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Pointing Fingers: Under What Circumstances Can Recipients of Goods Be Liable for Freight Charges?

A customer orders goods and the seller ships the goods but does not pay the carrier. Because that shipment was the obligation of the seller, it seems that the customer should not be liable for the seller's failure to pay the carrier. However, section 13706 of the Interstate Commerce Act (the ICA) imposes strict liability upon recipients, or consignees, for goods delivered to them by a motor carrier unless they notify the carrier in writing, prior to delivery, that they are acting only as an agent without any beneficial title in the goods. Case law demonstrates that this liability arises as a consequence of an agreement, which can either be an express contract or an implied obligation inferred from the consignee's conduct.

An implied obligation to pay for freight charges commonly arises as a result of a consignee's exercise of dominion and control over the goods. In *Chicago & N.W. Transport Co. v. Krohn Cartage Co., Inc.*, 79 Wis. 2d 39, 255 N.W.2d 310 (1977), a railroad carrier brought an action against a consignee to recover freight charges for two furniture shipments sent from New Hampshire. A portion of the load was unloaded in Chicago, and the remainder was delivered to the defendant (Krohn) in Milwaukee. The railroad billed the shipper and the Chicago facility, but turned to Krohn for all the freight charges when they were unable to collect.

Because the shipper is primarily liable to the carrier for damages, recipient liability under the ICA arises only as a consequence of either actually or constructively accepting delivery. In *Krohn*, the shipping documents did not impose liability expressly upon Krohn, and merely being named as a consignee of the shipment in the absence of express liability or conduct did not obligate the consignee to pay freight charges. Consequently, Krohn's liability could only be implied through conduct. Since Krohn never exercised dominion and control over the portion of the shipment that was delivered to Chicago, it was not liable for the shipping costs of those goods. However, it was liable for the shipping charges relating to the goods it had actually accepted in Milwaukee.

A consignee's liability for freight charges can also arise through documents or other evidence indicating that the consignee has a beneficial interest in the goods being shipped. In *O'Boyle Tank Lines, Inc. v. Beckham*, 616 F.2d 207 (5th Cir. 1980), Coffee Construction Company (Coffee) purchased asphalt from American Oil Company (Amoco) for another company, Milton Beckham Company (Beckham),

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with the understanding that the asphalt would be shipped directly from the refinery to Beckham's construction site, and Coffee would bill Beckham separately for the shipment. The carrier transported asphalt to Beckham's road construction site and when it was unable to collect freight charges from Amoco or Beckham, the carrier brought suit against Coffee. The district court granted Coffee's motion for summary judgment on the ground that it had neither expressly nor impliedly contracted with the carrier to be liable for freight charges since it was not a party to the contract of carriage, had not authorized its name to appear as a consignee on the bills of lading, and never accepted any goods from the carrier.

The Fifth Circuit reversed, and pointed to a short form bill of lading that showed Coffee to be the owner of the asphalt and shipping tickets which showed Coffee's name in addition to Beckham's as the consignees. The court stated that, though the shipper is ordinarily presumed to be primarily liable to the carrier for freight charges, this presumption can be rebutted by a bill of lading or other evidence indicating that another has a true beneficial interest in the goods being shipped. Further, liability of the consignee can arise from the consignee's "ownership, presumptive ownership, acceptance of the goods, or receipt of the benefits conferred by the carrier." The carrier argued that Coffee's inclusion on the short form bill of lading and shipping tickets established that it participated in the shipping contract and assumed liability for the freight charges as an owner and consignee, despite never possessing the asphalt. Coffee argued that it had no beneficial interest in the asphalt, and therefore should not be liable. The court found that this factual issue precluded summary judgment.

An important exception exists in situations when a consignee accepts a shipment of goods in reliance upon a bill of lading that indicates the freight charges have been prepaid. In *C.F. Arrowhead Services, Inc. v. AMCEC Corp.*, 614 F. Supp. 1384 (N.D. Ill. 1985), the court found that a carrier was estopped from attempting to collect freight charges from a consignee when the consignee relied on a bill of lading which mistakenly stated that the charges had been prepaid. Without that representation, the consignee would not have accepted the goods. Therefore, the court determined that the consignee was not liable, and the carrier could recover only from the shipper.

Section 13706 of the ICA imposes liability upon consignees where there is an express or implied contract; often, the conduct that leads to implied contractual responsibility is accepting the goods. To avoid liability under the statute, a consignee must notify the carrier in writing and prior to delivery that it is acting only as an agent. Companies that routinely receive shipments of goods through a

trucking firm retained by a shipper should be aware of the potential liability if their shipper refuses to pay the carrier.

If you have any questions about The Interstate Commerce Act, please contact your Reinhart attorney or any member of Reinhart's Business Reorganization group.