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USUAL BAGGAGE: AN EXCEPTION TO THE CARRIER'S RIGHT TO LIMIT LIABILITY

Under the Interstate Commerce Act, as amended, interstate common carriers may contract with their passengers¹ and shippers² to limit the extent of their liability, for loss or damage to their passengers' baggage or their shippers' freight, entrusted to them for carriage.³ However, before this limitation will be upheld, carriers must perform certain stipulated conditions, including the proper presentation of notice of their liability limitation scheme to their passengers and shippers.⁴ For over half a century courts have recognized as valid those Interstate Commerce Commission approved liability limitation schemes which employ such practices as posting notices of alternative tariff rates in conspicuous places in terminals and printing liability limitation contracts on baggage receipts and passenger tickets. These courts have held that such schemes provide the traveler with a fair

¹*Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A. 697 (1965); *Neece v. Richmond Greyhound Lines, Inc.*, 246 N.C. 547, 99 S.E.2d 756 (1957); *Royalty v. Southeastern Greyhound Lines, Inc.*, 75 Ohio App. 322, 62 N.E.2d 200 (1945); *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892 (1955); *Greyhound Corp. v. Stevens*, 413 S.W.2d 439 (Tex. Civ. App. 1966).

²*Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129 (4th Cir. 1967); *Strickland Transp. Co. v. United States*, 334 F.2d 172 (5th Cir. 1964); *Holmes v. National Van Lines, Inc.*, 55 Wash. 2d 861, 350 P.2d 864 (1960).

³Interstate Commerce Act, 49 U.S.C. § 20(11) (1964). Interstate Commerce Act, 49 U.S.C. § 319 (1954) applies § 20(11) to common carriers by motor vehicle.

⁴Interstate Commerce Act, 49 U.S.C. § 20(11) (1964) makes an apparent distinction between passenger baggage and other property shipped by interstate carriers, even though the Act does allow carriers to limit their liability with respect to both categories. See note 10 *infra*. Despite this apparent distinction, case law indicates that the conditions precedent to the validity of liability limitation schemes for both categories are very similar. See text at page 4 and cases cited note 18 *infra*.

The conditions which must be met before liability can be limited include: (a) Baggage carriers must file a tariff with and receive I.C.C. approval. *Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965); Carriers of freight must obtain I.C.C. approval authorizing a scheme to limit liability based on either declared or released value. *Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 134 (4th Cir. 1967). (b) Proper notice of the liability limitation scheme must be provided. *Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965) (passenger case); *Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 137 (4th Cir. 1967) (shipper case). (c) A showing by the carrier that it received property in the capacity of a common carrier. *Neece v. Richmond Greyhound Lines, Inc.*, 246 N.C. 547, 99 S.E.2d 756, 761 (1957) (language of paragraph covers both baggage and freight carriers). (d) The passenger must not have contracted for greater protection. *Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965) (passenger case); *Holmes v. National Van Lines, Inc.*, 55 Wash. 2d 861, 350 P.2d 864, 866 (1960) (shipper case).

opportunity to choose the desired coverage for his baggage.⁵ Recently, however, the Queens County Civil Court of New York held in *Chris v. Greyhound Bus Lines*⁶ that such practices do not of themselves constitute adequate notice. The court seems to impose absolute liability on interstate common carriers for loss or damage to the "average traveler's usual baggage."

In *Chris*, a piece of luggage containing personal clothing and belonging to the plaintiff passenger was lost by the defendant carrier, a bus line. The plaintiff sued for the full value of her lost luggage and its contents. The carrier established the usual defense in this type of case by proving that the plaintiff had available to her extra coverage thru a choice of rates in accordance with their rate tariff, as established by the Interstate Commerce Commission. She could have obtained full coverage by declaring the value of her luggage and paying the additional fee. Since her baggage went aboard free pursuant to the passenger ticket, the carrier argued she should be limited in her recovery, because there was a limitation of liability under the free rate. However, the court permitted the plaintiff to recover the full value of her luggage notwithstanding the liability limitation in the rate tariff.

The court based its decision upon its observation that the option of rates and insurance coverage is an "unrealistic" and "dormant" practice due to the overcrowded, "rush and crush" atmosphere of today's carrier terminals. It went on to point out that it was unfair to assume that a traveler rushing to meet a schedule would read posted notices or contracts printed on a baggage receipt or passenger ticket. The court also indicated that even if such notices and contracts were read by the traveler and he was aware of his options, it is unrealistic to assume that he could exercise these options because of the long lines and "rush and crush" of terminals when the traveler has to board a departing vehicle. The court stated that the "whole concept of baggage handling, baggage liability and related tariff and rate regulations should be given a fresh appraisal by the legislative bodies. . . ." Therefore it concluded, that since the legislative bodies

⁵*Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965) (passenger case); *Patton v. Pennsylvania Greyhound Lines*, 75 Ohio App. 100, 60 N.E.2d 945, 946 (1944) (passenger case); *Greyhound Corp. v. Stevens*, 413 S.W.2d 439, 448 (Tex. Civ. App. 1966) (passenger case); *accord*, *Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 137 (4th Cir. 1967) (shipper case); *Holmes v. National Van Lines, Inc.*, 55 Wash. 2d 861, 350 P.2d 864 (1960) (shipper case).

