

01-317-0D
BACKUS USA, INC. -vs- BROADWAY EXPRESS, INC. et al

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,

Plaintiff

vs.

ROADWAY EXPRESS, INC. and
NORTHAMPTON ASSOCIATES,

Defendants

No. 01-317-CD

Type of Pleading: Complaint

Filed on behalf of: Backus USA, Inc.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

FILED

MAR 07 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
ROADWAY EXPRESS, INC. and	:	
NORTHAMPTON ASSOCIATES,	:	
Defendants	:	

NOTICE

TO DEFENDANT:

You have been sued in Court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this Complaint and Notice are served, by entering a written appearance personally or by Attorney and filing in writing with the Court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so, the case may proceed without you and a judgment may be entered against you by the Court without further notice for any money claimed in the Complaint or for any other claim or relief requested by the Plaintiff. You may lose money or property or other rights important to you.

YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
ROADWAY EXPRESS, INC. and	:	
NORTHAMPTON ASSOCIATES,	:	
Defendants	:	

COMPLAINT

NOW, comes the Plaintiff, Backus USA, Inc., by and through its attorneys, The Hopkins Law Firm, and says as follows:

1. Plaintiff, Backus USA, Inc., is a Delaware corporation who maintains a principal business address along Route 219 North, DuBois, Pennsylvania 15801.
2. Defendant, Roadway Express, Inc., is a Delaware corporation who maintains a principal business address at 1077 Gorge Boulevard, Akron, Ohio 44310.
3. Defendant, Northampton Associates, is believed to be a Pennsylvania corporation maintaining a principal business address at 708 Lakeside Drive, Southampton, Pennsylvania 18966.

COUNT I

Breach of Contract

4. In or about 1999, Plaintiff contracted through Defendant, Northampton Associates, to ship a USM – 1 Onion Peeler together with ancillary equipment to Dallas, Texas Convention Center, 3817 Irving Boulevard, Dallas, Texas – Booth #317.

5. Defendant, Northampton Associates, holds itself out as transportation specialists. Plaintiff advised Defendant, Northampton Associates, that Plaintiff expected the equipment to arrive undamaged and to take those steps necessary to accomplish same.

6. Defendant, Northampton Associates, quoted Plaintiff the cost to transport the machine to Dallas, Texas never telling Plaintiff if the machine was damaged Plaintiff would not be paid its value or that additional insurance coverage was available for the trip.

7. While Plaintiff's goods and equipment were in the exclusive possession of the Defendant, thereby creating a bailment situation, Plaintiff's USM-1 Onion Peeler together with the Singulation/Dosaging Elevator (conveyor) and crating were destroyed.

8. Defendant, Roadway Express, Inc. is liable to Plaintiff as a result of its breach of contract to deliver the machinery to Dallas, Texas in the same condition which it received the equipment. As a result of said breach, Plaintiff has suffered damages in the amount of \$14,127.00.

9. Defendant, Northampton Associates, has breached its contract with Plaintiff in failing to deliver Plaintiff's property in good shape and unharmed in Dallas, Texas. As a result of said breach, Plaintiff has suffered damage in the amount of \$14,127.00.

WHEREFORE, Plaintiff demands judgment against Defendants Roadway Express, Inc. and Northampton Associates, jointly and severally, in the amount of \$14,127.00 together with pre judgment interest, post judgment interest and such other and further relief as the Court deems fair, just and equitable.

COUNT II

Backus USA, Inc. vs. Northampton Associates

10. Plaintiff repeats the allegations set forth in Count I as if set forth at length herein.

11. Northampton Associates holds itself out as a transportation specialist.

12. Plaintiff telephoned Defendant, Northampton Associates, in an effort to obtain expertise in the area of shipping.

13. Defendant, Northampton Associates, quoted Plaintiff a price to transport the equipment at issue without including or informing Plaintiff that should Plaintiff's equipment be damaged in shipping, Plaintiff would not be paid for the damage nor that Plaintiff's equipment was not insured to its full value while on a Roadway Express, Inc. truck.

14. Northampton Associates was negligent in failing to advise Plaintiff that should Plaintiff's equipment be damaged in shipping, Plaintiff would not be paid for the damage and that the price quoted Plaintiff to transport the equipment to Dallas, Texas did not include insurance for the full value of the equipment.

15. Had Plaintiff known its equipment was inadequately insured, Plaintiff would have procured additional insurance.

16. As a result of the negligence of Defendant, Northampton Associates, Plaintiff has suffered damages in the amount of \$14,127.00.

