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IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

TRAVELERS INDEMNITY COMPANY OF	)	Case No. 09-3118 SC
CONNECTICUT; MARINPAK MPK SONOMA,	)	
INC.,	)	ORDER DENYING MOTION TO
	)	DISMISS THIRD-PARTY
Plaintiffs,	)	<u>COMPLAINT</u>
	)	
v.	)	
	)	
COLMA DRAYAGE, INC.; DEVINCENZI	)	
TRUCKING, INC.; FREDRICK SHUMATE	)	
dba SHUMATE ENTERPRISES, LLC; and	)	
DOES 1-20, inclusive,	)	
	)	
Defendants.	)	
	)	
<hr/>		
DEVINCENZI TRUCKING, INC.,	)	
	)	
Third-Party Plaintiff,	)	
	)	
v.	)	
	)	
CARRIX, INC., and its subsidiary,	)	
SSA MARINE INTERNATIONAL,	)	
	)	
Third-Party Defendants.	)	
	)	
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**I. INTRODUCTION**

Now before the Court is the Motion to Dismiss Third-Party Complaint ("Motion") filed by third-party defendants Carrix, Inc., and SSA Marine International (collectively, "Carrix"). Docket No. 48. Carrix seeks to dismiss the Third-Party Complaint filed against them by defendant and third-party plaintiff Devincenzi Trucking, Inc. ("Devincenzi"). Docket No. 36 ("Devincenzi Compl."). The Motion is fully briefed. Docket Nos. 62 ("Opp'n"),

1 65 ("Reply"). Having considered the papers submitted by each  
2 party, the Court concludes that this matter is appropriate for  
3 determination without oral argument. For the reasons stated below,  
4 the Court DENIES Carrix's Motion.

5  
6 **II. BACKGROUND**

7 This suit began with a Complaint in Subrogation filed by  
8 Plaintiff Travelers Indemnity Company of Connecticut ("Travelers"),  
9 which is the insurer for Marinpak MPK Sonoma, Inc. ("Marinpak"), a  
10 food processor located in Sonoma, California. Docket No. 1  
11 ("Travelers Compl.") at 3. According to Travelers, Marinpak  
12 ordered a particular piece of machinery from a French manufacturer  
13 that was designed and built to specifications for Marinpak's Sonoma  
14 facility. Id. The machinery was shipped from France to Oakland as  
15 cargo that "consisted of one standard container holding three  
16 packed crates and another flat rack container holding two packed  
17 crates." Id. Travelers states that it successfully arrived in  
18 Oakland, California. Id.

19 After the cargo arrived in Oakland, Marinpak contacted Colma  
20 Drayage, Inc. ("Colma"), to secure transportation for the machinery  
21 from Oakland to its Sonoma facility. Id. According to Travelers,  
22 Colma arranged for Devincenzi to pick up and transport the  
23 machinery, and Devincenzi in turn arranged for Shumate Enterprises,  
24 LLC ("Shumate") to pick up and transport the machinery. Id. The  
25 machinery was loaded onto a truck. Id. While the machinery was  
26 being transported by truck from Oakland to Sonoma, one of the  
27 crates struck a highway overpass and damaged critical components of  
28 the machinery. Id. According to the Complaint, Travelers had to

1 pay a total of \$764,059.28 to Marinpak to replace the machinery,  
2 and Marinpak sustained uninsured business losses totaling  
3 \$465,276.63. Id. at 4. Travelers and Marinpak filed this action  
4 against Colma, Devincenzi, and Shumate, alleging violation of the  
5 Carmack Amendment, 49 U.S.C. § 14706.

