

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

)	Chapter 11
<i>In Re:</i>)	Case No. 14-10318 (KJC)
)	
QUANTUM FOODS, LLC, et al.)	Jointly Administered
)	
Debtors.)	Ref: Docket No. 466 and 585
)	

**FFE TRANSPORTATION SERVICES, INC.'S
REPLY TO DEBTORS' LIMITED OBJECTION TO ENTRY OF AN ORDER
ALLOWING ADMINISTRATIVE EXPENSE CLAIM AND DIRECTING THE
PAYMENT OF ANY ADMINISTRATIVE EXPENSE CLAIM TO
FFE TRANSPORTATION SERVICES, INC.**

FFE Transportation Services, Inc. (hereinafter referred to as "FFE"), submits its Reply to Debtors' Limited Objection to Entry of an Order Allowing Administrative Expense Claim and Directing the Payment of any Administrative Expense Claim to FFE Transportation Services, Inc. and states as follows:

1. The current dispute between FFE and the Debtors is a breach of contract for non-payment for services rendered, not a statute of limitations dispute. The contractual relationship between the Debtors and FFE is governed by federal statute and applicable federal tariffs. Title 49 has been interpreted under its plain meaning. See e.g. *Owner-Operator Independent Drivers Assn. v. Landstar Sys., Inc.*, 622 F.3d 1307, 1327 (11th Cir 2010); *Owner-Operator Independent Drivers Assn. v. United Van Lines, LLC*, 556 F.3d 690, 693-694 (8th Cir. 2009). The definition of "accrual" in Section 14705(g) under the statute of limitations provisions referred in the Debtors' motion is limited to initiation of an action to collect freight charges and is a definition that does not apply beyond the express statutory provision in which it is found. However, the date upon which the claim in this case became due is prescribed by federal statute and regulation as is discussed in this response at length.

2. FFE is a federally licensed motor carrier by authority issued to it by the Federal Motor Carrier Safety Administration (FMCSA). See Exhibit 1, Affidavit of Greg Stone (hereinafter “Exh. 1, Stone Aff.”), Paragraph 5.

3. FFE transports regulated commodities as well as commodities that are exempt from the jurisdiction of the Department of Transportation/FMCSA as defined in 49 U.S.C. 13506(a)(6)(C), (D). See Exh. 1, Stone Aff., Paragraph 6.

Pursuant to 49 U.S.C. 13707, FFE is required to bill and collect payment from the shipper or consignee in order to transfer possession of the goods it is responsible for shipping on said shipper’s and/or consignee’s behalf.

4. Section 14705(g) Subsequent to Debtors’ bankruptcy petition, FFE provided Debtors motor carrier transportation to and from Quantum Foods’ distribution facilities in Bolingbrook, Illinois and delivered same throughout the country during the period of April 2014 and May 2014 for which it seeks payment.¹ See Exh. 1, Stone Aff., Paragraph 3. FFE seeks payment of \$51,323.48.

5. FFE’s transportation of Quantum Foods’ shipments were subject to FFE’s own rules, regulations and practices. Rules regulations and practices governing FFE’s operations with Quantum are set forth in FFE’s General Rules Tariff FRZF105. FFE had in place additional General Rules for Quantum regarding rates from Bollingbrook, Illinois which were agreed to by the Parties. See Exh. 1, Stone Aff., Paragraph 8.

6. Although Quantum issued their own bill of lading, all shipments tendered to FFE by Quantum were subject to the terms and conditions contained in the Uniform Straight Bill of Lading as published in the applicable National Motor Freight Classification 100 Series as of the time of the shipment(s). See Exh. 1, Stone Aff., Paragraph 9. FFE is and was at all times here

¹ FFE acknowledges payment on shipments delivered subsequent to April 25, 2014.

relevant a participating member of NMFC in April 2014 and still remains a participating member. See Exh. 1, Stone Aff., Paragraph 9.

7. Under the rules of federal transportation law, the bill of lading contract is the basic bilateral contract mandated by federal statute. The bill of lading contract affixes the carrier's duty to transport the goods in interstate commerce and the shipper and/or the consignor's obligation to pay carrier's freight charges. See *Texas Pacific Railroad v. Leatherwood*, 250 U.S. 470, 481 (1919). The Supreme Court in *Southern Pacific Transportation Co. v. Commercial Metals Co.*, 456 U.S. 336, 342 (1982) found that:

“The bill of lading is the basic transportation contract between the shipper/consignor and the carrier; its terms and conditions bind the shipper and all connecting carriers ... [u]nless the bill provides to the contrary, the consignor remains primarily liable for the freight charges.”

Id.