⁶57 Misc. 2d 129, 291 N.Y.S.2d 964 (Civ. Ct. 1968).

⁷291 N.Y.S.2d at 967.

⁸291 N.Y.S.2d at 967.

have not yet acted, it should intervene to protect the "unwary public."

The court did not nullify the carrier's liability limitation scheme with respect to all types of people. The court did not concern itself with shippers as distinguished from passengers with baggage; and not even all type of passengers are included, only the "average traveler" and his "usual baggage." Judge Finz did not disagree with the decision in *Hartzberg v. New York Central Railroad Co.*,⁸ where the liability limitation scheme was upheld on facts similar to *Chris*, but he distinguished that case on the basis of the contents of the baggage. The contents in *Hartzberg* were commercial jewelry and diamonds valued at \$169,078.47; In *Chris* the contents were "usual" items of personal clothing.

Carrier liability for loss or damage to baggage and freight entrusted to it for carriage in interstate commerce is under the exclusive control of federal law.⁹ The Interstate Commerce Act, § 20(11)¹⁰ provides in general that any common carrier in interstate

⁸181 Misc. 129, 41 N.Y.S.2d 345 (Sup. Ct. 1943).

⁹*Silvers v. Pennsylvania R.R.*, 89 N.J. Super. 475, 215 A.2d 556, 558 (1965); *Royalty v. Southeastern Greyhound Lines, Inc.*, 75 Ohio App. 322, 62 N.E.2d 200 (1945); *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892, 893 (1955).

¹⁰Any common carrier . . . receiving property for transportation . . . shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it . . . and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier . . . from the liability imposed; . . . notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: . . . *Provided, however,* That the provisions hereof respecting liability for full actual loss, damage, or injury . . . shall not apply, first, to baggage carried on *passenger trains or boats, or trains or boats carrying passengers* (emphasis supplied); second, to property . . . received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the release value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released . . . and any tariff schedule which may be filed with the commission pursuant to such order shall contain specific reference thereto and may establish rates varying with the value so declared and agreed upon.

Interstate Commerce Act, 49 U.S.C. § 20(11) (1964) as cited in *Neece v. Richmond Greyhound Lines, Inc.*, 246 N.C. 547, 99 S.E.2d 756, 759-60 (1957).

Interstate Commerce Act, 49 U.S.C. § 319 (1964) makes § 20(11) of this title

commerce receiving property for carriage must issue a receipt and be liable to lawful holder of such receipt for all loss or damage to such property.¹¹ No receipt, contract or other device will be allowed to exempt such common carrier.¹²

However, the Interstate Commerce Act does allow common carriers to limit the *extent* of their liability if they meet certain stipulated conditions.¹³ In order to be able to limit their liability, carriers must first file a rate tariff with the Interstate Commerce Commission and obtain its approval.¹⁴ Such a rate tariff must provide to the shipper or passenger a choice of rates¹⁵ with accompanying, graduated insurance coverage commensurate with the particular rate.¹⁶ The Interstate Commerce Act specifically states that such rates which apply to a shipper's freight are to be "[D]ependent upon the value declared . . . by the shipper or agreed upon . . . as the released value of the property . . ."¹⁷ It is not clear whether this section of the Interstate Commerce Act applies with equal force to passengers' baggage. However, case law provides that passengers will be limited in their recovery for lost or damaged baggage unless they declare the value of their

applicable "[W]ith respect to common carriers by motor vehicle with like force and effect as in the case of those persons to which such provisions are specifically applicable." *Cray v. Pennsylvania Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892, 894 (1955).

¹¹Interstate Commerce Act, 49 U.S.C. § 20(11) (1964) provides that a carrier is liable for "any loss, damage, or injury to such property caused by it." This absolute liability is a codification of the

common-law rule that a carrier, though not an absolute insurer, is liable for damage to goods transported by it unless it can show 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.'

Chandler v. Aero Mayflower Transit Co., 374 F.2d 129, 132 n.2 (4th Cir. 1967); see *Missouri Pac. R.R. v. Elmore & Stahl*, 377 U.S. 134, 137 (1964).

¹²Interstate Commerce Act, 49 U.S.C. § 20(11) (1964); *Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 134 (4th Cir. 1967).

