

Carmack Amendment Loss Claims Should Indicate a Specified or Determinable Amount of Money

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In *N.Y. Marine & Gen. Ins. Co. v. Estes Express Lines, Inc.*, 719 Fed. Appx. 691 (9th Cir. 2018), the United States Court of Appeals for the Ninth Circuit (Appeals Court) addressed the question of whether an insurer, N.Y. Marine & General Insurance Company (N.Y. Marine), could recover from a cargo carrier under the Carmack Amendment, 49 U.S.C. § 14706, if the insured's loss claim did not state a specified amount of money. Finding that § 14706 requires that a party filing a cargo loss claim state a specified or determinable amount of money, the Appeals Court affirmed the district court's holding that neither the carrier, Estes Express Lines, Inc. (Estes) nor the broker, Exfreight Zeta, Inc. (Zeta), was liable to N.Y. Marine.

As stated by the court, in this matter, N.Y. Marine's insured, XPO, sent a shipment of batteries owned by XPO's customer, TransPower, using Zeta as the broker and Estes as the carrier. The batteries allegedly suffered damage while being carried by Estes and, thereafter, XPO filed a cargo claim with Estes and Zeta. The claim form stated that the extent of the damage was unknown until the cargo was inspected. Although the claim form noted that the cargo's total value was \$148,055.30, XPO never advised either Estes or Zeta of the results of the damages inspection.

To analyze whether XPO's claim form alerted Estes to the extent of its liability, the Appeals Court examined the Carmack Amendment's filing requirements. To file a Carmack Amendment claim against a cargo carrier, the claim must comply with the minimum filing requirements set forth in 49 C.F.R. § 1005.2(a)-(b). Pursuant to § 1005.2(b), a claim must, at a minimum, contain sufficient facts to identify the shipment, assert liability for alleged loss or damage and make a claim for the payment "of a specified or determinable amount of money." The trial court held that, although the claim form identified the upper bound of possible damages with the exact amount of damages "to be determined," it did not state a specified or determinable amount of damages. Thus, the trial court held that, even under the court's "substantial performance" standard, the form did not allow Estes to apprise itself of the approximate claim value and did not satisfy the dictates of § 1005.2. Because the Appeals Court agreed that XPO's claim form lacked a specified or determinable amount of damages, it affirmed the district court's conclusion that neither Estes nor Zeta was liable to N.Y. Marine.

The Appeals Court's holding serves as a reminder that, when an insurer receives a cargo claim, it should review the claim form filed by its insured against the carrier and/or broker to ensure that the form satisfies the Carmack Amendment's filing requirements. Absent compliance with the Carmack Amendment's filing requirements, a subrogating carrier may not be able to pursue a successful subrogation claim against a responsible carrier and/or broker.

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