

The Carmack Amendment Preempts State Law

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 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). The preemptive scope of the Carmack Amendment was first noted by the United States Supreme Court in Adams Express Co. v. Croninger, 226 U.S. 491 (1913). Despite the then non-exclusive language in the Carmack Amendment, the Court ruled that all state and common law causes of action relating to services under the Carmack Amendment were preempted by the liability provisions within the Carmack Amendment. *Id.* at 505-06. The Court stated: That the legislation supersedes all the regulations and policies of a particular state upon the same subject results from its general character . . . Almost every detail of the subject is covered so completely that there can be no rational doubt that Congress intended to take possession of the subject, and supersede all state regulation with reference to it.

A Carrier Can Limit Its Liability

The Carmack Amendment also 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, the 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 his choice of carrier liability limit; and,
4. Issue a bill of lading prior to moving the shipment that reflects any such agreement.

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. *Id.* 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 regarding timely notice. *Id.* at 1369. The main policy behind the nine (9) month claim period is to allow the carrier the chance to investigate the claim so as to protect its interest. *Taisho*, at 1368.