

Assigning Blame: Motor Carrier Liability to Brokers? Maybe.

OCTOBER 13, 2026

Authors: [Eric L. Zalud](#)

Featured Industries: [Transportation & Logistics](#)

Back in the old days (*i.e.*, maybe five or six years ago!) the mantra when representing a freight broker in a cargo loss and damage case was that: “Come on, brokers aren’t libel for freight loss and damage!” There were, and still are, literally, mountains of case law on this point. [*See Nipponkoa Ins. Co., Ltd. v. C.H. Robinson World Wide, Inc.*, 2011 WL 671747, at *3, No. 09 Civ. 2365 (S.D.N.Y. Feb. 18, 2011); *Chubb Group v. H.A. Transportation Systems, Inc.*, 243 F. Supp. 2d 1064 (C.D. Cal. 2002) (granting summary judgment to broker on breach of contract claim resulting from shipment that was stolen while in transport); *CGU International Ins., PLC v. Keystone lines Corp.*, No. C-02-3751 SC, 2004 WL 1047982 (N.D. Cal May 5, 2004) (finding that defendant acted as a broker and therefore was not liable for goods negligently damaged in transport); *New Prime, Inc. v. Professional Logistics Mgmt. Co.*, 28 S.W.3d 898 (Mo. Ct. App. 2000) (noting that if plaintiff were found to be a broker, it would be entitled to judgment); *Prof’l Communs., Inc. v. Contract Freighters, Inc.*, 171 F. Supp. 2d 546 (D. MD 2001); *Nat’l Union Fire Ins. Co. of Pittsburgh v. All Am Freight, Inc.*, No. 14-CIV-62262, 2016 WL 633710, at *9 (S.D. Fla. Feb. 2, 2016).]

The Carmack Amendment, (49 U.S.C. 14706) which governs the liability of motor carriers and freight forwarders for cargo loss, damage and delay for shipments in interstate commerce, provides a very clear, and federally preemptive, recourse for shippers asserting cargo claims against motor carriers. (Note, this doctrine of federal preemption is *not* impacted, at all, by the U.S. Supreme Court’s recent decision in *Montgomery v. Caribe Transport II, LLC*, 608 U.S. ____ (2026)). By the express terms of the Carmack Amendment itself though, its remedies are available to shippers, and possibly consignees, *only*. Commutatively, the Carmack Amendment *also* provides motor carriers the benefits of certainty, narrowing of applicable remedies and damages, and certain entrenched statutory defenses. So, that statutory regime for freight loss and damage has worked, and still works, fairly smoothly for cargo claims brought by *shippers*, against motor carriers.

Brokers, historically, were a different story. However, that somewhat worn scenario has rapidly evolved, driven by business initiatives and exigencies. Several years ago, many larger brokers, with others joining them later, began to, as essentially a customer service to their shipper customers, pay those shippers for freight claims against carriers and *then* seek recourse, *as a broker*, against the motor carrier. Often, this “service” provided by the brokers to their shipper customers was not even contractually required but was done by the brokers as a way to keep their shipper customers content, and in the fold. As the sector evolved, many brokers began to memorialize this practice in their contracts with their shipper customers. However, that practice, *i.e.*,

brokers, chasing motor carriers for cargo claims, careened headlong into the time-tested doctrine that brokers are not liable for freight loss and damage. Here, the brokers were essentially *assuming* that liability, either gratuitously through their business relationships with the shippers or via contract. There was also another foundational statutory impediment to this tack. Under the Carmack Amendment, *brokers have no standing to assert freight loss and damage claims against motor carriers*. The *only* entity with standing to assert such claims is the shipper itself, or possibly the consignee, depending upon who has title and ownership to the cargo at various junctures in the transport schematic.

So, this business practice, now fairly common throughout the brokerage sector, squarely contravenes two very clear and time-tested principles of statutory law and commensurate case law. Without some type of contractual mechanism or intervention then, brokers would be *unable*, based upon the applicable statutory regime, to chase motor carriers for cargo claims (unless provided in the broker's contract with the carrier). Consequently, the concept of an "assignment" of that claim, long used in other areas of law, has gained more and more prevalence in this arena. Courts have found that, with a proper "assignment of claim" from the shipper of its cargo claim, the broker then "steps into the shoes" of the shipper and thereby attains Carmack Amendment standing, and *can* bring a claim/lawsuit against the motor carrier for freight loss and damage.

The actual process of obtaining the assignment, however, requires a somewhat regimentalized, step-by-step procedure that, if not followed, can defeat such a cargo claim by the broker against the motor carrier. A recent case involving Carmack Amendment freight loss and damage issues and this entire cast of characters helped clarify how to dot the proverbial i's and cross the proverbial t's in these situations. In *Scotlynn USA Division, Inc. v. Titan Trans Corp.*, 555 F.Supp 1246, plaintiff Scotlynn, a freight broker, brought a cargo claim for spoiled beef under the Carmack Amendment against defendant Titan Trans, a refrigerated motor carrier. The shipper of the beef was Cargill, Inc., a global food corporation. Scotlynn then (as it turns out, improperly) brokered the load to Titan to transport. The parties stipulated that Cargill submitted a claim to Scotlynn for the cargo in the amount of \$89,823.68. There was no evidence in the record showing when the claim was submitted. The evidence *did* show that Scotlynn issued a check to Cargill in that amount, at a later date.

