

## FREIGHT SHIPPING PROBLEMS, WHO IS LIABLE?



2010

---

---

---

---

---

---

---

---

## Shippers, Carriers, Transportation Third Parties

WHO PAYS WHEN THINGS GO  
HORRIBLY WRONG?

© 2010 Axelrod, Goodman, Steiner & Bazelon  
All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted, in any form or by any means, electronic, mechanical, photocopying, recording, or by any information storage and retrieval system, without the prior written permission of Axelrod, Goodman, Steiner & Bazelon.

[www.agstb.com](http://www.agstb.com)

---

---

---

---

---

---

---

---

## STARTING WITH KEY ISSUES

- ▣ Getting the freight transported
- ▣ Cargo loss, damage and delay and who is responsible
- ▣ Cost of transportation and who pays
- ▣ Duties imposed by government regulations



---

---

---

---

---

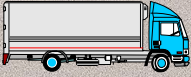
---

---

---

## BASIC TERMS - 1

- Common Carrier
- Contract Carrier
- Transportation Third Parties



---

---

---

---

---

---

---

---

## BASIC TERMS - 2

- Interstate and/or Foreign Commerce
- Intrastate Commerce
- Bill of Lading
- Tariff



---

---

---

---

---

---

---

---

## WHAT IS A COMMON CARRIER?

- A common carrier is a for hire carrier that holds itself out to serve the general public.



---

---

---

---

---

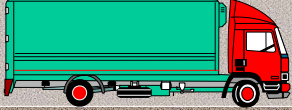
---

---

---

## Common Carriers

- Need not have any express agreements with shippers, other than Bills of Lading and Tariffs
- Must have Tariffs, need not file (*negotiated rates*). Courts have called them standard terms
- Must have cargo insurance
- Liable for loss and damage to cargo



---

---

---

---

---

---

---

---

## WHAT IS A CONTRACT CARRIER?

- A contract carrier is a for hire carrier that provides transportation only to those parties with which is has entered into continuing written agreements.



---

---

---

---

---

---

---

---

## Contract Carriers

- Do not have tariffs
- Rates and terms of service are contained in individual shipper contracts
- Not required to have cargo insurance



---

---

---

---

---

---

---

---

## All Carriers Liable for Freight

- ❑ Carmack and claims rules apply to all motor carriers
- ❑ Any FMCSA licensed motor carrier may provide service pursuant to a written contract.



---

---

---

---

---

---

---

---

## TRANSPORTATION THIRD PARTIES

- ❑ Offer or arrange transportation, but are not carriers:
  - ❑ Freight Forwarders – provide transportation
  - ❑ Property Brokers – arrange transportation
  - ❑ Warehousemen – store freight & may arrange transportation



---

---

---

---

---

---

---

---

## FREIGHT FORWARDERS

- ❑ May provide some of the physical transportation service
- ❑ Responsible for shipments from origin to destination
- ❑ Liable for cargo claims
- ❑ Must issue a bill of lading



---

---

---

---

---

---

---

---

## PROPERTY BROKERS

- ❑ No statutory liability for cargo claims
- ❑ Only "arranges" transportation
- ❑ Generally liable for negligence only, failure to select a qualified carrier
- ❑ May charge either carrier or shipper for its services



---

---

---

---

---

---

---

---

## WHAT IS A TARIFF

- ❑ A compilation of the rates, charges, rules, etc. of a common carrier
- ❑ Tariffs and Bill of Lading together form "contract of carriage" with a common carrier
- ❑ Most tariffs are not filed
  - ❑ You must ask carriers for copies.
  - ❑ If you ask, they must provide them
  - ❑ You may be bound by a tariff you have never seen



---

---

---

---

---

---

---

---

## BILLS OF LADING

- ❑ A document required to be issued by Carriers and Freight Forwarders – Shippers may prepare, but only Carriers "issue"
- ❑ Law presumes the issuance of a bill of lading



---

---

---

---

---

---

---

---

## Bill of Lading affects liability

- Who pays freight charges
- Amount paid on damage claims (Valuation)
- Claims process
- Who owns the claim
- Broker listed as the carrier does not make it so if broker did not prepare



---

---

---

---

---

---

---

---

## TRAPS & TRICKS AFFECTING LIABILITY

### Motor Carriers

- Must give notice within 180 days if contesting originally billed rates
- Statute of Limitations for Freight charges is 18 months
- Carrier must participate in any classification or mileage guide it relies upon or it cannot collect its charges.
- Tariff terms may be incorporated by reference in Bill of Lading
- With shipper/carrier contract pursuant to 49 U.S.C. § 14101(b) the parties can elect out of application of ICCTA to their transactions - except safety and registration requirements



---

---

---

---

---

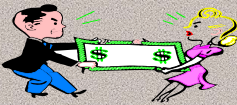
---

---

---

## CARGO CLAIMS

- "Carmack Amendment", 49 U.S.C. § 14706 (motor carriers and freight forwarders) controls unless contract to the contrary, does not cover brokers
- Value of the shipment and limitations on carrier liability
- Consequential damages
- No attorney's fees or punitive damages



---

---

---

---

---

---

---

---

## Who Pays & How Much

- Effect of Bill of Lading – Released Valuation
- Calculating damages
- “Carmack” or Contract
- What did your Broker agree to
- What happened at the warehouse



---

---

---

---

---

---

---

---

## The Bill of Lading & Claims

- Incorporation of tariff terms and conditions
- Release valuation
- Shipper’s load & count
- Concealed damage
- Time to file claims



---

---

---

---

---

---

---

---

## Calculating Damages

- “Carmack” = Full actual loss
- Market value at time and place of loss
- Contract price
- Exceptions to market value rule
- Additional costs as part of damages
- Consequential damages
- Carrier’s salvage rights



---

---

---

---

---

---

---

---

## Does "Carmack" Apply

- Common Carriers - Yes
- Contract Carriers - Yes
- Freight Forwarders - Yes
- Brokers - No
- Effect of tariff
- Effect of contract - ???



---

---

---

---

---

---

---

---

## WHO PAYS FREIGHT CHARGES

- Shipper or Consignor
- Consignee, with exceptions
- Beneficial owner of goods shipped
- Liability may be modified through a §14101(b) contract or bill of lading Sec. 7
- Broker



---

---

---

---

---

---

---

---

## Freight Charge Payment Issues

- Carrier not required to deliver unless charges paid
- Can contract with carrier who will pay charges
- Shipper can get stuck paying twice if it pays a broker or forwarder who fails to pay the carrier - there are defenses



---

---

---

---

---

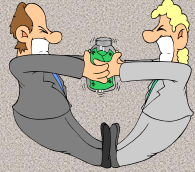
---

---

---

## New Concerns – Freight Charges

- ❑ Shipper Liability For Freight Charges Already Paid
- ❑ A recent growing problem
- ❑ Best addressed through contracts with your carriers and 3<sup>rd</sup> parties
- ❑ Double brokering



---

---

---

---

---

---

---

---

## New Trends – General Liability

- ❑ Liability for Carrier Negligence – Failure to Vet Carriers
- ❑ The recent crash cases have involved only brokers “so far”
- ❑ The legal theories that exposes brokers to liability apply equally to all shippers



---

---

---

---

---

---

---

---