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Fundamentals of the Carmack Amendment

by Daniel W. Raab, Esq.



The Carmack Amendment, 49 U.S.C.A. 14706, is a statute that regulates the liability of domestic carriers that travel across state lines within the United States. This article concentrates on this statute as it applies to commercial motor carriers. Although there are some similar concepts for liability that are similar to ocean carriers, such as the defense of an act of nature, the Carriage of Goods by Sea Act and the Carmack Amendment are two distinct statutes with shorter limitations of liability than what would apply in a standard breach of contract or tort claim.

If you have a claim against an interstate trucker, it is a good idea to obtain a copy of the bill of lading. This is the contract that governs the terms and conditions of the contract. Oddly enough, some of the motor carrier's shipping clients might issue their own bills of lading if they can convince the motor carrier to accept such a bill of lading.

Under the Carmack Amendment, a motor carrier bill of lading can provide that any claim must be made within 9 months. This claim must be in writing if required under the bill of lading and should be specific as to the damages. It is best to assume that you will have to make such a claim within 9 months. I have gone so far as to hire a process server to serve a motor carrier. If you do not do this, you could lose your total claim. I would suggest serving the motor carrier directly with the claim, unless it's insurance carrier or attorney gives you written permission from the motor carrier to serve one of them.

If the claim is declined by the motor carrier, you will have two years and a day from the date of declination in order to file a lawsuit. I would suggest that you do it within two years to be on the safe side. The notice and the contractual provisions are very different from Florida Law which allows 4 years to file on a tort claim and 5 years on a breach of contract claim.

The Carmack Amendment does allow for a motor carrier to have a low limitation of liability. (2-15 Law of Commercial Trucking § 15.08) It is important that you be aware of this if you are going to undertake such a claim. These limitations of liability are usually upheld unless there is an act of fraud, theft, conversion, and intentional destruction of the property. (2-15 Law of Commercial Trucking § 15.08)

It is also important to offer the shipper an opportunity to declare and pay for a higher value. (2-15 Law of Commercial Trucking § 15.08) Frankly, a shipper should carry its own first party insurance.

Motor carrier insurance policies have many exclusions and deductibles. The author has encountered policies that state that they have an unattended vehicle endorsement but it is only applicable if it is unattended in a fenced in area with security.

A carrier's defenses include an act of nature, an act of the public enemy, an act of the shipper (poor packing), inherent vice of the nature of the goods, act of a public authority, and freedom from negligence.

If you have an intermodal shipment, which is where trucking is involved as part of an international ocean shipment and if the bill of lading provides that the entire shipment is governed by the Carriage of Goods by Sea Act, then the Carriage of Goods by Sea Act would most likely supercede the Carmack Amendment under the Supreme Court cases of *Norfolk Southern Ry. v. James N. Kirby, Pty Ltd.*, 543 U.S. 14 (U.S. 2004) and *Kawasaki Kisen Kaisha Ltd. v. Regal-Beloit Corp.*, 558 U.S. 969 (U.S. 2009). They provide for an extension of contractual liability. An example of this would be if a shipment went by ocean from London to Jacksonville and then by truck to Atlanta. Even if the loss happened while in the truck's possession, the liability could be subject to the Carriage of Goods by Sea Act as opposed to the Carmack Amendment. This becomes important because there is a 1 year statute of limitation under the Carriage of Goods by Sea Act and an issue of the \$500.00 per package limitation.

There is also an entity known as a surface transportation forwarder which usually consolidates cargo and is subject to the Carmack Amendment. It does not actually own and operate motor vehicles but can be sued as a motor carrier under the Transportation Terms and Conditions, Raab, p. 26.

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There is a third type of entity involved in interstate transportation which is a surface transportation broker which serves as a booking agent and is excluded from the Carmack Amendment. However a transportation broker acts as a motor carrier on a shipment, it can be sued as a motor carrier and be subject to the Carmack Amendment. This has been the subject of litigation. The author was involved in the case of *Active Media Servs. v. CAC Am. Cargo Corp.*, 2012 U.S. Dist. LEXIS 139785 (D.N.Y. 2012) where the broker was held not to be a motor carrier under the Carmack Amendment.

This article is intended to cover some of the basic issues that you might encounter in a Carmack Amendment case against a motor carrier.

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