WAITER, PLEASE SEND THIS BACK!
A SMORGASBORD OF FOOD TRANSPORT RIGHTS AND REMEDIES

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A. *Introduction: All or Nothing? – Or a Middle Ground*?

There has been a recent spike in cargo loss and damage litigation involving refrigerated food products (and other cargo, such as high value pharmaceuticals), traveling in temperature controlled trailers, in which the seal on such a load has either broken or malfunctioned. At the docks, this phenomenon is manifested by consignees rejecting entire truckloads of goods in the event that there is a missing or broken seal or a malfunctioning refrigeration or temperature control device. The bases for this rejection are often stated as fear of contamination and concern over violation of food safety laws and commensurate regulations promulgated by Congress and the FDA, including the Bioterrorism Act. This issue has spawned nationwide, fractious litigation, touching upon the paramount issue of whether, in the event of a broken or missing seal, a consignee can automatically reject an *entire* shipment, regardless of whether only some of the goods are damaged. Corollary issues include the repercussions of such a rejection, and rejections of non-perishable products, which are not for human consumption. These issues involve not only shippers, carriers (motor and maritime in particular), but also freight intermediaries such as transportation brokers. They will be discussed below.

B. *Take Your Medicine: The Consignee's Obligations*

Ordinarily, a consignee has a duty to accept delivery of goods. That duty is typically not excused by the fact that the goods are damaged. However, a consignee need not accept delivery, where "such damage renders the property practically valueless, having regard to the expense of acceptance and use, and to the purpose for which it was intended." *See Bosung Indust. Co. v. M.V. Aegis Sonic*, 590 F. Supp. 908, 914 (S.D.N.Y. 1984); *Cargill, Inc. v. S/S/ Nasugbu*, 404 F. Supp. 342, 349 (M.D. LA. 1975). Thus, in the event that a consignee receives damaged goods, the consignee should conduct a careful inspection, produce an inspection report jointly with the carrier's driver, segregate the damaged goods, and immediately notify the owner or shipper of the foodstuff cargo. A consignee should *not* automatically reject the load without further inquiry or inspection (but consignees often do so). From the motor carrier's perspective, drivers should be trained to take additional specific precautions with refrigerated shipments upon delivery to the consignee's premises. A clean bill of lading is often very convincing evidence for the motor carrier. However, if a shipper's representative evinces an intent to reject the entire shipment, the driver should request that the representative undertake an inspection of the *entire* shipment, if practicable, to determine which portions of the shipment are actually deleteriously impacted. Specific template documentation can be provided for the drivers of these type of shipments and for these situations. Although the exigencies of a bustling loading dock often vitiate attempts at careful inspection and documentation, these are situations in which drivers should be trained to insist upon at least a modicum of an inspection, with the extent of that inspection carefully noted on the lading document.

C. *Something Fishy: Foodstuff Exceptions May Swallow the Rule*

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Under some circumstances, however, courts have found consignees to have *reasonably* rejected an entire shipment of goods, where some but not all of the goods have been damaged during transport, or some of the goods are salvageable, particularly when food products are involved. For instance, in *Orient Overseas Container Line LTD v. Crystal Cove Seafood Corp.*, No. 10 Civ. 3166 (PGG), 2012 WL 463927 (S.D.N.Y. Feb. 14 2012), Crystal Cove contracted with Orient Overseas to transport a shipment of frozen tilapia from China to Smyrna, Tennessee. The cargo left China in good order. It then traveled by vessel, and then in Tennessee by railcar, and finally by truck to an intermodal storage facility. During transport, the carriers were to maintain the cargo temperature at -0.4 degrees Fahrenheit. Unfortunately, while the goods were being stored in the storage facility, the refrigeration unit in Orient's container malfunctioned, causing some of the fish to spoil. After testing 5 out of the 3,400 cartons of frozen tilapia, which exuded a horrendous stench, and finding that their temperature had elevated to 30 degrees, Crystal rejected the entire shipment. This rejection culminated in Orient suing Crystal for wrongfully refusing to accept delivery and failing to pay demurrage fees. Crystal counterclaimed for the market value of the shipment under the Carriage of Goods by Sea Act, 46 U.S.C. § 30701 *et seq*. ("COGSA")/ Crystal claimed that Orient acted negligently after discovering the broken refrigeration unit, and that its negligence caused damage to the cargo. Crystal sought the market value of the tilapia in its pristine, frozen condition.