As a threshold issue, the court addressed whether or not Scotlynn, as a broker, *could* assert a Carmack Amendment claim at all against Titan, the motor carrier. The court confirmed that as a broker in its dealings with Titan, Scotlynn could not sue Titan on its own behalf under the Carmack Amendment. [See also *Essex Ins. Co. v. Barrett Moving & Storage, Inc.*, 885 F. 2d 1292, 1299 (11th Cir. 2018).] However, the court *did* recognize that Scotlynn, as the broker in the shipment schematic, could bring a Carmack Amendment claim as the *assignee* of "a person entitled to recover under the receipt or bill of lading," quoting the Carmack Amendment at 49 U.S.C. Section 14706(a)(1). In this particular case, for whatever reason, the parties had stipulated that "Scotlynn is the assignee of Cargill's rights related to the load at issue in this case, including its claims under the Carmack Amendment." This was not enough for the court though, because the stipulation did not specify the *date* of the assignment.

The court noted that there *was* a written assignment from Cargill in evidence that purported to assign the cargo claim to Scotlynn. However, that assignment was "effective as of September 26, 2016," but was not executed until April 1, 2021, *less than three weeks before trial*. The court then noted the clear authority on this point that: "in order for an assignment with a retroactive effective date to be

valid for standing purposes, the assignee must possess the assigned right on the day it filed the complaint,” quoting *MSP Recovery Claims v. QBE Holdings, Inc.*, 965 F.3d 1210, 1219 (11th Cir. 2020). This requirement cannot be met retroactively. [*Abraxis Bioscience, Inc. v. Navita*, 62 F.3d 1359, 1366 (Fed. Cir. 2010).] Scotlynn had alleged in its trial brief, without any evidentiary support (as noted by the court) that Cargill has “orally assigned its Carmack Amendment claim much earlier,” and that that verbal assignment was “memorialized in the written assignment.” The court pointed out, however, that the written assignment in evidence did not acknowledge any prior oral assignment.

Thus, there was a rather pointed gap in the assignment chain. Nevertheless, the court referenced the parties’ stipulation and, although noting that the parties had not stipulated to the *date* of the assignment, Titan did not challenge Scotlynn’s ability to bring a Carmack Amendment claim pursuant to the assignment in the trial proceedings. So, the court then rather charitably “inferred from the failure” that the stipulation included-implicitly-the fact that the assignment, either written or verbal, occurred prior to the filing of the Complaint. After making this rather generous leap, the court concluded that Scotlynn *could*, as Cargill’s assignee, seek relief under the Carmack Amendment against motor carrier Titan.

This body of case law and statutory law provides several helpful pointers for shippers, brokers and carriers in cargo claim situations:

1. **Brokers Not Liable for Freight Loss and Damage:** These time-tested legal principles still apply, although they may be altered by business relationships and by contract.
2. **Brokers Have no de facto Standing to bring a Carmack Amendment Claim for Freight Loss and Damage against Motor Carriers:** Again, this hard statutory reality can be altered by the contractual mechanisms discussed above.
3. **For Shippers:** Know that you can, via contracts with brokers/3PLs, or by business leverage, obtain payment of cargo claims directly from brokers with whom you partner. Often this provides more certainty in *actually getting paid* on a claim with timeliness and certainty. These assignments should be in writing and with appropriate specificity, so that the shipper does not, somehow, get dragged into the litigation.
4. **For Brokers:** Remember that if a broker is paying a cargo claim from its shipper customer, either gratuitously to foster the business relationship, or as a contractual requisite, the broker should obtain an assignment of that claim. That assignment enables it to seek recourse, under the Carmack Amendment, against the actual transporting motor carrier.
5. **Timing:** The law seems quite clear that, although an assignment may initially be verbal and less formal in the embryonic claim phase, for it to be held valid by a court when it is scrutinized, it must be completed and executed on a date *before the actual complaint is filed* (although it may be retroactive to the initial, less formal assignment agreement).

6. ***For Carriers:*** The Assignment of Claim is an essential building block for any cargo claim against a motor carrier or freight forwarder, brought by a broker/3PL. Consequently, motor carriers and their counsel should ascertain the existence, or nonexistence, of such an assignment, either informally at the outset of the litigation, or in discovery. Its absence, or insufficiency, could eliminate a high-value cargo claim.

ERIC L. ZALUD is co-lead of Benesch's Transportation & Logistics Practice Group and can be reached at 216.363.4178 and ezalud@beneschlaw.com.