

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
OCALA DIVISION**

GREAT AMERICAN INSURANCE
COMPANY OF NEW YORK, as
subrogee of BRINGER
CORPORATION,

Plaintiff,

v.

Case No: 5:15-cv-197-Oc-30PRL

FORWARD AIR, INC., a foreign
corporation,

Defendant.

ORDER


THIS CAUSE comes before the Court upon Defendant Forward Air, Inc.'s Motion to Dismiss Count II of Complaint and Strike Fee Claim (Doc. 6) and Plaintiff's response consenting to the relief requested by Defendant (Doc. 9). By its motion, Defendant seeks dismissal with prejudice of Plaintiff's claim for negligence (Count II), arguing that the claim for negligence under state law is preempted by the Carmack Amendment of the Interstate Commerce Act under which Plaintiff seeks relief in Count I. (Doc. 6 at 2-6). Defendant also seeks to strike Plaintiff's request for attorney's fees (Doc. 1, ¶ 23) because Defendant argues that attorney's fees are not recoverable under the Interstate Commerce Act for cases involving non-household goods.

Plaintiff consents to dismissal of its claim for negligence (Count II) and its request for attorney's fees. (Doc. 9). However, Plaintiff requests that such dismissal be made without prejudice.

Accordingly, it is therefore **ORDERED AND ADJUDGED** that:

1. Defendant Forward Air, Inc.'s Motion to Dismiss Count II of Complaint and Strike Fee Claim (Doc. 6) is GRANTED.
2. Count II of the complaint is DISMISSED without prejudice.
3. Plaintiff's request for attorney's fees (Doc. 1, ¶ 23) is STRICKEN.

DONE and **ORDERED** in Tampa, Florida, this 12th day of May, 2015.



JAMES S. MOODY, JR.
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel/Parties of Record