

**UNITED STATES DISTRICT COURT
DISTRICT OF MAINE**

LARS T., LTD.,)	
)	
PLAINTIFF)	
)	
v.)	Civil No. 99-347-P-H
)	
NEW PENN MOTOR EXPRESS, INC.)	
AND UNITED RENTALS, INC.,)	
)	
DEFENDANTS)	

**ORDER ON PLAINTIFF'S MOTION FOR REMOVAL AND
TRANSFER TO THE MAINE DISTRICT COURT**

Lars T., Ltd. filed this lawsuit in the Maine District Court, Division of Southern Oxford County, on October 25, 1999, against New Penn Motor Express, Inc. ("New Penn") and United Rentals, Inc. ("United"). Lars T. alleged that United had breached its contract to return two diesel engines in a repaired condition and that New Penn had negligently damaged the engines while shipping them. The Complaint did not specify the amount of damages. New Penn removed the case to federal court on November 12, 1999, under the Carmack Amendment asserting that the damages at issue exceeded \$10,000.¹ About five months later, on April 6, 2000, Lars T. filed this motion to remand on the ground that its claims do not

¹ The Carmack Amendment, 49 U.S.C.A. § 14706 (West 1997 & Supp. 1999), governs the liability of carriers for lost or damaged goods and preempts state law claims. See, e.g., Rini v. United Van Lines, Inc., 104 F.3d 502 (1st Cir. 1997). If the claim exceeds \$10,000, then the federal district courts have original jurisdiction. See 28 U.S.C.A. § 1337(a) (West Supp. 1999).

exceed \$10,000. The issue is whether Lars T.'s contention, five months after the removal, that it claims less than \$10,000 is enough to defeat federal jurisdiction.

I conclude that it is not.

In its motion, Lars T. writes, “[t]he Petitioner, New Penn Motor Express, Inc., sent the Notice of Removal, for it appeared at one time that there was approximately \$11,850.00 in damages, for the engines that are questioned in this law suit appeared to have been damaged beyond repair. However, the plaintiff is not alleging that this is the case, for it was subsequently determined that the engines were repairable, to which there was \$4,485.00 of expenses to repair these motors.” Mot. at ¶ 4. As the Supreme Court of the United States stated 62 years ago, “events occurring subsequent to removal which reduce the amount recoverable, whether beyond the plaintiff’s control or the result of his volition, do not oust the district court’s jurisdiction once it has attached.” St. Paul Mercury Indem. Co. v. Red Cab Co., 303 U.S. 283, 293 (1938); accord Coventry Sewage Assocs. v. Dworkin Realty Co., 71 F.3d 1, 7 (1st Cir. 1995).² Lars T.’s motion to remand clearly relies upon “events occurring subsequent to removal which reduce

² The complaints in Red Cab and Coventry specified damages in excess of the applicable jurisdictional amounts, whereas the Complaint here lacks an *ad damnum*. But I see no reason why this distinction should make a difference. In removing the case, New Penn produced a demand letter from Lars T. in the amount of \$11,850, sent one month before Lars T. filed its complaint in the Maine District Court, see Galante Aff. Ex. B. In addition, Lars T. concedes that until recently it believed its damages exceeded the jurisdictional minimum, see Mot. at ¶ 4. Cf. Wilson v. Republic Iron & Steel Co., 257 U.S. 92, 97-98 (1921) (“[I]f the plaintiff does not take issue with what is stated in the [removal] petition, he must be taken as assenting to its truth, and the petitioning defendant need not produce any proof to sustain it.”) (discussing fraudulent joinder) (citation omitted).

the amount recoverable” and therefore falls squarely within the rule of Red Cab and Coventry. Therefore, Lars T.’s motion is **DENIED**.

SO ORDERED.

DATED THIS 22ND DAY OF MAY, 2000.

D. BROCK HORNBY
UNITED STATES CHIEF DISTRICT JUDGE

U.S. District Court
District of Maine (Portland)
Civil Docket for Case #: 99-CV-347

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