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COUNT III

Backus USA, Inc. vs. Roadway Express, Inc.
and Northampton Associates

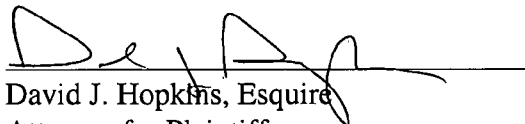
17. Plaintiff repeats the allegations set forth in Counts I and II as if set forth at length herein.

18. Defendants were careless and negligent in protecting Plaintiff's goods while in the possession of Defendants.

19. As a result of said negligence, Plaintiff has suffered damages in the amount of \$14,127.00.

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Respectfully submitted,


David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

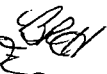
BACKUS USA, INC.

By: _____

Lawrence Salone

Date 2/26/01

FILED

 MAR 07 2001
01:11:04 PM
William A. Shaw
Prothonotary

pd \$80.00

acc cty Hpk

In The Court of Common Pleas of Clearfield County, Pennsylvania

Sheriff Docket # 10803

BACKUS USA, INC.

01-317-CD

VS.

ROADWAY EXPRESS, INC. a/

COMPLAINT

SHERIFF RETURNS

NOW MARCH 16, 2001 LAWRENCE R. MICHAELS, SHERIFF OF BUCKS COUNTY
WAS DEPUTIZED BY CHESTER A. HAWKINS, SHERIFF OF CLEARFIELD COUNTY
TO SERVE THE WITHIN COMPLAINT ON NORTHAMPTON ASSOCIATES,
DEFENDANT.

NOW APRIL 4, 2001 SERVED THE WITHIN COMPLAINT ON NORTHAMPTON
ASSOCIATES, DEFENDANT BY DEPUTIZING THE SHERIFF OF BUCKS COUNTY.
THE RETURN OF SHERIFF MICHAELS IS HERETO ATTACHED AND MADE A
PART OF THIS RETURN STATING THAT HE SERVED JOSEPH IERVBINO, PIC.

Return Costs

Cost	Description
27.89 SHFF.	HAWKINS PAID BY: ATTY.
48.00 SHFF.	MICHAELS PAID BY: ATTY.
10.00	SURCHARGE PAID BY: ATTY.

FILED

JUN 22 2001

01:30 PM
William A. Shaw
Prothonotary

Sworn to Before Me This

22nd Day of June 2001
William A. Shaw

WILLIAM A. SHAW
Prothonotary
My Commission Expires
1st Monday in Jan. 2002
Clearfield Co. Clearfield, PA.

So Answers,

Chester A. Hawkins
by Marilyn Harris
Chester A. Hawkins
Sheriff

3/26

BUCKS COUNTY ^{1 of 2} SHERIFF'S RETURN

Filed 3/7/01 in Clear Field
Bucks Case # 0130745 Rec'd 3/20/01

Special Instructions _____

Action complaint
Plaintiff Backus USA Inc

/s/
Defendant NORTHAMPTON ASSOCIATES
708 Lakeside Dr
Southampton, Pa 18966

Address Served if Different _____

Served under Pa.R.C.P. #402

- ☐ (A) (i) Defendant personally served
☐ (A) (2) (i) Family Member
☐ (A) (2) (i) Adult in Charge of Residence
☐ (A) (2) (ii) Manager/Clerk at Defts. Lodging
☐ (A) (2) (iii) Person in Charge of Business

By Handing to _____

☐ By Posting

Not Served

- | | |
|---------------------------------------------------------|------------------------------------------------|
| <input type="checkbox"/> 30 Days Ran Out | <input type="checkbox"/> Defendant Not Home |
| <input type="checkbox"/> Defendant Moved | <input type="checkbox"/> Address Vacant |
| <input type="checkbox"/> Def. Unknown | <input type="checkbox"/> Dep. Needs Better Add |
| <input checked="" type="checkbox"/> Checked Post Office | <input type="checkbox"/> No Forwarding |
| <input type="checkbox"/> Forwarding Address | _____ |

Twsp./Boro _____

By Deputy _____

Witness _____

At _____ o'clock (AM PM) on ____/____/____

The above document was served/not served on the
defendant as per information listed above in the County
of Bucks, Commonwealth of Pennsylvania.