¹³See note 4 *supra*, for cases delineating these conditions.

¹⁴*Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 134 (4th Cir. 1967); *Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965); *Greyhound Corp. v. Stevens*, 413 S.W.2d 439, 441 (Tex. Civ. App. 1966); *Holmes v. National Van Lines, Inc.*, 55 Wash. 2d 861, 350 P.2d 864, 866 (1960).

¹⁵*Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 137 (4th Cir. 1967) (shipper case); *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892, 895 (1955) (passenger case).

¹⁶In other words, the liability limitation scheme is built directly into the rate schedule. *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892, 895 (1955); *Pennsylvania Greyhound Lines, Inc. v. Wells*, 41 A.2d 837 (D.C. Mun. Ct. App. 1945).

¹⁷49 U.S.C. § 20(11) (1964). For an explanation of "released value" see *Strickland Transp. Co. v. United States*, 334 F.2d 172, 174-76 (5th Cir. 1964).

baggage and pay a rate commensurate with the declared value.¹⁸ Thus, when a passenger or shipper declares the value of his baggage or freight there is a choice of rates and insurance protection available to him. Connected with the lowest rate is the lowest carrier liability. The rationale underlying this scheme has been stated to permit the carrier to obtain compensation for the responsibility assumed.¹⁹

Once the rate tariff has been approved by the I.C.C., there must be an agreement between the shipper and carrier,²⁰ or passenger and carrier,²¹ to limit the carrier's liability. In determining whether or not an agreement has been reached, principles of contract law are to be applied.²² Thus, the assent of the shipper or passenger to the contract is effective to make the contract binding only if given after a fair opportunity to choose between higher or lower liability.²³ Proper notice of the liability limitation scheme is necessary to provide the shipper with knowledge of the differences in rates and insurance protection, and thus provide him with a fair opportunity to choose. In *Cray v. Pennsylvania Greyhound Lines, Inc.*,²⁴ it was held that reference to tariff regulations on tickets and baggage checks, and posting of regulations in conspicuous locations on ticket and baggage checking windows was sufficient to provide a fair opportunity for the passenger with baggage.²⁵

However, if notice of the tariff regulations and the liability limitation scheme are found inadequate, the court will not allow the scheme

¹⁸*Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697 (1965); *Royalty v. Southeastern Greyhound Lines, Inc.*, 75 Ohio App. 322, 62 N.E.2d 200 (1945); *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892 (1955).

¹⁹*Boston & Maine R.R. v. Hooker*, 233 U.S. 97, 119 (1914); *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892, 895 (1955).

²⁰Interstate Commerce Act, 49 U.S.C. § 20(11) (1964).

²¹*Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965).

²²*Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 134 (4th Cir. 1967).

²³*Chandler v. Aero Mayflower Transit Co.*, 374 F.2d 129, 135 (4th Cir. 1967) (shipper case); *General Precision, Inc. v. Burnham Van Service, Inc.*, 46 Msc. 2d 586, 260, N.Y.S.2d 308, 316 (Sup. Ct. 1965). *But cf.* *Kellett v. Alaga Coach Lines, Inc.*, 34 Ala. App. 152, 37 So. 2d 137, 139 (1948) which states the presumption that the passenger knows of the tariff and limitation; *Cray v. Pennsylvania Greyhound Lines, Inc.*, 177 Pa. Super. 275, 110 A.2d 892, 896 (1955) which sets forth the proposition that a passenger may be provided with a fair opportunity to choose without actually being informed.

²⁴177 Pa. Super. 275, 110 A.2d 892, 896 (1955).

²⁵Some courts have held that this method of providing notice is mandatory in order to limit the carrier's liability. *Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965); *Patton v. Pennsylvania Greyhound Lines*, 75 Ohio App. 100, 60 N.E.2d 945, 946 (1944).

to protect the delinquent carrier, and will grant the shipper or passenger a full value recovery.²⁶ However, such action by the court would only affect the particular case before the court, and would not permanently abolish the limitation scheme. This is so because when the carrier again provides proper notice, its rate tariff and liability limitation scheme will be upheld.²⁷

In *Chris*, Judge Finz appears to have based his decision upon this principle of notice. However, it seems that he expanded the principle beyond its normal case by case application by indicating that proper notice in overcrowded "rush and crush" carrier terminals is impossible.²⁸ In saying that notice is impossible *Chris* may be read as abolishing liability limitation schemes since proper notice is a condition precedent to their validity.