Orient conceded that the tilapia shipment was in "good order and condition" when it received the shipment. The burden of proof then shifted to Orient, to show either that a statutory exception applied, *see American Home Assur. Co. v. Zim Jamaica*, 418 F. Supp.2d 537, 545 (S.D.N.Y. 2006) (*citing Atl. Mut. Ins. Co. v. CSX Lines, L.L.C.*, 432 F.3d 428, 433 (2nd Cir. 2005), or that "it exercised due diligence to avoid and prevent the harm." *See Lekas & Drivas, Inc. v. Goulandris*, 306 F.2d 426, 429 (2nd Cir. 1962); *Marine Office of America Corp. v. Lilac Marine Corp.*, 296 F. Supp.2d 91, 102-103 (D.P.R. 2003). COGSA requires a carrier to "use due diligence to 'make the ship seaworthy at the beginning of the voyage'; and to 'make the holds, refrigerating and cooling chambers, and all other parts of the ship in which goods are carried, fit and safe for their reception, carriage, and preservation.'" COGSA §§ 3(1)(a)-(c). The fact that Orient demonstrated that it conducted a pre-trip inspection of the container *before* the voyage, and discovered no defects in the refrigeration unit, was sufficient to meet this burden.

Once Orient satisfied the due diligence requirements, the burden shifted to Crystal, to establish that Orient was negligent in its handling of the cargo. *See Hartford Fire Ins. Co. v. Novocargo USA, Inc.*, 257 F. Supp.2d 665, 671-72 (S.D.N.Y. 2003). Ultimately, the court found that Orient *was* negligent in handling the cargo. *To wit*, after discovering the broken refrigeration unit which had caused the cargo damage, Orient waited two days before notifying Crystal of the malfunction, and then ignored Crystal's request that Orient immediately transload the tilapia into a container with a functional refrigeration unit. Instead, Orient let the tilapia set for five days, in a non-working container, in sweltering heat.

Moving on to damages, under COGSA, where the shipper has demonstrated that the carrier was negligent and that the negligence caused damage to the cargo, "the carrier must bear the entire loss unless he can show what portion of the damages is attributable to some cause for which he is not responsible." *See Schnell v. The Vallescura*, 293 U.S. 296 (1934); *M. Golodetz*

v. S/S Lake Anja, 751 F.2d 1103, 1111 (2d Cir. 1985); *Fortis Corporate Ins., S.A. v. M/V Cielo Del* Canada, 320 F. Supp.2d 95, 105-06 (S.D.N.Y. 2004). Where a carrier's negligence has rendered the cargo practically valueless, a shipper is *not* required to accept delivery of the damaged goods and, instead, may recover their replacement costs. *See Bosung Indus. Co. v. M.V. Aegis* Sonic, 590 F. Supp. 908, 915 (S.D.N.Y. 1984), *see also, Amstar Corp. v. S.S. Naashi, 75 Civ. 4895*, 1978 A.M.C. 1845 (S.D.N.Y. 1978) (upholding shipper's rejection of 358,664 pounds of sugar where bottom 1 to 2 inches of sugar in hold was contaminated by diesel fuel, even though 8 to 10 feet of sugar piled on top appeared to be sound and was later proven sound); *Kentucky Fried Chicken Int'l Corp*., 1988 U.S. Dist. Lexis 3225 at *9 (upholding KFC's rejection of shipment of chicken nuggets after "exposure to high temperatures had changed the color and flavor of the product so as to render it unfit for use in the franchise outlets."). The *Orient* court then awarded Crystal the market value of the tilapia, finding that Crystal had reasonably rejected the entire shipment, even though about half of the tilapia was salvageable.

Orient was unable to show that Crystal was responsible for any portion of the damages. Instead, the court found that the putrid odor emanating from the thawed fish could have adversely affected the pristine boxes of tilapia. Given the expense of testing, storing, and then attempting to sell the compromised fish, the court determined that Crystal Cove *was* within its right to reject the shipment, under COGSA, because the cargo upon arrival was practically valueless for its intended purpose. Thus, in the Court's view, Crystal Cove's rejection of the goods, without testing all of the fish or attempting to salvage them, was well within the realm of reason. (It did not matter to the court that Orient was subsequently able to sell the cargo at salvage for half of its worth.)

