



North American Transportation Association

The Carmack Amendment

What You Need To Know About Cargo Claims

The Carmack Amendment is a law applied to motor carriers by Congress in 1935. It was adopted to achieve uniformity in rules governing interstate shipment.

The Carmack Amendment spells out rights, duties and liabilities of shippers and carriers when it comes to cargo loss. Rail and motor carriers are governed by the Carmack Amendment.

The Carmack Amendment states that claimants have a minimum of 9 months from the date of delivery to file a freight claim and states that motor or rail carriers are liable for the full loss. It applies to shippers and carriers involved with interstate shipments of all commodities.

Plaintiff's lawyers seeking recovery on behalf of their clients for cargo damage or loss incurred as a result of the interstate shipment of goods often file complaints alleging state law claims such as breach of contract, negligence and fraud. What Plaintiff's counsel does not know is that such state law claims are preempted by a federal law known as the **Carmack Amendment**.

The Carmack Amendment is a uniform national liability system for interstate carriers which provides certainty to both carrier and shipper. It specifically allows a carrier to require that all claims for loss or damage by a shipper be made in writing within nine months from the date of the loss. ***It also allows a carrier to limit its liability if all prerequisites have been met.***

The Carmack Amendment Preempts State Law Claims

The Carmack Amendment is presently codified at 49 U.S.C. Section 14706 et seq. **The 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 purpose of the Carmack Amendment is to provide

"...a uniform system of carrier liability that would provide certainty to both carrier and shipper by enabling the carrier to assess its risk and predict its potential liability for damages." 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.M. 1991). 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 **all preempted** by the Carmack Amendment.

How does Carmack work?

The Carmack Amendment holds the carrier liable for damages to the goods it transported, without proof of negligence, unless it can prove it was not negligent and/or one of the exceptions to liability applies.



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Under the Carmack Amendment to hold a motor carrier liable for cargo damage, the shipper must prove that:

- a) The goods were in good condition when given to the shipper
- b) The goods were damaged when delivered (or weren't delivered)
- c) The amount of damages

There are **five exceptions** outlined in the Carmack Amendment that a motor carrier can claim to deny liability for cargo damage:

- 1) an Act of God – weather, a tornado, flooding, acute driver illness
- 2) The public enemy
- 3) Act or Default of Shipper
- 4) Public Authority (the government)
- 5) The inherent vice or nature of the goods transported (**my favorite**)

The Carmack Amendment limits the motor carrier's liability to the actual loss or injury to the property. Courts have generally interpreted this to be the difference between the market value of the property in which it should have arrived at the destination, less the market value of the actual condition in which it arrives.

Hence there is an implied duty of the customer to mitigate its damages: they cannot simply sit back idly and do nothing. They have to make the most of the damaged cargo. This is an important defense carriers need to be aware of.

A Carrier May Require That Claims Be Made In Writing Within Nine Months.

Given that the Carmack Amendment provides a shipper with the sole remedy for interstate moves, all conditions precedent to bring a civil action under the Carmack Amendment must be satisfied. In particular, **a carrier may, by contract, require that a claim be made to it by a shipper within nine (9) months of the shipment and that a civil action be instituted within two (2) years after the denial of such a claim.** 49 U.S.C. Section 14706(e).

The nine (9) month limitation is a condition precedent to bringing a civil action. Consolidated Rail Corp. v. Primary Industries Corp., 868 F.Supp. 566, 577 (S. D. NY 1994). A cause of action will simply not accrue absent strict compliance with the claims limitation.

The purpose of a claim period is to provide the carrier with knowledge that the shipper will be seeking reimbursement. *Taisho Marine & Fire Insurance Co. v. Vessel Gladiolus*, 762 F.2d 1364 (9th Cir. 1985). There, the court held that the carrier's actual knowledge of damage to the property did not negate the requirement that written notice be given within the nine (9) month period.

The court granted the carrier's motion for summary judgment on the ground that the shipper did not comply with the requirement that it file a written claim within 9 months. The main policy behind the nine (9) months claim period is to allow the carrier the chance to investigate the claim so as to protect its interest.



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Carriers must incorporate these time frames (or their own more permissive standards) into the bill of lading or contract of carriage.

In a claim to carriers, the Carmack Amendment specifies that shippers must:

- 1) Use written or electronic communication
- 2) Include sufficient facts to identify the shipment or property involved
- 3) Assert liability against the carrier for loss, damage or delay
- 4) Demand a specified or determinable amount of money

Motor carriers can limit their liability under the Carmack Amendment.

Under the Carmack Amendment, a carrier can adopt a tariff that is applied to shipping rates based on the weight of goods, mileage required to transport, or the value of the goods. Shippers may agree to a lower shipping rate if they agree to limit the carrier's liability for the cargo. The Carmack Amendment provides that a carrier may limit its liability "to a value established by written declaration of the shipper or by a written agreement." 49 U.S.C. §14706(f).

In order to effectively limit its liability, a carrier must:

1. Maintain a tariff in compliance with the requirements of the Interstate Commerce Commission;
2. Give the shipper a reasonable opportunity to choose between two or more levels of liability;
3. Obtain the shipper's agreement as to its choice of carrier liability limit; and,
4. Issue a bill of lading prior to moving the shipment that reflects any such agreement.

Although the filing of a tariff alone will not limit a carrier's liability, the above requirements are satisfied when a shipper is given a "reasonable opportunity" to accept or deny the carrier's proposed limitation. *Hughes Aircraft*, 970 F.2d at 612. A "reasonable opportunity" means that the shipper had both reasonable notice of the liability limitation and the opportunity to obtain information necessary to make a deliberate and informed choice.

In *Schultz v. Auld*, 848 F.Supp. 1497, 1505 (Idaho 1993), the court held that a signature on the contract evidencing an acknowledgment and receipt of the contract and its terms was sufficient evidence of a reasonable opportunity to select among liability limitations. In fact, one court has gone so far as to say that a signature on the bill of lading is not actually required in order to limit the shipper's liability, but the shipper's mere acceptance of the contract is sufficient. *Johnson v. Bekins Van Lines Company*, 808 F.Supp. 545, 548 (E.D. Tex. 1992).

How should motor carriers respond to a cargo claim?

Motor carriers essentially have three choices when faced with a claim that they caused damage to cargo. They can either pay the full value of the cargo claim by the shipper, claim one of the five "outs" listed above, or pay under a proper limitation of liability.