There are, however, several questions as to the scope of Judge Finz's decision. First, the opinion indicates that proper notice is impossible in the "rush and crush" of today's "overcrowded" terminals. It is not entirely clear whether Judge Finz was taking judicial notice of the fact that all terminals are overcrowded or whether he intended that his decision apply only to those terminals which are in fact overcrowded. There is language in the case which indicates that he intended to limit the decision only to terminals which are overcrowded in fact: "Accordingly, and in the posture of this case I find that the plaintiff was wronged . . . and . . . is entitled to judgment in the full amount . . ."²⁹

There may also be a second limitation on the scope of *Chris*. In saying that proper notice could not be given in the atmosphere of

²⁶New York, N.H. & H.R.R. v. Nothnagle, 346 U.S. 128, 135 (1953) (passenger case); Chandler v. Aero Mayflower Transit Co., 374 F.2d 129, 137 (4th Cir. 1967) (shipper case); Shirazi v. Greyhound Corp., 145 Mont. 421, 401 P.2d 559, 561 (1965) (dictum) (passenger case); see Greyhound Corp. v. Stevens, 413 S.W.2d 439, 444-45, 447 (Tex. Civ. App. 1966) (passenger case) which interpreted New York, N.H. & H.R.R. v. Northnagle, *supra*, as disallowing the limitation scheme because the railroad failed to give the passenger a baggage receipt with the limitation thereon.

²⁷In each case, if the essential conditions have been met, including notice, then the limitation will have effect. Zeidenberg v. Greyhound Lines, Inc., 3 Conn. Cir. 176, 209 A.2d 697, 699 (1965); Patton v. Pennsylvania Greyhound Lines, 75 Ohio App. 100, 60 N.E.2d 945, 946 (1944).

²⁸Judge Finz did not explicitly state that notice was impossible, but it may be inferred from a reading of the case as a whole. He spoke of carrier terminal atmosphere as "rush and crush" and "no opening and no closing." He mentioned the "hurried movement of thousands throughout the day and night is a daily occurrence." Finally, he mentioned that the tariff and limitation system existed in fact only, and were dormant in practice. *Chris v. Greyhound Bus Lines*, 57 Misc. 2d 129, 291 N.Y.S.2d 964, 967 (Civ. Ct. 1968).

²⁹*Id.* at 967.

today's terminals, Judge Finz may not have intended to create a new rule of law that notice is never possible. He may have intended only to put the burden of proof on the defendant to show that there was notice in fact. Thus, when a passenger sues a carrier for loss of his baggage there would be a rebuttable presumption that notice was nonexistent, and that the carrier is liable without limitation.

Judge Finz was careful to limit *Chris* to the "average traveler" who has "usual baggage." Such passengers are the only ones who are not limited by the tariff system with its liability scheme and who may recover the full value of their belongings notwithstanding the fact they have not paid any extra tariff. "Usual baggage" is apparently a novel concept³⁰ and therefore raises problems for the future. By distinguishing *Hartzberg*, Judge Finz made it clear that commercial jewelry and diamonds valued at \$169,078.47 are not "usual baggage" but he gave no further clue as to the meaning of this term. Perhaps this category could be partially defined with reference to the term "baggage" which, at common law, included the luggage itself plus a reasonable amount of wearing apparel.³¹ In *Hannibal Railroad v. Swift*,³² the Supreme Court defined baggage as "a limited quantity of articles as are ordinarily taken by travelers for their personal use and convenience; such quantity depending of course upon the station of the party, the object and length of the journey, and many other considerations."

The *Chris* decision, with its many problems, would not have been before the court if the Interstate Commerce Commission had adopted a policy of withholding approval of carrier tariff regulations until the minimum liability rate is set high enough to provide full coverage for the average traveler's usual baggage. At present, that rate is often set near \$50.³³ This figure seems scarcely adequate to reimburse an average passenger for articles usually carried in transit. If the minimum liability were set at a more realistic figure, most average travelers would be fully protected.

³⁰Research has not revealed the use of the term by any statute or any other court.

³¹*Neece v. Richmond Greyhound Lines, Inc.*, 246 N.C. 547, 99 S.E.2d 756, 762 (1957).

³²79 U.S. (12 Wall.) 262, 274 (1870).

³³In the following cases the limitation was set at \$25. *Zeidenberg v. Greyhound Lines, Inc.*, 3 Conn. Cir. 176, 209 A.2d 697 (1965); *Neece v. Richmond Greyhound Lines, Inc.*, 246 N.C. 547, 99 S.E.2d 756 (1957); *Royalty v. Southeastern Greyhound Lines, Inc.*, 75 Ohio App. 322, 62 N.E.2d 200 (1945). \$50 is the figure set in the *Southern Greyhound Lines Terminal, Lexington, Virginia*. In *Fennell v. Trailways*, 169 So. 2d 858 (Fla. Dist. Ct. App. 1964), the state commission had set the limitation at \$100.