

R. J. Kolencik v. The Stratford Insurance Co., No. 06-12136, 2006 U.S. App. Lexis 21964 (11th Cir. Aug. 28, 2006) (unpublished)

Plaintiff obtained a judgment against a carrier. Plaintiff filed suit seeking to enforce the judgment against Stratford Insurance Company. Stratford filed a motion for summary judgment on the grounds that its policy was canceled several months prior to the accident. Plaintiff contended Stratford could not rely upon the cancellation because it failed to comply with O.C.G.A. § 46-7-12. However, the carrier never registered with the State. The district court granted summary judgment. The Eleventh Circuit affirmed, holding “[h]ad Stratford attempted to file a notice of cancellation with the State, it would have been rejected and returned. . . . We agree with the district court that the law cannot require an impossible act.” 206 U.S. App. Lexis 21964, at *3-4.

Knight v. Swift Transportation Co., Inc., Civ. No. 1:05-CV-1060-JEC, 206 U.S. Dist. Lexis 56551 (11th Cir. July 31, 2006)

Plaintiff alleged that a Swift tractor-trailer pulled in front of him causing his vehicle to leave the roadway and overturn. There were no witnesses to the accident. When investigating officers questioned the plaintiff on the scene about the accident, he could only describe the other vehicle as a truck. One week later, he saw a Swift tractor-trailer. He then identified Swift as the motor carrier that ran him off the road. Swift moved for summary judgment arguing the plaintiff presented no evidence that Swift owned, hired or borrowed the tractor-trailer and that there was no evidence any agent or employee of Swift was driving the truck. The district court granted Swift’s motion holding Georgia law “provides that, as plaintiffs have produced no evidence that defendant Swift owned or leased that tractor-trailer, or that one of its agents was driving the truck, plaintiff cannot prevail.” 206 U.S. Dist. Lexis 56551, at *17.

Altadis U.S.A., Inc. v. Sea Star Line, LLC, et al., 458 F.3d 1288 (11th Cir. 2006)

Plaintiff contracted with Sea Star to transport a shipment of cigars from Puerto Rico to Tampa, Florida. Sea Star issued an ocean through bill of lading upon receipt of the shipment in Puerto Rico. Sea Star handled the ocean carriage. Sea Star contracted with American Trans-Freight (ATF) to handle the inland carriage. ATF took possession of the cargo, and it was subsequently stolen. Both carriers moved for summary judgment on the grounds that plaintiff failed to bring suit within the one year statute of limitations provided by the Carriage of Goods by Sea Act (“COGSA”). The district court granted the motion. The Eleventh Circuit affirmed, holding “[i]n the absence of a separate domestic bill of lading covering the inland leg – the Carmack Amendment, and its two-year minimum statute of limitations, does not apply to this maritime contract covering the shipment pursuant to a single through bill of lading which governs the ocean voyage from Puerto Rico to Jacksonville and also the inland transportation to Tampa.” 458 F.3d at 1294.

Frey v. Gainey Transp. Servs., Civ. No. 1:05-CV-1493-JOF, 2006 U.S. Dist. Lexis 59316 (N.D. Ga. August 22, 2006)

The accident occurred on November 10, 2003. On November 20, 2006, Frey's attorney sent Gainey's safety director a spoliation letter which requested the preservation of many documents, including all Qualcomm records. The Qualcomm satellite records were not retained. Plaintiff moved to strike Gainey's answer or, in the alternative, receive a jury instruction for spoliation of evidence. The district court applied the five factor analysis set forth by the Georgia Court of Appeals in *Bridgestone/Firestone North American Tire, LLC v. Campbell*, 258 Ga. App. 767 (2003). The district court denied the motion finding the Plaintiff "has already secured testimony from the driver as to his activities on November 9-10. . . [and the Qualcomm data was irrelevant] "to the allegedly unsafe practices of Gainey's other truck drivers and therefore [the data] would not advance" her claims of negligent supervision and punitive damages. 2006 U.S. Dist. Lexis 59316, at *23.