So answers: _____

Lawrence R. Michaels, Sheriff of Bucks County

Affirmed and subscribed before me on this day
____/____/____

Prothonotary

Affirmed and subscribed before me on this day
____/____/____

Notary Public

My Com. Exp. _____

3/28 BR IDP B.O.C

DUPLICATE RECEIPT
CLERK # 2001 1 03733
TRANSACTION # SN 2001 30745
JOPKINS LAW FIRM
02/21/2001 11:39
48.00
48.00
TOTAL PAID
TOTAL COST
05.00
THANK YOU
BAE

1001

11/16
3/1

or

Attn. of David Hopkins
County Sheriff's Office
Invoice to be mailed to
Bucks County Case # 0130745

SH0201
DATE: 06/19/2001
TIME: 21:20

SHERIFFS OFFICE - LAWRENCE R. MICHAELS, SHERIFF
ADMINISTRATION BUILDING
DOYLESTOWN, PA 18901

BUCKS MISC DOCKET # 2001 30745 LOCATION: OUT OF COUNTY CLASS: ASSUMPSIT

***** SHERIFF'S RETURN OF SERVICE *****

SHERIFF'S OFFICE
CLEARFIELD COUNTY
MARKET ST
CLEARFIELD PA
ATTN: DAVID HOPKINS, ESQ

16830

PLAINTIFF
BACKUS USA INC

VS. DEFENDANT
NORTHAMPTON ASSOCIATES
708 LAKESIDE DR
SOUTHAMPTON, PA

18966

03072001 COMPLAINT - CIVIL ACTION RECEIVED FROM CLEARFIELD COUNTY JXT
03202001 RECEIVED IN SHERIFF'S OFFICE FOR SERVICE. TRANSACTION # 01 1 03733 JXT
AMOUNT PAID \$ 48.00
04042001 SHERIFF'S RETURN, UNDER OATH, FILED. DEPUTY GROMAN AT 10:30 AM JXT
SERVED DEFENDANT(S) PURSUANT TO PA.R.C.P. #402(A)(2)(III). SERVED JXT
NORTHAMPTON ASSOCIATES BY HANDING TO JOSEPH IERVBINO, PERSON IN
CHARGE.
06152001 INVOICE MAILED TO CLEARFIELD COUNTY JXT

TRANSACTION # 01 1 03733

END OF CASE

770 2nd St Pike
Richboro 18954

3/4/4

BUCKS COUNTY ^{2 of 2} SHERIFF'S RETURN

Filed 03/07/01 in Clearfield
Bucks Case # 0130745 Rec'd 03/20/01

Special Instructions _____

Action Complaint
Plaintiff Backus USA, inc.
vs
Defendant Northampton Associates
770 2nd Street Pike
Richboro, PA 18954

Address Served if Different _____

Served under Pa.R.C.P. #402

- ☒ (A) (i) Defendant personally served 101
☐ (A) (2) (i) Family Member
☐ (A) (2) (i) Adult in Charge of Residence
☐ (A) (2) (ii) Manager/Clerk at Defts. Lodging
☒ (A) (2) (iii) Person in Charge of Business

By Handing to Joseph Jercubino

☐ By Posting

Not Served

- | | |
|----------------------------------------------|-------------------------------------------------|
| <input type="checkbox"/> 30 Days Ran Out | <input type="checkbox"/> Defendant Not Home |
| <input type="checkbox"/> Defendant Moved | <input type="checkbox"/> Address Vacant |
| <input type="checkbox"/> Def. Unknown | <input type="checkbox"/> Dep. Needs Better Add. |
| <input type="checkbox"/> Checked Post Office | <input type="checkbox"/> No Forwarding |
| <input type="checkbox"/> Forwarding Address | |

Tw By Northampton

By Deputy 07/15

Witness

At 1030 o'clock (AM-PM) on 4/4/01

The above document was served/not served on the defendant as per information listed above in the County of Bucks, Commonwealth of Pennsylvania.

So answers: Lawrence R. Michaels

Lawrence R. Michaels, Sheriff of Bucks County
Affirmed and subscribed before me on this day

6/15/01
James R. Condo
Prothonotary

Affirmed and subscribed before me on this day

Notary Public

My Com. Exp. _____

6/15
1147



OFFICE (814) 765-2641
AFTER 4:00 P.M. (814) 765-1533

CLEARFIELD COUNTY FAX
(814) 765-6089

Sheriff's Office Clearfield County

SUITE 116
1 NORTH SECOND STREET - COURTHOUSE
CLEARFIELD, PENNSYLVANIA 16830

CHESTER A. HAWKINS
SHERIFF

DARLENE SHULTZ
CHIEF DEPUTY

MARGARET PUTT
OFFICE MANAGER

MARILYN HAMM
DEPT. CLERK

PETER F. SMITH
SOLICITOR

DEPUTATION

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA

BACKUS USA INC

NO. 01-317-CD

VS

ACTION: COMPLAINT

ROADWAY EXPRESS INC al

SERVE BY: 4/6/01

Or

HEARING DATE:

SERVE:

NORTHAMPTON ASSOCIATES

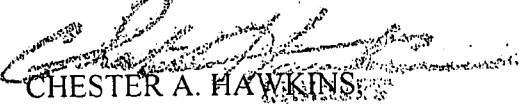
ADDRESS:

708 Lakeside Drive, Southampton, Pa. 18966

Know all men by these presents, that I, CHESTER A. HAWKINS, HIGH SHERIFF of CLEARFIELD COUNTY, State of Pennsylvania, do hereby deputize the SHERIFF of BUCKS COUNTY Pennsylvania to execute this writ.

