

The Judicial View™

Early Alert Case Summary Service

[Home](#) >> [Court Cases](#) >> [Transportation](#) >> [Sears Pays Twice for Freight Charges](#)

Transportation

Sears Pays Twice for Freight Charges

Failed to Alter Terms of Bills of Lading

Oak Harbor Freight Lines, Inc. v. Sears Roebuck & Co., 513 F.3d 949 (C.A. 9, Jan. 18, 2008)

Motor carrier Oak Harbor Freight Lines, Inc., contracted to provide freight services to Sears Roebuck & Co. ("Sears"), with National Logistics Corporation acting as a broker for Sears. Between August 1, 2004, and November 12, 2004, Oak Harbor transported Sears' freight and, for these services, was owed \$426,418. Sears alleged that it paid NLC the majority of these shipping charges, which NLC failed to forward on to Oak Harbor.

Oak Harbor brought suit for breach of contract in Washington state court against Sears and NCL, which was removed to the U.S. District Court for the Western District of Washington. After the District Court found Sears jointly and severably liable for the unpaid freight charges plus interest, Sears appealed.

Oak Harbor was a party to a National Carrier Contract with NLC, which stated that NLC would pay Oak Harbor for the freight charges, and Oak Harbor negotiated the freight rates with NLC. Bills of lading were also used for each shipment. For shipments from vendors to Sears, Oak Harbor generated the bills of lading, which showed Sears as Consignee and were marked "collect". For shipments from Sears, Sears prepared the bills of lading which had no identified shipper or consignor, were marked "Freight terms: Prepaid", showed "ship from" a Sears warehouse and showed Oak Harbor as "Carrier".

The District Court relied on the bills of lading and held Sears liable for all of the unpaid freight charges, and that Sears could recover from NLC any portion of the \$227,202 that Sears paid Oak Harbor that it had already paid to NLC.

The Court of Appeals held that the bills of lading between Sears and Oak Harbor were made to conform to the industry standards, so that they were controlled by the industry's default rule that, "absent a statement to the contrary," the bill of lading confers liability on the consignor and the consignee for shipping charges. Thus, Sears was liable as the consignor for outgoing shipments, because those bills of lading did not show "without recourse". Sears was liable as the consignee for incoming shipments because those bills of lading did not show "prepaid" (they showed "collect").

Sears argued that the Carrier Contract between NLC and Oak Harbor explicitly conferring liability for shipping charges onto NLC negated any liability conferred on Sears by the bills of lading. The Court of Appeals rejected this contention, holding that the Carrier Contract, to which Sears was not a party and was never mentioned by name or implication, did not modify the liability conferred by the bills of lading.

Sears next argued that the Carrier Contract represented the sole enforceable contract regarding shipping charges, again trumping the bill of lading. Instead, the Court found that the Carrier Contract and the bill of lading worked "in harmony," so that NLC became liable through the Carrier Contract, and Sears remained liable under the bill of lading.

The Court of Appeals also rejected Sears' final argument in holding that Oak Harbor was not barred by equitable estoppel from recovering shipping charges that Sears paid to NLC. The Court noted that it is the shipper who is in the best position to avoid liability for double payment by using a reputable freight forwarder, by contracting with the carrier to eliminate the shipper's liability, or by paying the carrier directly.

The Court of Appeals affirmed the judgment against Sears, including prejudgment interest.

[Click to View the Full Text of the Court's Decision](#)

Sears Pays Twice for Freight Charges

Related Categories: [Contracts](#)

Plaintiff Lawyer(s)	Plaintiff Law Firm(s)
Kenneth W. Hart	Larson Hart & Shepherd PLLC

Defendant Lawyer(s)	Defendant Law Firm(s)
William B. Berndt	Schopf & Weiss LLP
Paula E. Litt	Schopf & Weiss LLP

Rate this post
Quality ☆☆☆☆☆

Questions/Comments

Usefulness ☆☆☆☆☆

Comment:

Verification



Type the characters you see in this picture. This system ensures you are person submitting the form, not an automated program.

Characters:

The Judicial View, LLC reserves the right whether to publish questions and comments submitted by users

Submit >

All Content © 2007-2009 The Judicial View, L.L.C. All Right Reserved.