Preserve Carmack Preemption

BY GEORGE W. WRIGHT

For nearly a century, the Carmack Amendment to the Interstate Commerce Act has limited the liability of interstate motor carriers to the actual loss of or injury to transported property. Congress enacted Carmack in 1906 to end the inconsistent results of applying 50 different state law regimes to interstate transportation agreements and to promote stable freight rates. Since Carmack's passage, the federal courts almost universally have construed it to preempt state tort actions, including punitive damages, against interstate carriers arising from loss or damage to goods in transit and the processing of related claims. Historically, state law claims have been held preempted because their liability standards are incompatible with Carmack's "actual loss" standard. Relying on *dicta* in the U.S. Court of Appeals 1997 decision in *Rini v. United Van Lines Inc.,* however, a few courts have encouraged shippers to assert intentional tort claims that circumvent Carmack and bill of lading limitations of liability by asserting intentional tort claims.

To the extent *Rini's dicta* and later cases that follow it allow intentional tort claims designed to increase carrier liability based solely on contractual conduct, these cases are in conflict with Carmack and Supreme Court rulings that define Carmack's preemptive scope. By focusing on claims for personal injuries, like emotional distress, that are supposedly distinct from loss or damage to the shipper's goods, *Rini's dicta* and the cases relying on it disregard whether such injuries actually flow from the carrier's breach of the bill of lading contract with the shipper, rather than a breach of the carrier's general duty of care to the public at large.

In 2001, a bill was reintroduced by Sen. John F. Kerry, D-Mass., in the 107th Congress that would exclude from Carmack preemption shippers' damage suits against interstate motor carriers for alleged unfair claim handling under state deceptive trade practices acts. Although the proposed bill is named the Moving Company Responsibility Act, it indiscriminately authorizes punitive damages against all motor carriers, household goods and general freight carriers alike, "for engaging in unfair or deceptive trade practices in the processing of claims relating to loss, damage, injury or delay in connection with transportation of property in interstate commerce." This provision would be contained in a new subsection (h) to Title 49 U.S.C. Section 14706.

The extension of *Rini's dicta* and the introduction of the MCRA in Congress are only the latest efforts to usurp Carmack's exclusive dominion over interstate carrier bill of lading liability. In 1988, U.S. District Court in Massachusetts rendered two decisions restricting the scope of Carmack preemption by dividing interstate shipping transactions into pre-move, move and post-move phases. This approach generally was rejected by the other federal courts and eventually overruled by the 1st U.S. Circuit in *Rini.* While closing one door, though, *Rini* left another slightly ajar by suggesting intentional tort theories as a way for shippers to skirt around Carmack.

The proposed MCRA would undermine, not complement, existing federal transportation law and policy. The doctrine of complete federal preemption of state law claims with respect to interstate carriers' transportation and related services is now embodied in the ICC Termination Act of 1995 and its supplemental federal regulations. ICCTA and Carmack have met the need for stable interstate carrier rates and a national uniform standard of carrier liability that covers the entire contractual relationship between the shipper and carrier, of which claim handling is an integral part. The MCRA raises the question of whether Congress should amend Carmack to permit the 50 states to impose their diverse standards of consumer law liability on interstate carriers for claim handling conduct that is already federally regulated and an integral part of the carrier's statutory and contractual duties under its bill of lading.

The proposed new Section 14706(h), with its provision for state law punitive damages, would collide with ICCTA's preemption provision in Section 14501(c) that applies to all carrier "services." The MCRA's punitive damages incentive to litigate in court also thwarts Congress' effort to promote private arbitration of shipper-carrier claims under Section 14708. Considering the small amounts typically involved in most household goods loss and damage claims and the infrequency of allegations against interstate movers of bad-faith claim adjusting, the existing statutory and regulatory remedies provide sufficient deterrents to unreasonable carrier conduct and an expeditious arbitration procedure for resolving disputes in lieu of protracted, expensive lawsuits.

Even if available shipper remedies were shown to be inadequate, replacing existing federal standards with the checkered laws of the 50 states would not serve the public interest in maintaining stable uniform freight rates, standard carrier liability rules, carrier financial stability and judicial economy. Rather, the appropriate response would be to amend the federal law that applies evenly to shippers and carriers throughout the nation. Any federal law provision for punitive damages against carriers based on mere contractual breaches would clash with Carmack's "actual loss" liability standard.

Ultimately, Congress must decide whether to maintain a uniform system of carrier liability and promote informal resolution of claims or instead, encourage shippers to pursue rancorous litigation driven by the prospect of punitive windfalls. In the interest of preserving a coherent national transportation policy, Congress should not abdicate to the states its constitutionally mandated duty to regulate interstate commerce and its power to "make all laws" necessary to carry out that duty.

Wright is the principal of George W. Wright & Associates LLC in New York City and Hackensack, N.J. A complete version of this article may be requested from the author at gwright@wright-associate.com.