This Deputation being made at the request and risk of the Plaintiff this 16th day of MARCH 2001.

Respectfully,


CHESTER A. HAWKINS
SHERIFF OF CLEARFIELD COUNTY

MAKE REFUND PAYABLE TO:

THE HOPKINS LAW FIRM

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BACKUS USA, INC.

Plaintiff,

v.

ROADWAY EXPRESS, INC. and
NORTHAMPTON ASSOCIATES,

Defendants.

DOCKET NO. 01-317-CD

ISSUE NO.

TYPE OF PLEADING:

**NOTICE OF FILING
NOTICE OF REMOVAL**

CODE:

FILED ON BEHALF OF:

**Roadway Express, Inc.
Defendant**

NAME, ADDRESS AND TELEPHONE
NUMBER OF COUNSEL OF
RECORD:

William A. Gray, Esq.
Dennis J. Kusturiss, Esq.

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Firm No. 298

FILED

APR 16 2001

William A. Shaw
Prothonotary

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL DIVISION

BACKUS USA, INC.)	
)	
Plaintiff,)	
)	DOCKET NO. 01-317-CD
v.)	
)	
ROADWAY EXPRESS, INC. and)	
NORTHAMPTON ASSOCIATES,)	
)	
Defendants.)	

NOTICE OF FILING NOTICE OF REMOVAL

Please take notice of that on April 11, 2001 Defendant, Roadway Express, Inc. filed a Notice of Removal, a copy of which is attached hereto, removing the above-captioned action to the United States District Court for the Western District of Pennsylvania.

You are advised that Roadway Express, Inc., on filing such Notice of Removal in the Office of the Clerk of the United States District Court for the Western District of Pennsylvania effectuated a removal of the above-captioned action from the Court of Common Pleas of Clearfield County, Pennsylvania pursuant to 28. U.S.C. §1446(d).

Respectfully submitted,

VUONO & GRAY, LLC

By: 

William A. Gray, Esq.

Dennis J. Kusturiss, Esq.

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Dated: April 11, 2001

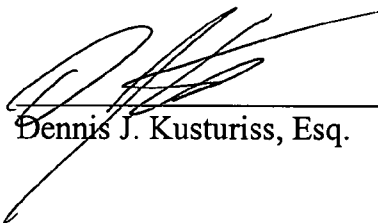
CERTIFICATE OF SERVICE

Dennis J. Kusturiss, Esq., hereby certifies that on the 11th day of April, 2001, he did serve a true and correct copy of the foregoing Notice of Filing of Notice of Removal upon the following counsel of record by first class mail, postage prepaid, at the address set forth below:

David J. Hopkins, Esq.
900 Beaver Drive
DuBois, PA 15801

Northampton Associates
770 Second Street Pike
Richboro, PA 18954

Barry Gross, Esq.
547 East Washington Avenue
Newtown, PA 18940



Dennis J. Kusturiss, Esq.

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF PENNSYLVANIA

BACKUS USA, INC.

Plaintiff,

v.

ROADWAY EXPRESS, INC. and
NORTHAMPTON ASSOCIATES,

Defendants.

CIVIL ACTION NO. 01-1165

ISSUE NO.

TYPE OF PLEADING:

NOTICE OF REMOVAL

CODE:

FILED ON BEHALF OF:

Roadway Express, Inc.
Defendant

NAME, ADDRESS AND TELEPHONE
NUMBER OF COUNSEL OF
RECORD:

William A. Gray, Esq.
Dennis J. Kusturiss, Esq.

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Firm No. 298

1. Roadway has been named as a Defendant in the above-captioned action instituted by the above named Plaintiff, Backus USA, Inc., at Docket No. 01-317-CD in the Court of Common Pleas of Clearfield County, Pennsylvania.
2. Defendant Roadway is a motor carrier of property and, as such, is involved in the transportation of freight in interstate commerce.
3. Plaintiff's action is for alleged damage to a shipment consisting of a USM-1 Onion Peeler together with ancillary equipment from Fruitland, Idaho to Dallas, Texas and, as such, arises under the Carmac Amendment to the Interstate Commerce Act, 49 U.S.C. §14706.

