

Sanitary Transport and the Carmack Amendment: What Constitutes Damages

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The Food Safety Modernization Act ("FSMA") is a 2011 law passed by Congress empowering the Food and Drug Administration to govern the safety standards and requirements of each party in the food transportation chain. One of the most significant results of the act was the FDA issuing a set of regulations, known as the Sanitary Transportation of Human and Animal Food. These regulations outline safeguards that trucking companies, among others, must abide by to ensure the safety of the food during transport. This framework touches upon requirements regarding vehicle and transportation equipment, transportation operations, training, records keeping, and accountability of parties in the chain. In addition to government fines and penalties, any cargo loss that violates the FSMA's Sanitary Transport rule is subject to liabilities and damages.

Since 1935, the Carmack Amendment (49 U.S. Code § 14706) governed interstate shipment activities, to achieve uniformity across state lines. A motor carrier can be held liable for damage of any goods shipped if the shipper can demonstrate that the: (1) goods were in "good condition" when handed off to the shipper; (2) goods were damaged when delivered, or were not delivered; and, (3) amount of damages sustained. The law also provides exceptions to allow the carrier to argue that it was not inherently at fault. Historically, this amendment has been applied to assign liability to parties in cargo loss actions.

So how do the two regulations impact each other with regard to damages of cargo loss in food transportation? The Sanitary Transportation rule of the FSMA augments best practices, but does not increase exposure or influence liability between parties in the food supply chain. Rather, the Sanitary Transportation rule sets safety requirements that all parties must abide by when transporting food. The Carmack Amendment, however, continues to direct liability and damages when it comes to cargo loss actions.

A leading example of the potential legal interplay of the Sanitary Transportation rule and the Carmack Amendment is found in a Wisconsin federal action, *Oshkosh Storage v. Kraze Trucking LLC*. In that case, the plaintiff sued the transporter defendant for a rejected load of Kosher cheese due to a broken seal on the trailer, which was not a requirement included in the bill of lading. The court applied the Carmack Amendment elements to find in favor of the plaintiff. Specifically, it ruled that despite what was written in the bill of lading, the driver and transport company must take all necessary actions to avoid foreseeable events that may cause damage to the cargo to demonstrate that they were free of negligence on their part. Given this ruling, strict adherence to Sanitary Transport rule by transportation companies in the food distribution chain may be the only way to avoid exposure to further liabilities.

The Take Away: Carriers cannot rely on simple bills of lading. Carriers must affirmatively anticipate potential issues such as broken trailer seals and monitor refrigerated containers holding temperatures.

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