

**TRANSPORTATION AND LOGISTICS COUNCIL, INC.
2017 – 43RD ANNUAL CONFERENCE
HENDERSON, NEVADA**

**WHAT DAMAGES ARE RECOVERABLE
UNDER THE CARMACK AMENDMENT?**

Presented by:

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Damages under the Carmack Amendment are limited to the actual loss suffered by the shipper. 49 U.S.C. 14706(a)(1).



Antique products can present a different challenge, as in *Schneider v. Fifth Wheel, LLC*, 2016 WL 4424944 U.S. Dist. LEXIS 111468 (N.D. Ohio Aug. 22, 2016), where a 1957 Mercedes Benz purchased for \$57,000 sustained damage to its paint job.

Addressing the “actual loss” standard, the court heard testimony about pricing in the resale market for motor vehicles as ambiguous, so the resale price as a measure of damages was rejected. The court instead awarded \$12,383 to repaint the car.



Special and Consequential Damages under Carmack

DUTIES OF THE SHIPPER







Mitigation of Damages

PRESERVATION

If a shipper wants to claim a loss for damage, the shipper should also preserve the goods, both damaged and undamaged, for inspection by the carrier.

- Failure to do so may prejudice the claim.
- Presents evidentiary issues.

PROBLEM AREAS





**WHO HAS THE
RESPONSIBILITY FOR LOADING?**

**HOW ABOUT SHIPPER-LOADED
CARGO WITH SEALS ON THE TRAILERS?**

PERISHABLE CARGO

LEGISLATIVE CHANGES

- Sanitary Food Transportation Act 2005

(Amended the Food, Drug, and Cosmetic Act, requiring regulation of sanitary food transport, and that non-compliance renders food adulterated)

- Food Safety Modernization Act 2011

(Establishes certain requirements for shippers, loaders, carriers, and receivers transporting food, the vehicles, equipment, operations, training, and records)



INDIVIDUALLY WRAPPED PRODUCTS IN LARGER CARTONS

- Partial damage
- Package damage
- Temperature variance
- Broken seals

QUESTIONS TO ASK

1. Who loaded the cargo?
2. Where was it loaded?
3. How was it loaded?
4. Did the driver supervise/inspect the loading?
5. Were any deficiencies noted on the bill of lading/shipping document?
6. Who sealed the trailer?
7. Was the seal intact at delivery?
8. Was the driver present when the seal was broken? Did he inspect the shipment? (Good idea to take photos.)

9. Were there any incidents during transport (accidents, overturns, rough roads)?
10. Who unloaded the shipment?
11. How was the cargo packed (packaged)?
12. How many packages/cartons/pallets were damaged?
13. For food shipments, odors or leakages?
14. Was interior of the trailer inspected after cargo discharged?
15. Were damaged-undamaged goods segregated?
16. Were the goods unique?
17. Were the goods seasonal?

18. Were the goods included within some state/federal law or regulations as to packaging, handling, shipment, or sale?
19. Are there any applicable product-specific industry standards for salvage?
20. Were there any contractual terms governing the measure of salvage/handling of the damaged goods?
21. Were the goods identifiable by marks, logos, or packaging?
22. What is the cost for inspection, surveying, and sale in the secondary market or disposal?
23. Photos?
24. Police accident reports?
25. Recorded information?
26. New or used cargo?



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