4. The amount in dispute in the said action exceeds, exclusive of interest and costs, the sum of \$10,000 as will appear from a copy of the Plaintiff's Complaint which is attached hereto, marked Exhibit "A" and made a part hereof.

5. Defendant Roadway is filing contemporaneously with this Notice of Removal a Motion to Dismiss.

6. The United States District Court for the Western District of Pennsylvania has jurisdiction pursuant to 28 U.S.C. §1337.

7. The above-captioned action was commenced on March 7, 2001 when Plaintiff filed a Complaint, its initial pleading, in the above-captioned action at Docket No. 01-317-CD in the Court of Common Pleas of Clearfield County, PA.

8. A copy of said Complaint was served by certified mail upon Defendant Roadway on March 13, 2001.

9. Defendant Northampton Associates (hereinafter referred to as Northampton) was served with a copy of the Complaint on April 4, 2001.

10. Northampton has consented to the removal of this action to the United States District Court for the Western District of Pennsylvania as evidenced by a Joinder, the original of which is attached hereto, marked Exhibit "B" and made a part hereof.

11. This Notice is being filed within the time required by 28 U.S.C. §1446.

WHEREFORE, Roadway Express, Inc., prays that the above-captioned action be removed from the Court of Common Pleas of Clearfield County, Pennsylvania at Docket

No. 01-317-CD to the United States District Court for the Western District of
Pennsylvania.

Respectfully submitted,

VUONO & GRAY, LLC

By: 

William A. Gray, Esq.

Pa. I.D. No. 17296

Dennis J. Kusturiss, Esq.

Pa. I.D. No. 28003

VUONO & GRAY, LLC
2310 Grant Building
Pittsburgh, PA 15219
(412) 471-1800

Dated: April 11, 2001

/15868

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

JH

MAR 14 2001

BACKUS USA, INC.,

Plaintiff

vs.

ROADWAY EXPRESS, INC. and
NORTHAMPTON ASSOCIATES,

Defendants

No. 01-317-00

Type of Pleading: Complaint

Filed on behalf of: Backus USA, Inc.

Counsel of Record for this party:

DAVID J. HOPKINS, ESQUIRE

Attorney at Law

Supreme Court No. 42519

900 Beaver Drive

DuBois, Pennsylvania 15801

(814) 375-0300

I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

MAR 07 2001

Attest.

William L. Shaw
Prothonotary

EXHIBIT A

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,	:	
	:	
Plaintiff	:	
	:	
vs.	:	No.
	:	
ROADWAY EXPRESS, INC. and	:	
NORTHAMPTON ASSOCIATES,	:	
Defendants	:	

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YOU SHOULD TAKE THIS PAPER TO YOUR LAWYER AT ONCE. IF YOU DO NOT HAVE A LAWYER OR CANNOT AFFORD ONE, GO TO OR TELEPHONE THE OFFICE SET FORTH BELOW TO FIND OUT WHERE YOU CAN GET LEGAL HELP.

Office of the Court Administrator
Clearfield County Courthouse
1 North Second Street
Clearfield, Pennsylvania 16830
(814) 765-2641 (ext. 5982)

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY PENNSYLVANIA
(CIVIL DIVISION)

BACKUS USA, INC.,	:	
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	:	
vs.	:	No.
	:	
ROADWAY EXPRESS, INC. and	:	
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Defendants	:	

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1. Plaintiff, Backus USA, Inc., is a Delaware corporation who maintains a principal business address along Route 219 North, DuBois, Pennsylvania 15801.
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COUNT I

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6. Defendant, Northampton Associates, quoted Plaintiff the cost to transport the machine to Dallas, Texas never telling Plaintiff if the machine was damaged Plaintiff would not be paid its value or that additional insurance coverage was available for the trip.

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Backus USA, Inc. vs. Northampton Associates

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Backus USA, Inc. vs. Roadway Express, Inc.
and Northampton Associates

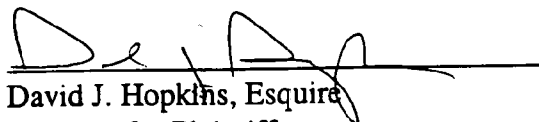
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Respectfully submitted,


David J. Hopkins, Esquire
Attorney for Plaintiff

VERIFICATION

I hereby verify that the statements made in this pleading are true and correct. I understand that false statements herein are made subject to the penalties of 18 Pa. C.S.A. Section 4904, relating to Unsworn Falsification to Authorities.

BACKUS USA, INC.

By: _____

Lawrence Salone

Date 2/26/01

EXHIBIT B

By:

(
(
(
(
(
(
(
(
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Plaintiff

v.