D. I'll Stop the Truck and Melt With You: Carmack Food Damage

The issue of damages within the food transportation context was further examined in *Land O'Lakes v. Superior Service Transportation of Wisconsin, Inc.*, 500 F. Supp.2d 1150 (E.D. Wis. 2007). In *Land O'Lakes*, Land O'Lakes ("LOL"), a dairy products manufacturer, agreed to ship about 40,000 pounds of butter from its Madison Dairy plant to Costco Wholesale, FOB, Costco's warehouse in New Jersey. Madison Dairy assigned the transport to Superior, which then, through Town Center Logistics, Inc., brokered delivery of the shipment to Runabout, a motor carrier. Runabout's president, Richardson, signed the bill of lading, acknowledging receipt of the shipment at the Madison Dairy facility. However, the shipment never reached Costco's New Jersey warehouse. On the way to the facility, Richardson was involved in an accident, in which the trailer suffered minor damages, and the cooling unit *remained operational*, and continued to maintain the required temperature.

An insurance adjuster with Owner Operator Services, Inc. ("OOS"), Roundabout's insurer, inspected the truckload and determined that the butter was still encased in the cardboard containers, wrapped in plastic, and that none of it had been exposed. Only 20% of the boxes were deformed. The rest had retained their original configuration. Nonetheless, Madison Dairy ignored OOS' requests that it take the goods back. Three weeks later, OOS sold the butter at salvage. Meanwhile, Madison Dairy replaced the shipment to Costco, and demanded that Superior and/or Runabout reimburse it for the invoiced amount. When both refused, LOL asserted claims against Superior and Runabout for loss of the butter shipment, pursuant to the

Carmack Amendment to the Interstate Commerce Commission Act, 49 U.S.C. § 14706. Subsequently, LOL moved for summary judgment on its Carmack claim, arguing that the shipment was delivered in good condition to Runabout for transport to New Jersey; but that, due to the accident, it never arrived.

For Runabout or Superior to be held liable under the Carmack Amendment, LOL had to demonstrate that: (1) it had delivered the shipment to the Roundabout in good condition; (2) the shipment was lost or damaged; and (3) the amount of damages. The burden would then shift to Runabout, to show that it was free from negligence and that the damage to the cargo was due to one of the excepted causes relieving a carrier from liability: "(a) the act of God; (b) the public enemy; (c) the act of the shipper himself; (d) public authority; (c) or the inherent vice or nature of the goods." *Miss. Pac. R.R. Co. v. Elmore & Stahl*, 377 U.S. 134, 137 (1964); *Allied Tube & Conduit Corp. v. S. Pac. Transp. Co.*, 211 F.3d 367, 370-71 (7th Cir. 2000). However, LOL was unable to establish that Runabout or Superior were liable under the Carmack Amendment when, other than Richardson having signed the bill of lading, LOL provided no other evidence that the load was in good condition when it was delivered to Roundabout. The court then denied LOL's affirmative motion for summary judgment. This is a critical component of any Carmack Amendment claim that is often overlooked by shippers seeking to prove the requisite Carmack Amendment elements. As this case exemplifies, if not proven, it can be fatal to a shipper's damage claim.

Superior then moved to dismiss LOL's claims, arguing that it never physically accepted delivery of the butter; never issued a bill of lading; and never provided actual transport, since the load was brokered by Town Center Logistics to Runabout. However, the Court noted that liability under the Carmack Amendment extends beyond the carrier who actually provides the transportation, to any carrier "providing transportation or services." 49 U.S.C. §14706(a)(1). "Motor Carrier" is defined as "a person providing motor vehicle transportation for compensation." 49 U.S.C. §13102(14). "Transportation" includes "services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, *refrigeration, icing*, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property." 49 U.S.C. §13102(23)(B) (emphasis added). The court determined that Superior was acting as a "motor carrier" for purposes of the Carmack Amendment, because although Superior did not directly transport the shipment, it arranged for Town Center to broker the transport to Runabout and was entitled to payment for its services under the contract. Thus, the court denied Superior's motion to dismiss. This broad reading of the statutory "Transportation" definition has been used to expand Carmack Amendment liability to warehousemen, packagers, and various freight intermediaries, if they are not vigilant in their internal practices and procedures. It also exemplifies the tensions between touting their seamless transportation services, while contemporaneously running the risk of possibly being deemed a "carrier" with full Carmack Amendment liability for freight loss and damage.

