

TLA
Transportation Lawyers Association

CHICAGO

Regional Seminar and Bootcamp

January 23–24, 2025

Radisson Blu Aqua Hotel ❁ Chicago, IL





MOTOR CARRIER LIABILITY (PART 1)

- Panelists:** **Kathleen C. Jeffries**, Partner, Scopelitis Garvin Light Hanson & Feary, Pasadena, California
- Daniel R. Sonneborn**, Director, PretiFlaherty, Boston, Massachusetts
- M. Gordon Hearn**, Partner, Gardiner Roberts, Toronto, Ontario
- Carlos M. Sesma Jr.**, Partner, Sesma, Sesma & McNeese, Monterrey, Mexico



Nuts and Bolts of Motor Carrier Cargo Claim Liability in the United States

- What is the governing law?
- What claims are covered by the Carmack Amendment?
- What's required to establish liability under Carmack?
- What damages are recoverable under Carmack?
- What defenses are available to the near strict liability imposed by Carmack?



Scope of the Carmack Amendment

- Federal law governing interstate cargo claims (49 U.S.C. § 14706)
- Preempts state court causes of action, limiting theories of recovery to Carmack only and limiting recoverable damages
- But does not cover all cargo claims
 - Does not protect brokers (with limited exceptions)
 - Does not apply to exempt shipments
 - Does not apply when it has been waived through contract
 - Applies when services are intrastate part of interstate move, but not to purely intrastate moves



Procedural Issues: Removal to Federal Court

- Carmack confers federal courts with jurisdiction over cargo claims
- Cases filed in state court may be removed to federal court if Carmack asserted in complaint or counts stated are preempted by Carmack and certain requirements are met
 - Amount in controversy in excess of \$10K for *each* bill of lading
 - 30-day deadline from service
 - Consent of all served defendants required



Procedural Issues: Venue

- Venue options set by statute: 49 USC §14706(d)(1)
 - An action can be brought:
 - Against the delivering carrier in a judicial district or state through which the carrier operates
 - Against the carrier responsible for the loss or damage where the loss or damage is alleged to have occurred
- Carmack preempts forum selection clause in parties' contract
 - Many Carmack cases do get transferred based on FSC where defendant does not raise preemption issue



Burden of Proof under Carmack

- A claimant/plaintiff need only prove three facts to establish a prima facie case of liability against a carrier:
 - The cargo was in good condition (for damage claim) or full count (for shortage claim) when received by the motor carrier at origin;
 - The cargo was in damaged condition or short at destination (or failed to arrive); and
 - The amount of actual damages suffered through the loss or damage.



Burden of Proof under Carmack

- No liability established without adequate proof of all three prongs
- Bill of lading, standing alone, does not establish good origin condition where the cargo is in a sealed trailer or otherwise not open to inspection
- Clean delivery receipt establishes a presumption of good condition which the claimant must overcome with a clear showing that damage existed at delivery
- If no clear proof of the amount of that loss or damage is presented, a plaintiff cannot recover anything from the carrier



Measure of Damages under Carmack

- If a plaintiff is able to establish all three prongs of the shipper's prima facie case, the carrier is deemed liable for “the actual loss or injury to the property.”
 - For damaged goods, difference in market value from point of origin to point of destination less salvage
 - For lost goods: invoice value of goods if presold
 - No lost profits unless reasonably foreseeable
 - No attorneys' fees
 - No consequential or punitive damages
- Damages may be limited



Defenses Potentially Available to Carrier

- Claimant's failure to establish prima facie case
- Time bar: claim-filing and suit-filing
- Limitation of liability
- Act of God *
- Act of the shipper *
- Inherent vice of goods *
- Act of public enemy/war *
- Act of public authority *

* Requires showing that this was cause of loss or damage *and* carrier was free from negligence



Time Limitations

- Carmack: nine-month claim-filing and two-year suit-filing “rules”
 - Time periods are permissive – *not* a statute of limitations
- Enforceable only if adopted by carrier in contract, incorporated tariff, bill of lading or other freight documents
 - Note that uniform bill of lading contains the time limits
- Claim-filing period begins at delivery or expected time of delivery for missing items
- Suit-filing period begins at claim declination
- Without binding suit-filing deadline, state statute of limitations may apply



Limitation of Liability

- Carmack (§ 14706(c)(1)(A)) permits carriers to limit their liability for loss or damage through written agreement between the carrier and the shipper
- The written agreement requirement may be satisfied through an express contract between the parties or incorporation into the transportation documents of the carrier's tariff provisions



Limitation of Liability

- Four-part test used to determine validity of limitation:
 - Maintain a tariff with clear limitation provision and make it available to shippers
 - Give the shipper a reasonable opportunity to choose between two or more levels of liability;
 - Obtain the shipper's agreement as to its choice of liability; and
 - Issue a bill of lading prior to moving the shipment.