NORTHAMPTON ASSOCIATES,
ROADWAY EXPRESS, INC. and
Defendants.

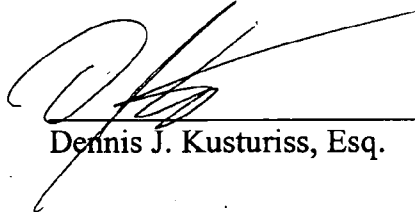
CERTIFICATE OF SERVICE

Dennis J. Kusturiss, Esq., hereby certifies that on the 11th day of April, 2001, he did serve a true and correct copy of the foregoing Notice of Removal upon the following counsel of record by first class mail, postage prepaid, at the address set forth below:

David J. Hopkins, Esq.
900 Beaver Drive
DuBois, PA 15801

Northampton Associates
770 Second Street Pike
Richboro, PA 18954

Barry Gross, Esq.
547 East Washington Avenue
Newtown, PA 18940



Dennis J. Kusturiss, Esq.

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

BACKUS USA, INC.,
Plaintiff,

v.

ROADWAY EXPRESS, INC.,
NORTHAMPTON ASSOCIATES,
Defendants.

Civil Action No. 01-116J

01-317-10

MEMORANDUM ORDER

D. BROOKS SMITH, Chief District Judge

Plaintiff's complaint alleged that it arranged with defendant Northampton Associates ("Northampton") to ship an onion peeler to Dallas, Texas and that the onion peeler was destroyed while it was in the possession of defendant Roadway Express, Inc. ("Roadway"). In an effort to recover its damages, plaintiff asserted state law claims for breach of contract and negligence against both defendants. Defendant Roadway, with the consent of defendant Northampton, removed the action, contending that the action for "alleged damages to a shipment . . . from Fruitland, Idaho to Dallas, Texas . . . arises under the Carmac[k] Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706." Dkt. no. 1, ¶ 3. In addition, Roadway moved to dismiss plaintiff's complaint under Rule 12(b)(6), arguing that the plaintiff "failed to plead the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706 as the basis of liability and such Act is the sole basis to establish liability of common carriers transporting property in interstate commerce." Dkt. no. 3, ¶ 5. Roadway pointed out in its brief that courts "have consistently recognized the preemptive effect of the Carmack Amendment over claims brought under state

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William A. Shaw
Prothonotary

law." Dkt. no. 4, at 4. Although the motion is unopposed,¹ it must be denied because this court lacks subject matter jurisdiction.

Section 1441 of the Judicial Code provides a substantive right to remove diversity actions and federal question cases. 28 U.S.C. § 1441. A federal question matter includes "all civil actions arising under the Constitution, laws, or treaties of the United States." 28 U.S.C. § 1331. "It is long settled law that a cause of action arises under federal law only when the plaintiff's well-pleaded complaint raises issues of federal law." Metropolitan Life Ins. Co. v. Taylor, 481 U.S. 58, 63 (1987) (citations omitted). The well-pleaded complaint rule requires that "the controversy [arising under federal law] must be disclosed upon the face of the complaint, unaided by the answer or by the petition for removal." Gully v. First Nat. Bank in Meridian, 299 U.S. 109, 113 (1936). As a result, a federal defense, even that of federal preemption, "does not authorize removal to federal court." Metropolitan Life, 481 U.S. at 63.

One corollary of the well-pleaded complaint rule developed in the case law, however, is that Congress may so completely pre-empt a particular area, that any civil complaint raising this select group of claims is necessarily federal in character.

Id.

Plaintiff's complaint in the instant case did not assert a claim under federal law. Moreover, plaintiff's complaint did not even mention the Carmack Amendment cited by defendant Roadway. Because plaintiff's causes of action are based solely on state law, removal was proper only if the Carmack Amendment "so completely pre-empts" this particular area that

¹After noticing that the plaintiff failed to respond to the motion, my law clerk contacted plaintiff's counsel by telephone and requested a response. Thereafter, my deputy clerk issued a briefing letter, directing a response by November 2, 2001. To date, a response has yet to be filed.

plaintiffs' claims are "necessarily federal in character." Metropolitan Life, 481 U.S. at 67.

Although defendant Roadway has not addressed the issue of complete preemption, I am obligated to raise the issue of subject matter jurisdiction sua sponte. Meritcare Inc. v. St. Paul Mercury Ins. Co., 166 F.3d 214, 216 (3d Cir. 1999). If "it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c)).

