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# Carmack Amendment Liability: Reminder of the Basic Legal Principles

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We regularly receive questions about motor carrier liability under the Carmack Amendment. This standard has been ubiquitous with interstate motor carriage since its enactment in 1906. Still, misunderstandings abound and can lead to road bumps in both contract negotiation and resolution of cargo claims.

Here is a reminder of the basic legal principles.

**No Carrier Negligence Standard.** At a high-level, a motor carrier providing interstate transportation services assumes liability for loss, damage, or delay to cargo pursuant to 49 USC 14706 (the Carmack Amendment). The Carmack Amendment places a near strict liability standard on motor carriers for the "actual loss or injury" to cargo that occurs while under the motor carrier's care, custody, and control (Carmack Liability). A carrier's negligence, or lack of negligence, is purposefully absent from a Carmack Liability analysis.

**Limitations of Liability.** The "actual loss or injury" standard generally includes loss, damage, or delay and extends to loss, damage, or delay that is reasonably foreseeable. The quintessential examples for delay liability (i.e., a failure to use reasonable dispatch) may constitute "actual loss or injury" when a food product that is delayed in delivery such that it expires and is no longer saleable or when dated materials such as greeting cards stating "Merry Christmas 2022" arrive January 2023. In practice, the rates offered for service are typically based upon an agreed limitation of liability, such as $100,000 per truckload. Liability options, or the opportunity to declare a higher value for commensurate rates, are common to provide a meaningful choice in agreeing to the limitation.

**Claim Filing Period.** The Carmack Amendment provides a clear and express minimum claims filing period at 49 USC 14706(e)(1) requiring at least 9 months following delivery for claims filing and 2 years from written claim denial for filing a civil lawsuit.

**Shipper's Burden of Proof.** Shippers have a three-part burden of proof under case law applying the Carmack Amendment. A prima facie case of Carmack Liability is established if the shipper can show: (i) the motor carrier accepted the cargo in good condition without exception (i.e., no notation of loss or damage on the bill of lading at origin); (ii) the cargo was delivered in damaged condition relative to receipt; and (iii) substantiation for the value of loss. Once a shipper establishes its prima facie case, the burden shifts to the motor carrier to prove a defense to Carmack Liability.

**Carrier's Common Law Defenses.** A motor carrier may nonetheless avoid liability in situations where the motor carrier establishes one of the following common law defenses: (i) act of God; (ii) act

or default of the Shipper; (iii) act of public enemy (i.e., act of war or terrorism); (iv) act of public authority (i.e., governmental action); or (iv) inherent vice or nature of the goods.

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