6 Devincenzi thereafter filed a third-party complaint against  
7 Carrix and its wholly-owned subsidiary, SSA Marine International.  
8 See Devincenzi Compl. ¶¶ 1-2. Devincenzi alleges that Carrix  
9 provides "marine terminal and transportation services, including  
10 such services to some or all of the parties to the [Travelers]  
11 Complaint In Subrogation," and that any liability that Devincenzi  
12 incurs in the underlying suit is the result of "the active and  
13 primary negligence or otherwise wrongful conduct of [Carrix] in  
14 connection with the handling of the freight . . . ." Id. ¶¶ 6, 8.  
15 As Devincenzi explains more clearly in its Opposition to Carrix's  
16 Motion, Carrix "got the load, including its flat rack, ready to be  
17 hooked up to the truck-tractor that was to haul the cargo to Sonoma  
18 County. Once the load was ready to be hauled, Shumate hooked up  
19 its truck-tractor and hauled the load away from the Port of  
20 Oakland," only to strike a freeway overpass before reaching its  
21 destination. Opp'n at 1-2.

22 Although this Court clearly has subject matter jurisdiction  
23 over Travelers' claim under the Carmack Amendment, Carrix argues  
24 that this Court lacks jurisdiction over Devincenzi's third-party  
25 complaint for indemnification, on the basis that the complaint  
26 involves a separate "occurrence" from the facts that constitute  
27 Travelers' Carmack claim. Mot. at 6-9. Carrix filed the Motion  
28 that is now before the Court to challenge this Court's subject

1 matter jurisdiction over the Devincenzi Complaint.  
2

3 **III. LEGAL STANDARD**

4 As a court of limited jurisdiction, "[a] federal court is  
5 presumed to lack jurisdiction in a particular case unless the  
6 contrary affirmatively appears." Stock West, Inc. v. Confederated  
7 Tribes, 873 F.2d 1221, 1225 (9th Cir. 1989). When a defendant  
8 submits a motion to dismiss under Rule 12(b)(1) of the Federal  
9 Rules of Civil Procedure, the Plaintiff bears the burden of  
10 establishing the propriety of the court's jurisdiction. See  
11 Kokkonen v. Guardian Life Ins. Co. of Am., 511 U.S. 375, 377  
12 (1994). "A Rule 12(b)(1) jurisdictional attack may be facial or  
13 factual." Safe Air for Everyone v. Meyer, 373 F.3d 1035, 1039 (9th  
14 Cir. 2004). In a facial attack on subject matter jurisdiction, the  
15 defendant challenges the basis of jurisdiction as alleged in the  
16 complaint. Id. In such a case, the court may assume that the  
17 factual allegations in the complaint are true, and draw all  
18 reasonable inferences in the plaintiff's favor. See Wolfe v.  
19 Strankman, 392 F.3d 358, 362 (9th Cir. 2004).

20

21 **IV. DISCUSSION**

22 By its Opposition, Devincenzi effectively concedes that there  
23 is no basis for subject matter jurisdiction over its third-party  
24 Complaint, except through supplemental jurisdiction obtained under  
25 28 U.S.C. § 1367(a). Opp'n at 3. This Court agrees that  
26 Devincenzi's allegations are insufficient to establish diversity  
27 jurisdiction, and that the claim does not give rise to a  
28 significant federal question. The Court therefore has jurisdiction

1 over Devincenzi's claim only if it is "so related" to claims that  
2 are within the original jurisdiction of this Court "that they form  
3 part of the same case or controversy under Article III of the  
4 United States Constitution." 28 U.S.C. § 1367(a).

5 There is no question that this Court has original jurisdiction  
6 over Travelers' claim against Devincenzi and the other primary  
7 defendants. This is a claim brought under the Carmack Amendment,  
8 49 U.S.C. § 14706, which "is the exclusive cause of action for  
9 interstate shipping contract claims, and it completely preempts  
10 state law claims alleging delay, loss, failure to deliver and  
11 damage to property." White v. Mayflower Transit, L.L.C., 543 F.3d  
12 581, 584 (9th Cir. 2008).<sup>1</sup> This statute holds any carrier or  
13 freight forwarder liable "for the actual loss or injury to the  
14 property" caused by any carrier "whose line or route the property  
15 is transported in," or who received or delivered the property. 49  
16 U.S.C. § 14706(a).