The court also rejected Runabout's argument that Costco would have rejected the goods anyway, because LOL did not seal the truck after the butter had been loaded and its internal policy provided that any load arriving at one of its receiving facilities without a seal was subject to refusal. The court found that the Carmack Amendment required LOL, as the shipper, to establish that the goods were delivered to the carrier in "good condition," not that the load was

sealed. As stated by the court, "[the seal's] absence [did] not mean that the shipment [was] contaminated or otherwise damaged." This holding is a favorable one for motor carriers, since the lack of a seal did not *automatically* trigger Carmack Amendment liability.

Further, the court found that there were facts in dispute as to whether it was reasonable for the consignee and shipper to reject the entire load, and not to try to sell or deliver the butter in boxes that were still intact. Although ordinarily, the measure of damages for undelivered goods under Carmack is the fair market value, "the shipper is under a duty to take reasonable steps to reduce the amount of its loss." *Gordon v. United Van Lines, Inc.*, 130 F.3d 282, 287-88 (7th Cir. 1997); *Paper Magic Group, Inc. v. J.B. Hunt Transport, Inc.*, 318 F.3d 458, 461 (3rd Cir. 2003). LOL argued that its policy precluded it from accepting and salvaging product that had been in an accident, due to the risk of food contamination. LOL also contended that it was entitled to protect its reputation, as well as that of its products (lost goodwill is an argument often used by shippers in these cases, and is frequently accepted by the courts). In any event, due to the factual dispute as to the condition of the butter following the accident, the court could *not* make a determination as to whether LOL had failed to mitigate its damages for summary judgment purposes. The court indicated that if the goods were truly exposed to hazardous elements, as suggested by LOL (and disputed by Runabout), then LOL's rejection of all of the goods would have been reasonable. On other hand, if most of the butter was *unharmed* by the accident, and the 20% that was deformed could have been resold at or near the market price, yet LOL decided (for policy reasons or otherwise), to reship a new load out of an overabundance of caution, but without a genuine risk to the public or its reputation, a fact finder *could* reasonably conclude that LOL had failed to mitigate its damages. This component of the court's holding is particularly helpful for motor carriers in these situations, since it implicitly endorses the concept that portions of an allegedly contaminated load, may be not only salvageable, but fit for human consumption as if pristine.

E. One Bad Apple Doesn't Spoil the Whole Bunch: Repercussions for Wrongful Rejection of an Entire Load

Wrongful rejection of all or part of a load will subject a consignee to liability for damages flowing from the wrongful rejection. If a portion of the goods are *not* damaged, or are salvageable, then the consignee's ability to recover for damaged goods will be reduced by the amount that it could have received, had it mitigated its damages. Automatically rejecting the *entire* shipment, will deprive the owner of the goods the ability to inspect the goods and record their condition at the time of tender. Without taking this action, *i.e.*, a chronicled inspection, it becomes difficult for the consignee to establish that the goods were damaged upon delivery and to recover damages under the Carmack Amendment or COGSA.

F. Half a Loaf is Better Than None: Mitigation of Foodstuff Damages

In these cases, like in all freight loss and damage litigation, "[t]he defendant has the burden to prove that the plaintiff did not exercise *reasonable* diligence in mitigating its damages." *Eastman Kodak Co. v. Westway Motor Freight, Inc.*, 949 F.2d 317, 320 (10th Cir. 1991) (emphasis added). So, what is reasonable? Courts have found that damages recoverable in these situations *can* include salvage costs. For instance, in *Gourmet Boutique v. Global*

Express, Inc., No. CV 11-2769 2012 WL 1888136 (E.D.N.Y. Apr. 18, 2012), shipper Gourmet Boutique contracted with Target and Safeway to provide various frozen food items. Gourmet also contracted with Global Express, Inc. to transport the frozen food items from its New York plant, to its Arizona warehouse. According to the bill of lading, the food was to be kept frozen throughout the trip. The frozen food was placed inside Global's trailer, together with a new PakSense monitoring device, which would record temperatures inside the cargo area every five minutes. Global closed and sealed the trailer cargo door and the trailer was under Global's control during the entire shipment. Upon arrival in Arizona, Gourmet learned that for almost 50 hours of the transport, the temperature had exceeded the federal mandate. Gourmet manually tested the food and determined that it was "in damaged or otherwise unfrozen condition." The entire shipment was deemed unsalvageable, and was destroyed.

