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## Transport Co. Looks To Claw Itself Out Of Stolen Lobster Row

By **John Kennedy**

Law360, New York (October 25, 2017, 2:51 PM EDT) -- An Ohio transportation company on Tuesday fired back at a seafood distributor in Massachusetts federal court, arguing that it couldn't be responsible for the alleged theft of \$318,000 worth of lobster because as the broker that hired the actual trucking company, it didn't physically transport the cargo.

California-based Richwell Group Inc., doing business as Maxfield Seafood, sued Seneca Logistics Group LLC in August, seeking to recover lost profits stemming from the stolen lobster and claiming Seneca was negligent in vetting the company and driver that allegedly stole the seafood. Seneca argued in its motion to dismiss on Tuesday that it is a broker, not a carrier, and that its contract with Maxfield explicitly prevents Seneca from being held liable for any lost cargo.

Maxfield's complaint consists of two counts: violation of the Carmack Amendment, which governs a carrier's liability to a shipper when interstate cargo is lost or damaged, and common law negligence. But the Carmack Amendment doesn't apply to the relationship between Seneca and Maxfield, while their contract bars any negligence claims, Seneca said.

Maxfield ordered the quantity of crustacean in question from Massachusetts-based Preferred Freezer Services of Boston Harbor LLC and has claimed it hired Seneca to handle the pickup and transportation. The distributor said that without its knowledge, Seneca outsourced the job to Rapid Logistics Services Inc. and driver Ernesto Perez, who allegedly stole the lobster in mid-December 2016.

The distributor has accused Seneca of making no effort to look into Perez's or Rapid's background or credentials, or to otherwise ensure the cargo would be transported as promised.

In its motion, Seneca pointed to the contract between it and Maxfield, which says Seneca is a broker, not a carrier, and "will contract directly with a carrier (unless otherwise agreed to)." The contract also says Seneca "will not be liable under any circumstances for any special, incidental, extended or consequential damages," including loss or nondelivery of a shipment or lost profits.

Given its status as a broker, the Carmack Amendment, which applies only to carriers, doesn't apply, Seneca said, citing four cases in support of its argument. The company also said the contract refers to Seneca as a broker, not as a carrier.

As for the negligence claim, Seneca said that Maxfield agreed it couldn't recover the kinds of damages it now seeks because the contract requires all claims must be filed directly against the actual carrier, which in this case was Perez and Rapid. The company also said no claims have been filed against either Perez or Rapid.

Alternatively, the economic loss doctrine says Maxfield can't use negligence to recover money based on purely economic harms, such as lost profits, Seneca said. In support of that point, it cited a Massachusetts federal judge's 2012 decision in *MacDonald v. Old Republic National Title Insurance Co.*, which said that when a plaintiff's negligence claims are related to the performance of a contract, or are reformulated breach of contract claims, they're barred by the economic loss doctrine.

Jeffrey E. Poindexter, a lawyer for Maxfield, told Law360 in a Wednesday email that his client hired Seneca to ensure the lobster was picked up and distributed to specific locations and that Seneca failed to do so.

"Seneca cannot shirk this very simple obligation by making unmeritorious technical arguments," Poindexter said.

Seneca is represented by Lee E. Rajsich of Rajsich & Associates PC and Robert D. Cohan of Cohan Rasnick Myerson Plaut LLP.

Maxfield is represented by Jeffrey E. Poindexter and Elizabeth S. Zuckerman of Bulkley Richardson and Gelinas LLP.

The case is Richwell Group Inc. v. Seneca Logistics Group LLC, case number 1:17-cv-11442, in the U.S. District Court for the District of Massachusetts.

--Editing by Jack Karp.

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