17 Carmack effectively codified the strict liability  
18 rule that governed the liability of common  
19 carriers at common law. Once the shipper  
20 establishes a prima facie case of Carmack  
21 liability by showing delivery in good condition,  
22 arrival in damaged condition, and the amount of  
23 damages, the carrier is liable for the actual  
24 loss or injury to the property it transports,  
25 unless there is an available defense.

26 Sompo Japan Ins. Co. of Am. v. Union Pac. R.R., 456 F.3d 54, 59

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27 <sup>1</sup> Although the accident occurred during transportation between  
28 Oakland, California, and Sonoma County, California, "the Carmack  
Amendment applies to the inland leg of a [foreign] shipment even if  
that leg is fully intrastate." Chubb Group of Ins. Cos. v. H.A.  
Transp. Sys., 243 F. Supp. 2d 1064, 1068 n.3 (C.D. Cal. 2002)  
(citing Project Hope v. M/V IBN Sina, 250 F.3d 67, 70-71, 73 (2nd  
Cir. 2001)). In addition, the Court notes that Travelers' claim is  
well over the \$10,000 jurisdictional minimum set by 28 U.S.C.  
§ 1337(a).

1 (2nd Cir. 2006) (citations and internal quotation marks omitted).

2 The question now before the Court is whether Travelers'  
3 Carmack claim against Devincenzi and the other defendants "form  
4 part of the same case or controversy" as Devincenzi's indemnity  
5 claim, which is "predicated on the active and primary negligence or  
6 other wrongful conduct" of Carrix. Put otherwise, this Court will  
7 have jurisdiction only if the two claims "derive from a common  
8 nucleus of operative fact." See Carpenters Health & Welfare Trust  
9 Fund v. Tri Capital Corp., 25 F.3d 849, 852-53 (9th Cir. 1994)  
10 overruled on other grounds by S. Cal. IBEW-NECA Trust Funds v. Std.  
11 Indus. Elec. Co., 247 F.3d 920, 928-29 (9th Cir. 2001) (equating  
12 standard in 28 U.S.C. § 1367(a) with "common nucleus" standard  
13 articulated in United Mine Workers v. Gibbs, 383 U.S. 715, 725  
14 (1966)).

15 Carrix rests its argument primarily on one case, that of Galt  
16 G/S v. Hapag-Lloyd AG, 60 F.3d 1370 (9th Cir. 1995). Galt was an  
17 admiralty action in which Galt, the insurer for Safeway Stores,  
18 sued carrier Hapag-Lloyd for damage to 2160 tins of ham that had  
19 been transported from Denmark to California. Id. ¶ 1372. Safeway  
20 did not discover that the ham was frozen and spoiled until well  
21 after delivery, and after it had been stored in Safeway's own  
22 facilities for more than a week. Id. Hapag-Lloyd claimed that  
23 none of the carriers could have frozen the ham, and the district  
24 court allowed Hapag-Lloyd to bring a third-party claim against  
25 Safeway. Id. After a bench trial, the district court awarded  
26 judgment to Hapag-Lloyd, and the Ninth Circuit reversed, citing the  
27 lack of supplemental jurisdiction over Hapag-Lloyd's claim:

28 We conclude that the cargo damage claim and the

1 ancillary claims arise from different  
2 occurrences. The alleged occurrence in the cargo  
3 damage claim is whether Hapag-Lloyd or one of the  
4 carriers mishandled the ham during shipment; the  
5 alleged occurrence in the indemnification claim  
6 is whether Safeway stored the ham improperly.  
7 The two occurrences are separated by the  
8 carriers' relinquishing control over the hams.  
9 They are also separated in time. Accordingly,  
10 the district court erred in exercising ancillary  
11 jurisdiction over the California indemnification  
12 claims against Safeway.