Gourmet brought an action against Global, to recoup its losses for the value of the food products along with salvage costs, prejudgment interest from the date of delivery and attorneys' fees. After a default judgment, the court allowed Gourmet to recover the value of the damaged frozen food under Carmack, which allows an injured party to recover "the actual loss or injury to the property caused by [a carrier]." 49 U.S.C. § 14706(a)(1). Actual loss or injury to property is typically measured "by fair market value of the damaged goods at destination." *See Jessica Howard Ltd. v. Norfolk Southern R.R. Co.*, 316 F.3d 165, 168 (2nd Cir. 2003). The court further found that Gourmet could recover the cost of salvaging the damaged frozen food as an "incidental damage" because it was foreseeable that Gourmet would have to destroy foods not kept at proper room temperature, and commensurately bear the disposal costs. *See American Pac. Enters., LLC v. Celadon Trucking Servs.*, No. 05 Civ. 3684, 2006 WL 2289833, at *3 (S.D.N.Y. Aug. 9, 2006); *Project Hope v. M/V Ibn Sina*, 2001 WL 1875854, at *2 (S.D.N.Y. Jul. 17, 2001) (A party may recover incidental damages if they were foreseeable and within the parties' contemplation at the time they entered the contract). While the court awarded Gourmet prejudgment interest (often determined by state law), it denied Gourmet's request for attorneys' fees because the Carmack Amendment "does not expressly provide for attorneys' fees." *See Fireman's Fund Ins. Co. v. Never Stop Trucking, Inc.*, No. 08-CV-3445, 2009 WL 3297780, at *3 (E.D.N.Y. Oct. 13, 2009). This case provides a helpful laundry list of damages recoverable in a Carmack action involving perishable goods. The holding on attorneys' fees is obviously a helpful one for motor carriers in all freight loss and damage litigation, and is consistent with prior precedent.

G. The Curse of the Broken Seal

Seals are such a critical and pervasive component of food product transport that courts often even read implicit terms into the lading documents. For instance, in *Trucker's Exchange, Inc. v. Border City Foods, Inc.*, 998 S.W.2d 434 (Ark. Ct. App. 1999), Border City engaged Trucker's Exchange to transport shipments of frozen poultry parts from Fort Smith to Seaboard Farms in Elberton, Georgia. Border City loaded the goods and placed a seal on the rear door of the trailer as required by the buyer. Although the bill of lading did not specifically mention the seal, it contained the seal's serial number and both parties acknowledged it to be a designation of a seal. During transit, the driver heard the load shift, pulled over, and broke the seal to inspect the product and restack it if necessary. Upon inspection, the driver discovered that a portion of the load had been improperly loaded by Border City, which had caused the load to fall to the

floor. The driver determined that he was unable to restack the product, and therefore proceeded to deliver the load to Seaboard Farms.

Upon arrival, Seaboard Farms rejected the entire load when it found that the seal had been broken. After being notified by Seaboard Farms of its having rejected the shipment, Border City sold the non-contaminated product at a reduced price. It then invoiced Trucker's Exchange for the difference in the amount it received from the salvaged chicken and what Seaboard Farms was to have paid for it. Tucker's Exchange refused to pay that amount and Border City filed suit. The appellate court upheld the trial court's decision to award Border City the amount of its damages, less the value of the part of the shipment lost due to its improper loading and awarded Trucker's Exchange its unpaid freight charges. Enforcing the bill of lading as a contract between the parties and applying Articles 7 and 1 of the Uniform Commercial Code as codified in the Arkansas code, Ark. Code Ann. § 4-7-101 *et seq*., the court found that there "[was] a custom in the industry, particularly in the poultry and fresh meat business of having chicken delivered with the seal unbroken." *See Precision Steel Warehouse v. Anderson*-Martin, 854 S.W.2d 321, 325-26 (1993) (*citing Sharpensteen v. Pearce*, 245 S.W.2d 385, 386 (Ark. 1952). The court then read the industry custom into the agreement between the parties, because it was "so widespread in the industry that the contract would be presumed to have been made with reference to it, it becomes part of the agreement." The widespread industry practice of rejecting poultry shipments where the seal on the trailer has been broken was further supported by Trucker's Exchange's testimony that it had been informed of the need for shipments to Seaboard farms to be delivered with the seal intact, and that it was custom in the poultry industry to do so. Seaboard Farms' testimony also supported the industry standard concept when it stated that it would not have rejected the entire load had the seal not been broken. So, in these cases, a broken seal can be very difficult to overcome, particularly in poultry and meat shipments. It is important then, to ensure that there is shipper cooperation, to maximize salvage value.

