

PROMPT ASSESSMENT OF CARGO CLAIMS CAN LEAD TO REDUCED LITIGATION COSTS

Trucking & Transportation Practice Group

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As gas prices soar and trucking companies become increasingly sensitive to the rising costs of business, greater emphasis is being placed on effective risk management and claims handling.

For this reason, quickly and objectively coming to terms with the strengths and weaknesses of claims has become more important than ever. Some of the most common claims faced by the trucking industry are those stemming from cargo damage.

Keeping litigation in check is the Carmack Amendment (49 U.S.C. § 14706) to the Interstate Commerce Act, which is a federal statute providing a uniform national framework governing cargo damage claims. The statute applies to claims against motor carriers and freight forwarders, but not to transportation brokers. When it applies, the Carmack Amendment sets forth the only cause of action available to a shipper for loss or damage to goods arising from the interstate transport of goods.

Under the Amendment, the shipper need only show delivery of goods to the carrier in good condition, arrival of such goods from the carrier in damaged condition, and the amount of damages. The carrier is liable for damages to its cargo unless the carrier is able to show that the carrier was not negligent *and* that the damage was caused by (a) an act of God; (b) a public enemy; (c) the act of the shipper; (d) public authority; or (e) the inherent vice or nature of the goods.

If the carrier is liable, what must the carrier pay?

The Carmack Amendment allows the shipper to recover for any actual loss or damage to the property. Specifically, the shipper's damages are calculated by the difference between the market value of the property in the condition in which it should have arrived, as opposed to the market value of the condition in which the property actually arrived. In addition to recovering the fair market value of the damaged or lost cargo, some courts will allow the shipper to receive reimbursement of the freight charges.

How can a carrier limit its exposure to cargo claims?

A carrier may offer the shipper a lower shipping rate in exchange for the shipper's agreement to limit the carrier's exposure to a set value, which is usually lower than the actual value of the goods. In order to have the option of offering the lower shipping rate and corresponding limitation

of liability, the carrier must: (a) maintain approved tariff rates; (b) give the shipper a fair opportunity to choose between two or more levels of liability; (c) obtain the shipper's written agreement as to the choice of liability; and (d) issue a receipt or bill of lading before moving the shipment.

The carrier seeking to limit its liability must bring the proposed limitation to the attention of the shipper, and the shipper must be given a choice to hire the carrier whether with or without the damages limitation. In order to enforce the damages limitation, the carrier must show a well informed and deliberate choice by the shipper to limit the carrier's exposure in exchange for a reduced shipping rate.

What additional restrictions govern carriers of household goods?

The Carmack Amendment provides additional protection to shippers where the carrier is delivering household goods. Specifically, federal regulations require the carrier to make certain mandatory written disclosures to the shipper. In the absence of such disclosures, the shipper may be precluded from limiting its own exposure and, therefore, liable for the full actual value of the damage or loss. Even where a carrier makes all of the appropriate disclosures to the shipper, the Amendment states that a carrier shipping household goods may only limit its exposure to a value that would be "reasonable under the circumstances."

What claims may escape the protective umbrella of the Carmack Amendment?

Many courts have found that the Carmack Amendment preempts all causes of action, whether they are based upon state or federal law. However, some courts have disagreed, stating that only claims *based on the loss or damage* to the shipped goods are preempted. Therefore, where a shipper's claims are based on conduct separate and distinct from the delivery, loss of, or damage to the goods, some courts have found that these claims survive and are not preempted by the Carmack Amendment. Certain courts have gone a step further, stating that the Carmack Amendment may not bar punitive damages where the carrier acted with actual malice or reckless or wanton indifference to the rights of the shipper.

Transportation companies, risk managers and claims representatives consistently face cargo damage claims. Given the climate of today's marketplace and the ever increasing stress on companies to reduce claim-related costs, it is now more important than ever to quickly and accurately evaluate the liability and damages aspects of such claims in order to effectively manage their handling and resolution.

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