The Third Circuit has yet to address the pre-emptive scope of the Carmack Amendment which was enacted in 1906 as an amendment to the Interstate Commerce Act of 1887. See Howe v. Allied Van Lines, Inc., 622 F.2d 1147, 1156 (3d Cir. 1980). The Carmack Amendment "federalized, and thus made uniform, the law of common carrier liability in interstate commerce transactions[,]" id. at 1157, by imposing "liability on a common carrier for the actual loss or injury to goods in an interstate commerce shipment." Beta Spawn, Inc. v. FFE Transp. Serv., 250 F.3d 218, 223 n. 4 (3d Cir. 2001); see also Allied Tube and Conduit v. S. Pac. Transp. Co., 211 F.3d 367, 369 (7th Cir. 2000).

In Adams Express Co. v. E.H. Croninger, 226 U.S. 491, 505-06 (1913), the Supreme Court observed that Congress enacted the Carmack Amendment in 1906 to "take possession of the subject [of interstate carriers' liability for lost or damaged property], and supersede all state regulation with reference to [liability for lost or damaged property.]" A state law cause of action against a common carrier is therefore preempted by the Carmack Amendment if it involved a loss of, or damage to, goods in an interstate shipment. Id.; see also Ward v. Allied Van Lines, Inc., 231 F.3d 135, 138 (4th Cir. 2000); Insurance Co. of North Am. v. Fed. Express Corp., 189 F.3d 914, 924 (9th Cir. 1999) (observing that Carmack Amendment, as interpreted by the Supreme Court, "entirely preempted state regulation of common carriers"); Moffitt v. Bekins

Van Lines Co., 6 F.3d 305, 307 (5th Cir. 1993); Hughes v. United Van Lines, 829 F.2d 1407(7th Cir. 1987); Underwriters at Lloyds of London v. North Am. Van Lines, 890 F.2d 1112 (10th Cir. 1989); Intech, Inc. v. Consol. Freightways, Inc., 836 F.2d 672, 677 (1st Cir. 1987); Hoppers Furs Inc. v. Emery Air Freight Corp., 749 F.2d 1261, 1264 (8th Cir. 1984).

The "touchstone of the federal district court's removal jurisdiction is not the 'obviousness' of the pre-emption defense but the intent of Congress" that a state law claim is necessarily federal in character. Metropolitan Life, 481 U.S. at 66. In determining whether the Carmack Amendment completely preempts state claims for damages caused by a common carrier during the interstate shipment of goods, the Third Circuit requires the application of a two-part test. Railway Labor Exec. v. Pittsburgh & Lake Erie R., 858 F.2d 936, 942 (3d Cir. 1988). First, the district court must determine if the "statute relied upon by the defendant as preemptive contains civil enforcement provisions within the scope of which the plaintiff's state claim falls." Id. If so, the "federal court must further inquire whether there is a clear indication of a Congressional intention to permit removal despite the plaintiff's exclusive reliance on state law." Id. In applying this test, a district court must be mindful that "it is clear from the Supreme Court case law that the doctrine of complete preemption operates in a very narrow area." Id.

Here, the plaintiff's claim for damages against Roadway² sustained as a result of the loss of the onion peeler falls within the scope of the Carmack Amendment. See 49 U.S.C. § 14706(a)(1) ("A carrier . . . [is] liable to the person entitled to recover under the receipt or bill of lading . . . for the actual loss or injury to the property caused by" the carrier). The clear

² It is unclear on the record whether Northampton is a common carrier for purposes of the Carmack Amendment.

indication of a Congressional intent to permit removal, however, is lacking. As the Fifth Circuit found in Beers v. North Am. Van Lines, Inc., 836 F.2d 910, 913 n.3 (5th Cir. 1988), there is "no manifest congressional intent, of the type contemplated in Taylor, to make this state claim removable to federal court." See also Hunter v. United Van Lines, 746 F.2d 635, 643 (9th Cir. 1984) (finding federal jurisdiction lacking over case which presented, inter alia, claim for damages to property shipped by a common carrier); Lamm v. Bekins Van Lines Co., 139 F.Supp.2d 1300, 1313 (M.D. Ala. 2001) (finding that the ICC Termination Act of 1995, which preserved the Carmack Amendment, did not include any "express grant of removal jurisdiction for claims brought in the form of state-law actions" that would completely preempt this area of the law); Circle Redmont Inc. v. Mercer Transp. Co., 78 F.Supp. 2d 1316 (M.D. Fla. 1999); Ben & Jerry's Homemade, Inc. v. KLLM, Inc., 58 F.Supp.2d 315 (D. Vt. 1999) (criticizing its earlier decision that state claim would have been completely preempted by Carmack Amendment as erroneous in light of guidance from the Second Circuit that the complete preemption doctrine is "extremely narrow"); compare Metropolitan Life, 481 U.S. at 65-66 (citing, as basis for finding that ERISA completely preempts this area of the law, the legislative history which states "[a]ll such actions in Federal or State courts are to be regarded as arising under the laws of the United States in similar fashion to those brought under section 301 of the Labor Management Relations Act of 1947") (citation omitted); contra Bear MGC Cutlery Co. v. Estes Express Lines, Inc., 132 F.Supp.2d 937 (N.D. Ala. 2001) (listing district court cases that have held that Carmack Amendment completely preempts this particular area of the law).