8. Under the FFE Tariff, a consignor such as Quantum may elect to have preprinted their own bill of lading form, or consignors who have preprinted their own bill of lading forms may, at their option, instead of using the Uniform Straight Bill of Lading as set forth, use the Straight Bill of Lading-Short Form. In either case, the transportation of the shipment by FFE shall be subject to all terms and conditions of the Uniform Straight Bill of Lading. See Exh. 1, Stone Aff., Paragraph 10.

9. The Uniform Straight Bill of Lading contains preprinted language which incorporates the carrier tariff as follows:

“Received, subject to individually determined rates or contracts that have been agreed upon in writing between the carrier and shipper, if applicable, otherwise to the rates, classifications and rules that have been established by the carrier and are available to the shipper on request.” Exh. 1, Stone Aff., Paragraph 11.

10. Debtors set forth that any services rendered prior to April 26, 2014 constitute an Excluded Administrative Expense and falls outside the Budget limitation. Essentially, Debtors

contend that the ship date controls rather than the date of invoice. Debtors contend that “49 U.S.C. 14705 et seq. is instructive as to when the disputed amounts became due and owing, on or before the cut-off date.” Reliance on 49 U.S.C. 14705 is a red herring which should be rejected in determining whether the contractual time for payment was due between the parties because it is in direct conflict with the federal regulations and FFE’s governing tariff. As provided for by the federal regulations and incorporated in FFE’s governing Tariff, FFE relinquished possession of the freight in advance of the payment of its Tariff charges. See 49 C.F.R. 377.203(a)(1). See Exhibit 1, Stone Aff., Paragraph 12. With respect to each shipment for which it seeks recovery, FFE sent an invoice to Quantum for payment which identified that payment was due within 15 days. See Exh. 1, Stone Aff., Paragraph 12. The 15 day credit period is prescribed by federal regulation and was also set forth in FFE’s Tariff. See 49 C.F.R. 377.203(A)(2)(c) and See Exh. 1, Stone Aff., Paragraph 12. The credit period begins to run the day following the presentation of the freight bill. See 49 C.F.R. 377.203(A)(2)(b). FFE seeks payment of its invoices dated April 14, 2014 through April 30, 2014. See Exh. 1, Stone Aff., Paragraph 12. Quantum’s contractual obligation to pay did not become due until 15 days from the date of invoice. See Exh. 1, Stone Aff., Paragraph 12. Quantum’s contractual obligation to FFE did not arise on any of the services provided for which FEE seeks payment until after April 25, 2014 and therefore each of the invoices should be allowed.

11. Even if this Court agrees with Debtors and determines that the claim accrues on delivery of the product by the carrier to the consignee, Debtors themselves acknowledge that some of the shipments may be subject to certain exemptions and thus are not under the jurisdiction of the Department of Transportation. See 49 U.S.C. 13506 et seq., Debtors’ Opposition, Paragraph 6, Footnote 2.

12. Certain commodities are exempt from regulation. See Exh. 1, Stone Aff., Paragraph 13; See also 49 U.S.C. 13506(a)(6)(C) and (D) and Administrative Rule 119.

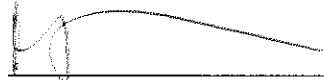
13. Of the 83 invoices for which FFE seeks recovery, 19 invoices totaling \$14,789.22 are for transportation services where the commodity is exempt from federal regulation. Seventeen of the shipments involved the transportation of poultry product that was either pre-cooked, marinated, breaded and/or battered, frozen or refrigerated, and therefore exempt from regulation. See Exh. 1, Stone Aff., Paragraph 14; See also *Pillsbury Co. et al v. U.S. et al.*, 409 U.S. 808 (1972). Two other shipments are exempt from regulation because the product being transported was seafood. See Exh. 1, Stone Aff., Paragraph 14. With respect to these 19 shipments, Debtors' reliance on 49 U.S.C. 14705(g) as to the date of the accrual of the claim is inapplicable. Each of the invoices pertaining to these 19 shipments were due subsequent to April 25, 2014.

CONCLUSION

WHEREFORE, for the foregoing reasons, FFE Transportation Services, Inc. respectfully requests that this Court grant the Motion and grant such other and further relief as is just and proper.

Dated: August 14, 2014

ELLIOTT GREENLEAF



Rafael X. Zahralddin-Aravena (No. 4166)

Jonathan M. Stemerman (No. 4510)

1105 North Market Street, Suite 1700

Wilmington, Delaware 19801

Telephone: (302) 384-9400

Facsimile: (302) 384-9399

Email: rxza@elliottgreenleaf.com

Email: jms@elliottgreenleaf.com

and

John T. Husk
Jeffrey E. Cox
SEATON & HUSK, L.P.
2240 Gallows Road
Vienna, VA 22182
johnhusk@aol.com
jeffcox@transportationlaw.net

Counsel for FFE Transportation Services, Inc.