H. But It Wasn't Me! Broker Liability Where a Consignee Has Rejected an Entire Truckload of Food Product.

The principals that have converged to expand broker liability in other contexts have also impacted broker liability in food transport scenarios. For instance, in *Contessa Premium Foods, Inc. v. CST Lines, Inc.*, No. CV 10-7426, 2011 WL 3648388 (C.D. Cal. Aug. 18, 2011), the court examined whether a broker that may have acted as a carrier could be held liable for cargo damage during transport under the Carmack Amendment. Shipper, Contessa Premium Foods, Inc. ("Contessa") entered into a Motor Carrier Agreement with CST Lines, Inc. ("CST") to transport 48 pallets of frozen food products from Contessa's plant in California to an Indiana warehouse. CST agreed to provide temperature-controlled transportation for the shipment, and to maintain the food at minus 10 degrees Fahrenheit for the entire duration. CST subsequently engaged Far East Carrier ("Far East") to pick up, transport and deliver the shipment, pursuant to a broker/carrier agreement. The lawsuit brought by Contessa and its insurance company, Zurich American Insurance Company ("Zurich"), arose after the frozen food was delivered to Indiana at an elevated temperature, thereby causing damage to the shipment. The parties each moved for summary judgment with respect to whether CST could be held liable as a motor carrier under the Carmack Amendment.

The court determined that CST was a motor carrier, within the definition of Carmack, based upon three key pieces of evidence. First, CST had identified itself as a "Carrier" in the motor carrier agreement between CST and Contessa. The agreement also imposed liability on CST "for any and all or damage to . . . . shipment." Applying *AIOI Ins. v. Timely Integrated, Inc.*, No. 08 Civ. 1479, 2009 WL 2474072, at *3 (S.D. N.Y. Aug. 12, 2009) and *Land O' Lakes, Inc. v. Superior Serv. Transp. Of Wis., Inc.*, 500 F. Supp.2d 1150, 1154 (E.D.Wis. 2007) (recognizing that a party can accept responsibility and become liable under the Carmack by signing a Motor Carrier Agreement that identifies the party as a "motor carrier), the court determined that this was strong evidence of CST's status as a motor carrier.

Second, the court found no evidence that CST Lines had acted like a "broker" within the purview of the Carmack statutory definition. There was no evidence that CST sold, offered, or held itself out to Contessa as arranging for shipments by others to serve as carriers. *See* 49 U.S.C. § 13102(2). Instead, CST held itself as "carrier" for the shipment of goods, in both the Motor Carrier Agreement and the bill of lading which referenced CST lines as "motor carrier." Moreover, the CST directly invoiced Contessa for carrier services. *See Delta Research Corp. v. EMS, Inc.*, 2005 WL 2090890 at *6 (E.D. Mich. Aug. 29, 2005) (finding direct invoice by broker to shipper for entire loading and transportation process was circumstantial evidence of carrier status). CST also never communicated to Contessa that it had intended to subcontract transportation to another carrier, and Contessa continued to bill CST after the goods were delivered.

Finally, the court found that CST had exerted sufficient control over Far East such that it could be considered CST's agent. After booking the shipment with Contessa, CST faxed a load confirmation document with specific handwritten instructions regarding the manner and means by which the load should be carried. The instructions directed Far East to transport the load at a specific temperature, make daily check calls to CST , and sign all papers using CST's name. After determining that CST was a motor carrier under Carmack, the court granted summary judgment and damages in favor of Contessa. Thus, as brokers strive to provide ever more seamless service to their customers, and as they trumpet this seamlessness to the outside world, they run the risk of expanding their liability, to include Carmack liability for freight loss and damage. One clear lesson from this case is, essentially a tautological one: On lading and contractual documents a broker should call itself just that—a broker.