13 Id. at 1374.

14 According to Carrix, Galt controls the outcome of this Motion  
15 because "there can be no legal connection or relationship between  
16 [Carrix] 'handling' the cargo, and a motor carrier driving the  
17 cargo into a bridge" because "these two discrete occurrences are so  
18 far removed in time and in location that they cannot be said to  
19 form 'part of the same case or controversy . . . ." Mot. at 8-9.  
20 This Court disagrees.

21 Galt does prevent this Court from finding that the two claims  
22 "form the same case or controversy" on the sole basis that they  
23 involve two theories as to the factual cause of a single injury.  
24 See 16 James Wm. Moore et al., Moore's Federal Practice § 106.24[6]  
25 (3rd ed. 1999) (noting that Galt "seem[s] to reject, or at least  
26 ignore, a single-injury approach with regard to multiple  
27 causation"). However, Galt does not stand for the proposition that  
28 a carrier's claims against a third party will always form a  
separate case or controversy. The relationship apparent here,  
between Devincenzi's claim and Travelers' claim, is stronger than  
the relationship that existed in Galt, between Hapag-Lloyd's  
allegations and Galt's allegations. In Galt, Hapag-Lloyd and Galt  
each expounded an independent theory as to how the ham was, in

1 fact, damaged. The facts necessary to prove one theory (damage in  
2 transit) were separate from the facts needed to prove the competing  
3 theory (damage in Safeway's storage). Damage that was caused in  
4 storage bore no causal relationship to damage that occurred in  
5 transit. In contrast, both Travelers and Devincenzi allege that  
6 Marinpak's machinery was damaged when it hit the overpass. There  
7 is a direct causal link between Carrix's alleged negligence and the  
8 event that, all parties agree, caused the injury. Devincenzi  
9 merely alleges an additional link in the causal chain that lead to  
10 that injury (i.e., Carrix's negligence), and not an independent  
11 chain that precludes Devincenzi's own involvement or liability.  
12 This is a claim that a third party's negligence contributed to an  
13 injury that clearly occurred during carriage, rather than a claim  
14 that a third party's acts independently caused that injury after  
15 carriage. The Court finds that Devincenzi's claim bears "a common  
16 nucleus of operative fact" with Travelers' claim, and is related  
17 enough to support supplemental jurisdiction over Devincenzi's  
18 Complaint.

19 The Court also notes that Carrix's Reply contains a number of  
20 arguments that go to the merits of Devincenzi's claim, to show that  
21 "Devincenzi has no legal basis to assert a state law indemnity  
22 claim against Carrix/SSA for this loss." Reply at 4-5. These  
23 arguments include citations to the California Vehicle Code and  
24 cases applying indemnity principles in similar situations. Id.  
25 These arguments go well beyond the jurisdictional arguments set out  
26 in Carrix's initial Motion. Devincenzi may not, in its Reply,  
27 present new arguments that have the effect of converting its  
28 12(b)(1) motion into a 12(b)(6) motion. Devincenzi has had no



1 opportunity to respond to these arguments, and this Court therefore  
2 does not consider Carrix's arguments on the merits.

3 Devincenzi has also indicated that it has discovered that "the  
4 actual entity in charge of the terminal and dock at the Port of  
5 Oakland was a California entity, SSA Terminals (Oakland), LLC," and  
6 it has requested leave to file an amended third-party complaint  
7 that also names this party as a defendant. This Court should  
8 freely give such leave when justice requires. Fed. R. Civ. P.  
9 15(a)(2). Carrix's only objection is that amendment would be  
10 futile because this Court lacks subject matter jurisdiction over  
11 Devincenzi's claim -- an argument that the Court rejects for the  
12 reasons stated above. Devincenzi is therefore granted leave to  
13 amend its third-party complaint.

14

15 **V. CONCLUSION**

16 Carrix's Motion to Dismiss is DENIED. In addition,  
17 Devincenzi's request for leave to amend its third-party complaint  
18 is GRANTED. Devincenzi must file the amended third-party complaint  
19 within seven (7) days of the date of this Order.

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21 IT IS SO ORDERED.

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23 Dated: March 15, 2010

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UNITED STATES DISTRICT JUDGE

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