

### **Mohawk Valley Ski Club, Inc. v. Town of Duanesburg Supreme Court of New York, Appellate Division, Third Department 304 A.D. 2d 881 (Decided April 3, 2003)**

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## THE STATUS OF “NAVIGABILITY” AS A MATTER OF LAW AS APPLIED TO LAKE MARIAVILLE, SCHENECTADY COUNTY, NEW YORK

**A lake will not be found to be “navigable” if the lake lacks suitable public access or termini, it is not practical public transportation and historically the general public never used the lake in its natural state as a navigable waterway. Thus, the Town of Duanesburg’s Local Law No. 1 is valid.**

Mohawk Valley Ski Club, Inc. v. Town of Duanesburg  
Supreme Court of New York, Appellate Division, Third Department  
304 A.D. 2d 881  
(Decided April 3, 2003)

Mohawk Valley Ski Club (“Mohawk Club”) is a not-for-profit corporation that ran a water-skiing instruction program at Lake Mariaville within the Town of Duanesburg. Lake Mariaville is currently one mile long by one-quarter mile wide and was artificially created by the placement of a concrete dam across a streambed in 1920.

In April 2000, the Town of Duanesburg passed Local Law No. 1, which bars “any person or persons, corporation, partnership, organization, club or entity of any kind of public or private to operate a business or commercial venture upon the waters of the Mariaville Lake.”

Mohawk Club sought judgment declaring the lake a navigable body of water per the New York Navigation Law § 2(4), and such action would make the Local Law No. 1 void because the jurisdiction of navigable waters belongs to the State. The Town of Duanesburg defended its ordinance on the grounds that Lake Mariaville was not a navigable body of water as a matter of fact. The Supreme Court of Schenectady County, New York denied Mohawk Club’s motion for summary judgment.

On appeal the Appellate Division, Third Department weighed the case with the focus on two issues: 1) whether the lake had the capacity and history of commercial transportation, and 2) if this capacity was demonstrated, the lake must contain access or termini for public entrance and exit of the waterway. The claim that the Town of Duanesburg lacked jurisdiction would be moot if the lake was not found to be a navigable body of water.

The navigable waters of the state are defined as “all lakes, rivers, streams and waters within the boundary of the state and not privately owned, which are navigable in fact or upon which vessels are operated, except all tidewaters bordering on and lying within the boundaries of Nassau and Suffolk counties.” New York Navigation Law § 2(4). The court defined a critical test of navigability in this case as “[w]hether the river was so far navigable or floatable, in its natural state and its ordinary capacity, as to be of public use in the transportation of property.” *Morgan v. King*, 35 N.Y. 454, 458-459 (1866). The court rejected Mohawk Club’s assertion that the presence of motorized vessels upon the lake sufficiently met the criteria of navigability.

The court also explained that the absence of multiple points of access could be “evidence that a pond is not suitable for trade, commerce or travel” (*Hanigan v. New York*, 213 A.D. 2d 80, 85 (3d Dept. 1995)), and further explained that “the mere fact that a small pond, with no navigable inlet or outlet, has been used to float canoes and small

boats for purely recreational purposes is insufficient to demonstrate that the pond has a capacity or suitability for commercial transportation.” *Id.* at 84.

The court held that Mohawk Club failed to present a *prima facie* case because it was unable to demonstrate that Lake Mariaville had any historic use of commercial transportation and the lake lacked suitable public access. The Appellate Division, Third Department affirmed the lower court’s denial of plaintiff’s motion.

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**Class of 2005**

### **APPLICATION OF THE CARMACK AMENDMENT, 49 U.S.C.S. § 14706, TO LAND CARRIERS**

**A shipper establishes a *prima facie* case when it shows: (1) delivery in good condition, (2) arrival in damaged condition, and (3) the amount of damages. Upon such a showing, the burden shifts to the carrier to show both that it was free from negligence and that the damages to the cargo were due to one of the excepted causes relieving the carrier of liability: (1) acts of God, (2) acts of the public enemy, (3) acts of the shipper himself, (4) public authority, or (5) the inherent vice or nature of the goods. Carmack Amendment, 49 U.S.C.S § 14706.**

Am. Nat’l Fire Ins. Co. v. Yellow Freight Systems, Inc.  
United States Court of Appeals for the Seventh Circuit  
325 F. 3d 924  
(Decided April 10, 2003)

Plaintiff, American National Fire Insurance Company (“American National”), subrogee of a cigar manufacturer alleged that a shipment of cigars transported by the defendant, Yellow Freight Systems (“Yellow Freight”), was damaged in transit due to water leakage in the freight carrier’s trailer. Plaintiff brought suit in United States District Court for the Northern District of Illinois, Eastern Division, claiming damages under the Carmack Amendment, 49 U.S.C.S. § 14706. The district court ruled that the plaintiff-subrogee had established a *prima facie* case under the Carmack Amendment. In addition the district court held that the defendant failed to prove that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving it from liability. The district court awarded the plaintiff the costs of freight, taxes, and insurance.

The defendant appeals the district court’s ruling that the plaintiff proved a *prima facie* case under the Carmack Amendment, that the defendant did not prove any of the excepted causes, and that the damaged cartons were part of the shipment at issue. In addition, the defendant appeals the district court’s award of freight, taxes, and insurance. The plaintiff cross-appeals the district court’s decision that the date of subrogation, rather than the date of delivery of the damaged goods, should be used to determine the date of accrual for prejudgment interest. In addition, the plaintiff argues that the district court erred in awarding simple rather than compound interest. The United States Court of