

CARGO UPDATE NEWSLETTER

CARRIER'S ONLINE BOOKING SYSTEM FAILED TO GIVE CHOICE OF RATES – December 2013

In an October 2013 decision, the United States District Court for the District of New Jersey, in *The Donna Karan Company LLC v. Airgroup et al.*, (Civil Action No. 12-2149), ruled in favor of the shipper in finding that the carrier's online booking system failed to limit the carrier's liability under Carmack since it did not offer a choice of rates based on level of liability.

The case involved the theft of a Donna Karan shipment during the shipping process. The relevant facts of the case were undisputed. The carrier used an online booking system called "Shiptrax" where the shipper enters shipment information on a series of web pages. For the shipment at issue, Karan left the boxes for "declared value" and "insured value" blank but accepted the carrier's "Rules and Regulations." The question on cross-motions for summary judgment was whether this provided the shipper a reasonable opportunity to choose between two or more levels of liability. Karan asserted that the rate was based solely on weight not value. Airgroup's counsel conceded that the rate would not have changed had Karan checked the declared value or insured value boxes, but argued that Karan was offered the opportunity to declare a value by checking the box, and by leaving the box empty, Karan chose to accept the level of liability stated in Airgroup's Rules and Regulations, which provided that declared value was the lesser of 50 cents per pound or \$50.00, and that insurance was available upon request up to \$25,000, but insurance over \$25,000 required approval prior to movement of the freight. The Court rejected Airgroup's argument that this was an offer of two or more levels of liability, finding rather, that it was a limit to one level of liability with a separate and supplementary mention of limited insurance but with no rate given. The Court concluded that the requirements for limitation of liability under Carmack had not been met.

Having determined that liability was not limited under Carmack, the Court went on to consider the proper measure of damages. Airgroup argued that it was not likely the stolen goods would re-enter the domestic market (and thus compete with Karan's legitimate sales). The Court found that there was nothing in the record to conclude that the theft did not cause Karan to lose sales, and held that Airgroup failed to meet its burden of proof that the Court should deviate from the market value rule, and that therefore the measure of damages shall be the domestic market value of the stolen goods. Karan's motion was granted in its entirety and Airgroup's was denied.

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