Act of Shipper

- Defense raised when “act or omission of the shipper or owner of the goods or their agent” is the cause of damage to the cargo
- Typical application of defense is improper packaging, loading or securing
 - Not helpful to carrier if packaging or loading defect is obvious or carrier’s handling is outside the norm
 - Not helpful to carrier that failed to comply with 49 C.F.R. 392.9 requirement of confirming that cargo is properly secured



Inherent Vice or Nature of Goods

- Carrier has the burden of establishing that the damaged condition of the goods at destination was due solely to inherent vice
- “Inherent vice” = “any existing defects, diseases, decay or the inherent nature of the commodity which will cause it to deteriorate with the lapse of time.”
- Defense typically involves goods such as fruits, vegetables, cheese and tobacco
- If carrier contends only part of shipment was damaged by an inherent vice, it must show what portion



Act of Public Enemy or War

- Rarely arises in motor carrier cargo claim cases
- Typically limited to loss or damage caused by hostile acts of military forces which are the enemies of the government
 - Outside the influence of either carrier or shipper
- Arson “may be the act of a public enemy”



Act of Public Authority

- Like act of public enemy defense, this defense rarely arises
- Actions such as police seizure, quarantines, road closures or trade embargoes apply under this exception
- Police barricade of accident scene purportedly preventing carrier from recovering the load and making timely delivery may qualify as an “act of public authority”



Nuts and Bolts of Cargo Claim Liability in Canada

- No Federal regime such as with the FMCSA
- Motor carrier liability regulated at the provincial level
- Deemed application of “Uniform Bill of Lading” – most provinces
- No “Preemption” or “Removal”
- “Superior Courts” or Small Claims Court of the Provinces
- Possible filing in Federal Court of Canada (where truck undertaking tied into a multi-modal air or maritime shipment)



The “Uniform Bill of Lading” in Canada

- Essentially identical burden of proof:
 - Shipper proves the contract and the damages
 - “Good In / Bad Out”
 - Carrier has onus of proving defences
- Two key and fundamental differences:
 - ***Notice of Claim*** (60 days for loss or damage + 9 months for non-delivery . . . and submission of proof of payment of freight bill within 9 months)
 - ***Deemed Limitation of Liability to \$2 per pound*** unless a value was declared on the bill of lading or the contract of carriage
- Canada is a “*Hadley v. Baxendale*” country – *generally* no liability for consequential damages



Limitation of Liability - Canada

➤ Sample bill of lading provisions:

9. *Valuation*

Subject to Article 10, the amount of any loss or damage for which the carrier is liable, **whether or not the loss or damage results from negligence**, shall be the **lesser of**,

- i. **the value of the goods at the place and time of shipment**, including the freight and other charges if paid, and
- ii. **\$4.41 per kilogram** computed on **the total weight** of the shipment.

10. *Declared Value*

If the consignor has **declared a value of the goods on the face of the contract of carriage**, the amount of any loss or damage for which the carrier is liable shall not exceed the declared value.

- Prescribed rules for “Goods of Extraordinary Value” and “Undeliverable Goods”

Limitation of Liability - Canada

DECLARED VALUATION FOR CARRIAGE \$_____ . Maximum liability of \$2.00 per pound (\$4.41 per kilogram) computed on the total weight of the shipment, unless declared valuation states otherwise.

Consignor _____ Carrier: _____

Per Per

RECEIVED IN APPARENT GOOD ORDER EXCEPT AS NOTED ON THIS BILL OF LADING

Per	Consignee	Date.
-----	-----------	-------

NOTICE OF CLAIM

- (a) No carrier is liable for loss, damage or delay to any goods under the Bill of Lading unless notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the originating carrier or the delivering carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment.
- (b) The final statement of the claim must be filed within nine (9) months from the date of shipment together with a copy of the paid freight bill.



Limitation of Liability – Canada

- Issues on application / trigger:
 - Issuance of a compliant bill of lading?
 - Who bears this responsibility?
 - Multi-modal carriage context
 - “Freedom of contract” – huge . . . Stayed tuned to Panel 2



Time Bars for Suit in Canada

- Decided as a matter of substantive law – what is the law of the contract?
- 2 or 3 years from the date the “cause of action” arose



Nuts and Bolts of Cargo Claim Liability in Mexico

Applicable Law

- International and intrastate transportation are both managed at a Federal level of law and courts
- The Law of Roads, Bridges and Federal Autotransportation (LRBFA) along with its corresponding Regulations are the applicable Federal statute
- Bill of lading is the default contract between consignor and carrier



Liability Regime - Mexico

- Mexican Commerce Code and LRBFA establishes that carriers, duly licensed to operate by the Mexican DOT, are responsible for losses and damages to cargo they transport, from the moment they receive the cargo until the moment they deliver the product.
- If shipper does not declare the value of the cargo then carriers, which are duly licensed to operate by the Mexican DOT, have a statutory limit of liability for loss or damage to cargo equivalent to 15 measure units (approx. USD\$50.00 dollars per ton of cargo).



Excluded Cases - Mexico

- Inherent vice or inadequate packaging of cargo
- The cargo due to its own nature deteriorates
- Loss or damaged cargo which was transported in open vehicles as per instructions of shipper if by nature it needed to be transported in closed vehicle
- False declarations of wrong instructions from shipper



Important Considerations - Mexico

- Statutory limit of liability is only applicable to carriers which are duly registered before the Mexican DOT
- Shipper can declare value to carrier to make carrier liable up to such declared value and carrier can charge back to shipper for insurance costs
- Declaration of value makes carrier liable even in cases of Force Majeure or Acts of God
- Statutory limits of liability are waivable by contract