

THOUGHT LEADERSHIP

News

ATTORNEYS' FEE AWARD TO INSURER IN SUBROGATION RECOVERY REVERSED UNDER STATE COURT'S APPLICATION OF FEDERAL STATUTE

Newsbrief

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Federal law pre-empted recovery for attorneys' fees in an insurer's subrogation action to recover for a loss suffered during interstate transportation of computer equipment, the Fourteenth Court of Appeals in Houston held last Tuesday. *Daybreak Express, Inc. v. Lexington Insurance Company*, No. 14-09-01032, 2013 WL 5629813 (Tex. App.—Houston [14th Dist.] Oct. 15, 2013) concerned the insurer's claim for damages based on a shipper's delivery of damaged goods. The insurer filed suit asserting a claim for breach of contract, which under Texas law permits the recovery of attorneys' fees, and the trial court awarded \$85,800 in damages plus attorneys' fees.

In the initial appeal, the court of appeals reversed the entirety of the trial court judgment. The Texas Supreme Court's January 2013 opinion on rehearing in *Lexington Ins. Co. v. Daybreak Express, Inc.*, 393 S.W.3d 242 (Tex. 2013), reversed the court of appeals and reinstated the trial court's judgment as to actual damages, but remanded for further proceedings with respect to attorneys' fees. In its opinion on remand, the court of appeals held that the federal Carmack Amendment, which was enacted to create uniformity in damage awards arising out of interstate transportation, "impliedly preempts all state law claims arising in connection with this dispute involving interstate transportation of goods by a common carrier." The Carmack Amendment does not provide an award of attorney's fees, and therefore Texas law awarding fees in a breach of contract case was preempted by the federal statute. The court of appeals accordingly reversed the award of attorneys' fees.