

COLIN TURNER, ET AL

STATE OF LOUISIANA

VERSUS

COURT OF APPEAL

MILLER TRANSPORTERS, INC.

FIRST CIRCUIT

*Consolidated with*

EDWARD E. SKELTON, ET AL

NUMBER 2002 CA 2278

VERSUS

MILLER TRANSPORTERS, INC.

C/W NUMBER 2002 CA 2279

ON REHEARING.

The scope of this rehearing is limited to the single issue of whether a federal or state statute of limitations should apply to the allegation of damages that arose on or after January 1, 1996 by plaintiffs, Turner Transporter, Inc., et al., against defendant, Miller Transporters, Inc. The issue of a federal statute of limitations was not raised at trial or on appeal; instead the dispute among the parties focused on the statutes of limitations for Louisiana and Mississippi. Our initial opinion held that Mississippi law governed because the parties had expressly agreed that the contracts would be interpreted under Mississippi law. This court's decision in the instant case, however, held that the enactment of 49 U.S.C. § 14704(a)(2) created a federal private right of action as of January 1, 1996, for damages in commercial disputes involving a violation of the regulations of the Interstate Commerce Commission Termination Act (ICCTA), which preempted the states' laws. **Turner v. Miller Transporters, Inc.**, 2002-2278 (La. App. 1 Cir. 6/27/03), 852 So.2d 478. The federal statute's preemptive role concomitantly raises the issue of the existence of a federal statute of limitations relative to the federal causes of action.

The determination that a private agreement cannot supercede a federally enacted cause of action for damages necessitates that this court consistently find

*But*  
*F.T.*  
*with P*  
*attached*  
*report on*  
*response*  
*rehearing*

that the federal statute of limitations would likewise override any agreements among the parties that Mississippi law would generally prevail. Pursuant to 28 U.S.C. § 1658(a), Congress has invoked a four-year statute of limitations when specific limitations periods have not been enacted for federal causes of actions.<sup>1</sup> As circumstance would have it, the resulting four-year period constitutes the identical time limitation as the Mississippi statute of limitations. It is, therefore, in the interest of intellectual consistency that our holding is hereby amended to provide the appropriate legal principle.

**ORIGINAL COURT OF APPEAL JUDGMENT AFFIRMED, AS AMENDED.**

---

<sup>1</sup> In *Fitzpatrick v. Morgan Southern, Inc.*, 261 F. Supp.2d 978 (W.D. Tenn. 2003), the court held that a two-year statute of limitations should apply to the private right of action for damages under 49 U.S.C. § 14704(a) (2). The *Fitzpatrick* court creatively observed that, as a result of a scrivener's error when the ICCTA was codified, section 14704(a)(2) of the "Truth-in-Leasing" Regulations was mistakenly moved from 49 U.S.C. § 14704(b), to which a two-year statute of limitations applies. *Fitzpatrick*, 261 F.Supp.2d at 985 n. 8. We decline to infer such a federal statute of limitations in the absence of legislative fiat.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2002 CA 2278

COLIN TURNER, ET AL

VERSUS

MILLER TRANSPORTERS, INC.

*CONSOLIDATED WITH*

2002 CA 2279

EDWARD E. SKELTON, ET AL

VERSUS

MILLER TRANSPORTERS, INC.

ON REHEARING

**GUIDRY, J., agrees in part, dissents in part and assigns reasons.**

**GUIDRY, J., agreeing in part and dissenting in part.**

I agree with the judgment on rehearing to the extent that it finds that a federal statute of limitations applies to claims of damages that arose on or after January 1, 1996. However, I believe that the majority errs in finding that because none of the provisions in 49 U.S.C. § 14705 directly references 49 U.S.C. § 14704(a)(2), the general federal statute of limitations provided in 28 U.S.C. § 1658(a) should apply (that provision provides for a 4-year statute of limitation). See 49 U.S.C. § 14705(b) and (c) (which specifically reference §§ 14704(c)(1) and 14704(b), respectively, as providing the statute of limitations for those sections.) The majority merely glosses over the case of Fitzpatrick v. Morgan Southern, Inc., 261 F.Supp.2d 978 (W.D. Tenn., 2003), which reaches a different conclusion, in a footnote. I believe that the decision reached by the Fitzpatrick court is correct and

a better determination of the issue of what statute of limitations applies to causes of action brought pursuant to 49 U.S.C. § 14704(a)(2).

In Fitzpatrick, the court acknowledged that there was no express statute of limitation provided to bring an action pursuant to 49 U.S.C. § 14704(a)(2); however, based on the alleged scrivener's error raised by the appellant in that case, the court considered the legislative history of 49 U.S.C. § 14704(a)(2), and related statutes (i.e., 49 U.S.C. § 14705) to conclude that the two-year statute of limitations period provided in 49 U.S.C. § 14705(c) applied to actions brought pursuant to 49 U.S.C. § 14704(a)(2). Fitzpatrick, 261 F.Supp.2d at 986-987. Based on the reasoning and legislative history outlined in the Fitzpatrick opinion, I believe that the appropriate statute of limitations to apply in this matter is the two-year period referenced in 49 U.S.C. § 14705(c).

Therefore, I respectfully dissent in part.