Because the Carmack Amendment does not completely preempt plaintiff's state law claims, this court lacks the "power to do anything other than remand [plaintiff's claims] to the

state court where the preemption issue can be addressed and resolved." Dukes v. U.S.

Healthcare, Inc., 57 F.3d 350, 355 (3d Cir. 1995). Accordingly, this 21st day of November 2001, it is hereby

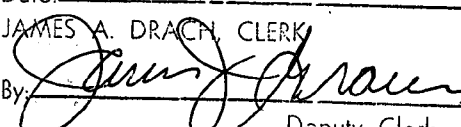
ORDERED AND DIRECTED that the Clerk shall remand this action to the Court of Common Pleas of Clearfield County pursuant to 28 U.S.C. § 1447(c) for lack of subject matter jurisdiction. The Clerk shall mark this case CLOSED.

BY THE COURT:



D. Brooks Smith
Chief United States District Judge

cc: All counsel of record

CERTIFIED FROM THE RECORD	
23 NOV 2001	
Date:	
JAMES A. DRACH, CLERK	
By:	
	Deputy Clerk

FILED

11 cc Atty
Hopkins

NOV 26 2001

m13A1

William A. Shaw
Prothonotary

1 CC Roadway

1 CC Northampton

[Signature]

UNITED STATES DISTRICT COURT
OFFICE OF THE CLERK
WESTERN DISTRICT OF PENNSYLVANIA
ROOM 208
319 WASHINGTON STREET
JOHNSTOWN, PA 15901
WWW.PAWD.USCOURTS.GOV

JAMES A. DRACH
CLERK
814-533-4504

IN REPLYING, GIVE NUMBER
OF CASE AND NAMES OF PARTIES

DATE: November 23, 2001

William A. Shaw, Prothonotary
Clearfield County Courthouse
P.O. Box 549
Clearfield, PA 16830

IN RE: BACKUS USA, INC.

vs.

ROADWAY EXPRESS, INC., et al

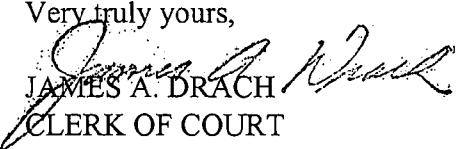
CIVIL ACTION NO. 01-116 J

STATE COURT NO. 01-317-CD

Dear Sir:

I am enclosing herewith a certified copy of the order entered by the
Honorable D. Brooks Smith in the above entitled case on November 21, 2001, which remands
the matter to your court.

Very truly yours,


JAMES A. DRACH
CLERK OF COURT

By: 

Deputy Clerk

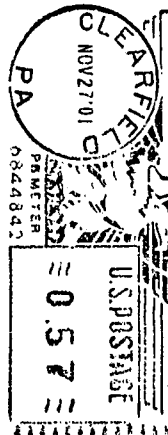
Enclosure

WILLIAM A. SHAW
PROTHONOTARY
and CLERK of COURTS
P.O. BOX 549
CLEARFIELD, PENNSYLVANIA 16830

FILED

DEC 06 2001

William A. Shaw
Prothonotary



Handwritten initials: W A S

Northampton Associates
708 Lakewood
Southampton

☐ A ☐ INSUFFICIENT ADDRESS
☐ C ☐ ATTEMPTED NOT KNOWN
☒ D NO SUCH NUMBER/STREET
☐ E NOT DELIVERABLE AS ADDRESSED
UNABLE TO FORWARD

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RETURN TO SENDER

IN THE UNITED STATES DISTRICT COURT
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Plaintiff,

v.

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Defendants.

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I hereby certify this to be a true
and attested copy of the original
statement filed in this case.

NOV 26 2001

Attest:

William L. Brown
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Here, the plaintiff's claim for damages against Roadway² sustained as a result of the loss of the onion peeler falls within the scope of the Carmack Amendment. See 49 U.S.C. § 14706(a)(1) (" A carrier . . . [is] liable to the person entitled to recover under the receipt or bill of lading . . . for the actual loss or injury to the property caused by" the carrier). The clear

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BY THE COURT:



D. Brooks Smith
Chief United States District Judge

cc: All counsel of record

