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The Carmack Amendment: Implications for Liability for Claims Against Interstate Carriers

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The 1906 Carmack Amendment was originally enacted to govern bills of lading in the rail transportation industry. The Amendment has been altered and recodified over the last century. In its current form, the Amendment provides a uniform national system of liability for interstate rail and motor carriers. *See* 49 U.S.C. § 11706 and 49 U.S.C. § 14706, respectively. In general, Carmack provides a federal cause of action that allows a shipper to bring a cause of action against certain carriers for property damage, and also provides carriers with a basis to limit their liability.

Preemption of State-Law Claims and Removal

Courts have uniformly held that the Carmack Amendment preempts all state and common-law claims and provides the sole and exclusive remedy to shippers for loss or damage in interstate transit. *Hughes Aircraft v. North American Van Lines*, 970 F.2d 609, 613 (9th Cir. 1992). The preemptive effect of the Carmack Amendment also applies to claims of damage or loss relating to storage and other services rendered by interstate carriers, *Margetson v. United Van Lines, Inc.*, 785 F.Supp. 917, 919 (D. N.M. 1991), and for delay or the failure to deliver cargo. *Hall v. North American Van Lines*, 476 F.3d 683 (9th Cir. 2007). Additionally, causes of action for negligence, breach of insurance contract, breach of contract of carriage, conversion, intentional misrepresentation, negligent misrepresentation, and negligent infliction of emotional distress are also preempted by the Amendment. *See R.H. Fulton v. Chicago, Rock Island & Pacific R.R. Co.*, 481 F.2d 326 (8th Cir. 1973).

The Amendment itself allows a civil suit to be brought against a carrier in either state or federal court. However, when the damages exceed \$10,000, federal courts retain original jurisdiction over an action brought under Carmack, and the matter may therefore be removable from state to federal court. *See* 28 U.S.C. § 1337. Plaintiffs will often attempt to include well-pleaded, state-law claims to defeat removal. Under the “well-pleaded complaint” rule, a plaintiff may avoid federal jurisdiction by exclusive reliance on state law. *Caterpillar v. Williams*, 482 U.S. 386, 392 (1987). This rule applies even though the defense is solely grounded in federal law, or where the parties agree that the claim involves federal law. *Id.*

However, the recent trend has been for federal courts to find that Carmack completely preempts even well-pleaded, state-law claims, thus allowing removal to federal court (so long as

the \$10,000 amount-in-controversy requirement is met). *See, e.g., Hall v. North American Van Lines*, 476 F.3d 683 (9th Cir. 2007); *Hoskins v. Bekins Van Lines*, 343 F.3d 769 (5th Cir. 2003); and *Hughes Aircraft*, 970 F.2d at 613. Nonetheless, under certain narrow circumstances, the inclusion in the complaint of state-law claims, such as intentional infliction of emotional distress, may prevent removal to federal court. *See, e.g., Gordon v. United Van Lines, Inc.*, 130 F.3d 282, 289 (7th Cir.1997).

Liability under the Carmack Amendment

Carmack provides that any common carrier receiving property for transportation in interstate commerce must issue a receipt or bill of lading to the shipper. Carmack imposes liability upon receiving carriers, *and* delivering carriers, for damage caused during the transportation of goods under the bill of lading, regardless of which carrier caused the damage. Carmack's purpose is to relieve cargo owners "of the burden of searching out a particular negligent carrier from among the often numerous carriers handling an interstate shipment of goods." To help achieve this goal, Carmack constrains the carriers' ability to limit liability by contract. *Kawasaki Kaisen Kaisha Ltd. v. Regal-Beloit Corp.*, 130 S.Ct. 2433 (U.S. 2010).

Thus, the Amendment provides that the receiving carrier (the first carrier in the shipping chain), and the delivering carrier (which ultimately delivers the cargo), will each be liable to the shipper (or any other lawful holder of the receipt or bill of lading) for loss, damage, or injury to the property before its delivery to the consignee. This liability attaches whether the loss, damage, or injury is caused by the receiving carrier, or by any other carrier to which the property might be delivered, or over whose lines it might pass.

Although Carmack allows the shipper to elect to recover damages from a receiving carrier, or the delivering carrier, those carriers are not left "holding the bag" if it can be shown that another carrier is at fault for the alleged loss. In such a case, that carrier is entitled to recover the amount required to be paid to the owners of the property from the carrier over whose line or route the loss or injury occurred. That carrier is also entitled to recover the amount of its expenses reasonably incurred in defending a civil action brought by the plaintiff. 49 U.S.C. § 14706(b).

Limitation of Liability under Carmack

Carmack includes special rules that allow a shipper to limit liability. First, a carrier may limit its liability for any such damage under 49 U.S.C. § 10730, which provides that "[t]he Interstate Commerce Commission ("ICC") may require or authorize a carrier ... to establish rates for transportation of property under which the liability of the carrier for that property is limited to a value established by written declaration of the shipper, or by a written agreement, when that value would be reasonable under the circumstances surrounding the transportation."

The ICC allows a carrier to file a written document, known as a "tariff," which sets forth terms and conditions of shipment, available freight rates, and other relevant information, including any *applicable liability limitations*. Before a carrier's attempt to limit its liability will be effective, the carrier must: (1) maintain a tariff in compliance with ICC requirements; (2) give

the shipper a reasonable opportunity to choose between two or more levels of liability; (3) obtain the shipper's agreement as to his choice of carrier liability limit; and (4) issue a bill of lading before moving the shipment that reflects any such agreement. *Rohner Gehrige Co., Inc. v. Tri-State Motor Transit*, 950 F.2d 1079, 1081 (5th Cir.1992); *Hughes v. United Van Lines, Inc.*, 829 F.2d 1407, 1415 (7th Cir.1987).

In addition to allowing a carrier to limit the *amount* of its liability, Carmack allows a carrier to limit the *time* for filing a claim. Under the Amendment, a carrier may, by contract, require that a claim be made to it by a shipper within nine months of the shipment. The carrier may also require that a civil action be instituted within two years after the denial of such a claim. 49 U.S.C. § 14706(e). The purpose of the claim period is to provide the carrier with knowledge that the shipper will be seeking reimbursement. *Taisho Marine & Fire Ins. Co. v. Vessel Gladiolus*, 762 F.2d 1364 (9th Cir. 1985). As a general rule, such written claims are liberally construed and the standard applied is one of substantial performance. The form of the written notice is less important than its adequacy in apprising the carrier of the basis for the claim and of the fact that reimbursement will be sought. *Wisconsin Packing Co. v. Indiana Refrigerator Lines, Inc.*, 618 F.2d 441, 444 (7th Cir. 1980).

Implications for Litigation

In any litigation involving claims against an interstate carrier, the insurer and defense counsel should be aware of Carmack and its implications. The defendant carrier should be contacted immediately to determine whether it has limited its liability through the use of a tariff. If so, defense counsel should move to dismiss any state-law claims at the outset of litigation and evaluate the potential for removal to federal court, if that venue is preferable to the state court. Additionally, if the defendant carrier has imposed notice requirements, the plaintiff's failure to comply with those may present another basis for dismissal or summary judgment. Finally, the defense should be mindful of deadlines for the amendment of pleadings or for the filing of contribution claims. When the defense investigation reveals that the property damage occurred on another carrier's watch, the Amendment will provide a basis to seek reimbursement of both the amount of the judgment or settlement, and reasonable attorney fees.