant did not provide the requested services under the agreement between the parties, and thus, I conclude that Beta Spawn is not liable to FFE for the shipping charges of \$2,685. Therefore, I will enter judgment in favor of Beta Spawn, and against FFE on the counterclaim.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

BETA SPAWN, INC.	:	CIVIL ACTION
Plaintiff,	:	
	:	
v.	:	
	:	
FFE TRANSPORTATION SERVICES, INC.	:	
Defendant.	:	NO. 99-0815
	:	

ORDER

AND NOW, this day of March, 2000, upon consideration of the plaintiff's complaint, the defendant's answer, and after trial, and in accordance with the aforesaid findings of fact and conclusions of law, IT IS HEREBY ORDERED that, in reference to the claim brought by Beta Spawn, Inc. against FFE Transportation Services, Inc., judgment is entered in favor of the plaintiff, Beta Spawn, Inc., and against the defendant, FFE Transportation Services, Inc., in the amount of twenty thousand dollars (\$20,000.00).

In reference to the counterclaim brought by FFE Transportation Services, Inc., against Beta Spawn, Inc., IT IS HEREBY ORDERED that judgment is entered in favor of Beta Spawn and against FFE Transportation Services, Inc.

William H. Yohn, Jr., J.