Admiralty Practicum

Volume 2004
Issue 1 *Spring 2004*

Article 9

February 2018

Albingia Versicherungs A.G. v. Schenker International Inc. United States Court of Appeals for the Ninth Circuit 344 F.3d 931 (Decided October 10, 2002)

Robert Maher, Class of 2006

WAYBILL LIMITATIONS ON LIABILITY HELD VALID UNDER FEDERAL COMMON LAW

When the Warsaw Convention is inapplicable because damage to goods took place off-airport, a waybill limitation for damage to goods shipped in interstate or international commerce will be applicable, provided that the shipper has reasonable notice of the limitation and fair opportunity to purchase the means to avoid it.

Albingia Versicherungs A.G. v. Schenker International Inc.
United States Court of Appeals for the Ninth Circuit
344 F.3d 931
(Decided October 10, 2002)

Plaintiff Appellant, Albingia Versicherungs A.G. ("Albingia"), insurer of Siemens Components Pte. Ltd. ("Siemens") brought a subrogation claim in a California Superior Court for San Francisco against defendant, Schenker International Inc., ("Schencker"), a freight forwarder and three other defendants. Siemens, a German manufacturer of computer chips made in Singapore, sent a shipment of chips to San Jose California for testing. When the cartons containing the computer chips arrived back in Germany, one of the three inner boxes in each carton contained a brick instead of circuits. Albingia paid Siemens $235,000 for the chips as part of a claim arising out of the theft of cargo while in transit. Defendant Schenker operated a warehouse in San Francisco where the chips had been stored prior to transport on Eva Air back to Singapore.

The complaint stated five causes of action. The first arose under the Convention for the Unification of Certain Rules Relating to International Transportation by Air ("The Warsaw Convention") 49 U.S.C. § 40105. The others arose under California State law. Eva Air, an international air carrier and co-defendant in the original action removed the case to federal court based on the Warsaw Convention claim. Schenker and Albingia stipulated to facts establishing that Schenker employees had probably stolen the chips from Schenker's South San Fancisco warehouse. Neither party disputes this claim. Siemens's waybills however, contained a limitation on liability that supplemented the liability of $20 per kilo, specified by the Warsaw convention. It contended that its liability was limited to $20 per kilo whether the Warsaw Convention applied to the situation or not.

Both parties filed cross motions for summary judgment on the applicability of the Warsaw Convention and the monetary limitations in the waybills. The district court held that the Convention did not apply because defendant's warehouse was off-airport. In *Read-Rite Corporation v. Burlington Air Express, Inc. 186 F.3d 1190* (9th Cir. 1999), the court held that the Warsaw Convention applies to transportation, but not everything leading up to transportation by air. The court also held that the waybill limitation was valid under federal common law. The court determined that Albingia was entitled to $5,394.00 computed under the waybill limitations by way of summary judgment.

Appellants appealed the district court's grant of summary judgment. Albingia argued that upon deciding that the Warsaw convention did not apply, the district court lost its basis of removal under federal question jurisdiction. Appellant further argued that the district court should have remanded the state law claims back to the state superior

court because it lacked supplemental jurisdiction to rule on the state law claims. Finally, it argued that even if the district court had supplemental jurisdiction over the state law claims it should have applied California law rather than federal common law. Under California law, Albingia would have avoided the $20 per kilogram liability limitation.

First, The Ninth Circuit held that the case had properly been moved from state to federal court because under 28 U.S.C. § 1441(b), any civil action over which the district courts have original jurisdiction over claims arising under... treaties or laws of the United State shall be removable... ." The complaint was brought under a treaty and a federal claim. At the time the case was brought the federal claim was central to the case. It was not "insubstantial or frivolous." The court held that jurisdiction existed regardless of whether the Warsaw Convention ultimately provided a basis for recovery.

Next, the court held that the district court had supplemental jurisdiction because 28 U.S.C. §1367(a) states that "in any civil action of which the courts have original jurisdiction, the district courts shall have supplemental jurisdiction over all claims... that form part of the same case or controversy." The state law claims were a part of the same case; Albingia sought reimbursement for $235,000, which Albingia paid Siemens for the stolen computer chips.

The court also held that the district court's supplemental jurisdiction was not destroyed by the dismissal of the Warsaw Convention claim because in *Acri v. Varian Associates Inc.*, 114 F.3d 999, (9th Cir. 1997), the Ninth Circuit held that 28 U.S.C. § 1367(c) allows a district court, in its discretion, to retain supplemental jurisdiction over state law claims when the federal question claim is defeated on the merits. In the case at bar, the federal claim was defeated on the merits because it turned out that the chips were stolen at Schenker's off-airport warehouse.

The court then referred to the standard set in *Bell v. Hood,* 327 U.S. 678 (1946) which held that the district court properly exercised supplemental jurisdiction. In that Supreme Court decision, the court held that when a well-pleaded complaint states a federal claim, jurisdiction is not defeated if the averments fail to state a cause of action on which the petitioners could recover. In the case at bar, the pleading asserted, without frivolousness, that the Warsaw Convention gave Albingia a claim. Therefore, even though the claim eventually failed, the district court still had jurisdiction.

The court held that the district court did not abuse its discretion in awarding summary judgment because Albingia did not raise the question of vacating federal jurisdiction until after the district court's adverse summary judgment decision on the state law claim. Moreover, the court specifically pointed to its decision in *Acri* where it held that under similar circumstances a court ordinarily should dismiss the state law claims; however, it is not required. *Acri*, 114 F.3d at 1000.

The court reviewed *de novo* the district court's decision to enforce the $20 per kilogram limit in the waybill, rather than apply California law in this matter. The court held that there is no need to settle this disagreement because Albingia does not dispute that if federal law applies, the limit is enforceable. In *Read-Rite,* the court held that where the Warsaw Convention is not applicable because the damage occurred off-airport, federal common law applies to determine the validity of a waybill limitation on limitation of liability for damage to goods being shipped in interstate or international commerce. *Read-Rite,* 186 F.3d at 1190.

Under federal common law, the court held that the limit on liability is valid and enforceable if the shipper has reasonable notice and a fair opportunity to purchase the means to avoid it. *Kesel v. UPS,* 339 F.3d 849 (9th Cir. 2003). Siemens met both tests because Schenker's warehouse was outside the airport and because Siemens bought insurance on the chips from Albingia, in obvious recognition of the waybill. The $20 per kilogram limit is valid and controlling under federal law.

Finally, the Court distinguished the case at bar from a decision that came three weeks after *Read Rite.* In *Insurance Company of North America v. Federal Express Corp.* 189 F.3d 914 (9th Cir. 1999), the court held that state law was applicable because the warehouse from which the theft took place was within the airport. It concluded that state law controls once a shipment is at the airport and the Warsaw Convention governs the commercial relationship, but federal common law controls when the shipment is within the state, but outside of the airport and beyond the scope of the Warsaw Convention.

Robert Maher
Class of 2006