

Carmack Preemption of Damage to Real Property—Watch Your Step!



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Courts have long held that the Carmack Amendment's imposition of liability on carriers for "the actual loss or injury to the property" transported over state lines should be interpreted in the broadest terms.¹ However, federal courts have recognized that there may be narrow exceptions to the preemptive scope of the Carmack Amendment, where a shipper alleges liability that is separate and distinct from the loss of, or damage to, the goods shipped.² While the U.S. Appellate Courts describe these exceptions as "narrow," District Courts struggle to find a uniform application of Carmack Amendment preemption in unique shipping situations. This article explores one of those scenarios: damage to real property during the pick up or delivery of interstate shipments of household goods.³

The Ninth Circuit: Preemption Based on Underlying "Conduct," Not "Harm"

Historically, the Ninth Circuit has embraced a broad interpretation of the preemptive scope of the Carmack Amendment. In 1936, the United States Supreme Court found that the Carmack Amendment was "comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any

part of the transportation to the agreed destination."⁴ Relying on the broad language within the Supreme Court's decision in *Pastime Amusement*, the Ninth Circuit, in *Hall v. N. Am. Van Lines, Inc.*, held that the Carmack Amendment "constitutes a complete defense to common law claims alleging all manner of harms."⁵

When considering the preemptive scope of the Carmack Amendment in *White v. Mayflower Transit, L.L.C.*, the Ninth Circuit noted that the Eleventh and Fifth Circuits focus on the *conduct* underlying the alleged harm to determine whether Carmack Amendment preemption applies.⁶ In contrast, the Ninth Circuit noted that the First and Seventh Circuits focus on the alleged *harm* (rather than the underlying conduct) to determine whether Carmack Amendment preemption applies.⁷

Despite the split in Circuit decisions, the Ninth Circuit held that "a rule focusing on harm to the exclusion of conduct would contradict the Supreme Court's statement" in *Pastime Amusement*, and that the words of the Carmack Amendment "are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination."⁸ Thus, in the Ninth Circuit, state law claims arising out of the transportation of household goods are preempted by the

Carmack Amendment because the underlying transportation service, rather than the alleged harm, is the proper focus of the preemption inquiry.⁹ Applying this analysis extends Carmack Amendment preemption to numerous situations, including real property damage.

For example, the Eastern District of California expressly extended preemption to claims for damage to real property.¹⁰ In *Waller v. Gary & Koby Transp.*, the plaintiff brought a claim for damage to household goods pursuant to the Carmack Amendment, as well as a negligence claim under the California Civil Code for damage to household goods and damage to plaintiff's floor caused during the delivery of the goods.¹¹ Relying on the United States Supreme Court's broad interpretation of the Carmack Amendment and the Ninth Circuit's recent decision in *Hall*, the Magistrate found that the negligence claim for damage to flooring was "preempted by the Carmack Amendment" and recommended that the requested relief be denied.¹² The District Court adopted that Magistrate's findings and recommendations.¹³

More recently, in *Konecne v. Allied Van Lines*, the District of Nevada considered whether damage to a staircase caused during an interstate move of household goods was preempted by the Carmack Amendment.¹⁴ In *Konecne*, the plaintiffs brought suit under the Carmack Amendment for alleged damage to property during interstate transport and

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brought state law negligence claims alleging damage to the staircase in the plaintiffs' home.¹⁵ The defendants moved to dismiss the state law claims, arguing they were preempted by the Carmack Amendment. Relying on *Hall* and *Waller*, the District Court found that Carmack Amendment preemption extends to damage to real property caused during the interstate transportation of household goods.

The *Konecne* holding is in line with *White*, the Ninth Circuit's most recent decision concerning Carmack Amendment preemption analysis. Indeed, the underlying conduct in both *Waller* and *Konecne* was the interstate transportation of goods, which falls within the preemptive scope of the Carmack Amendment. Thus, in the Ninth Circuit, any harm arising from the interstate transportation of goods (including damage to real property) should be, and is, preempted by the Carmack Amendment. If the conduct is not the focus of the preemption inquiry, then defendants that inadvertently cause damage to real property during transport could face state law liability, in direct contradiction to the certainty and clarity provided by the Carmack Amendment analysis of the Ninth Circuit.

Uncertainty in the East: Household Moves Get Mixed Results

In contrast to the District Courts from the Ninth Circuit, several District Courts from the First, Third, Fourth, and Seventh Circuits narrowly construe the Carmack Amendment's preemptive scope with regard to real property damage. Courts in these Circuits have held that state law claims for damage to real property related to an interstate move of household goods are not preempted by the Carmack Amendment. While there appear to be some trends in the reasoning of these Courts that limit the scope of Carmack preemption, decisions within each Circuit remain inconsistent.

One of the first cases to specifically address—in detail—preemption of real property damage claims under the Carmack Amendment was *Rehm v. Balt. Storage Co.*¹⁶ In *Rehm*, the plaintiffs sued the interstate carriers for damage to their household goods,

but brought a separate claim for damage to their home sustained during the delivery of those goods. The defendants moved to dismiss the real property claim under Carmack preemption. The assigned Magistrate, and later the District Court judge, disagreed with the defendants and allowed the plaintiffs to retain the real property claim. The Court reasoned that “[a]lthough Congress has undertaken to regulate nearly all aspects of the legal relationship between common carrier and shipper, there is no evidence that Congress has sought to extend the reach of the Carmack Amendment to real property damage incidental to the transportation service.”¹⁷

Specifically, the *Rehm* Court focused first on the absence of textual references to real property damage. The Court noted that the language of 49 USC § 14706 was limited to liability for “property a carrier receives for transportation” and apparently referred “to personalty, and not to real property.”¹⁸ The Court further noted that the applicable regulations under 49 CFR 1005.1 “make reference to damage to ‘baggage,’ ‘cargo,’ ‘package,’ and ‘shipment’ but do not contain any mention of claims relating to residential damage.”¹⁹ The Court reasoned that the lack of textual references regarding real property damage was evidence that Congress did not intend to preempt such claims.²⁰

The *Rehm* Court further construed a carrier's obligations under federal law as stemming from purely bailment-related duties. The Court explained that “the distinct nature of the common law dealing with common carriers, and the federal statutory law that governs their interstate operation, arises from the commitment of goods to the possession of another.”²¹ The Court determined that a carrier's duty not to cause damage to a residence upon unloading was “another matter,” arising not from “the legal relationship specific to carrier and shipper but from the relationship general to two individuals.”²² The Court concluded that “[a]bsent congressional directive, state regulation of this area is therefore permissible.”²³

Other Courts have adopted the reasoning of the *Rehm* decision and have declined to allow Carmack preemption of claims alleging damage to real or other property caused during pick up or delivery.

For example, the District of Maryland held that damage to a residence upon delivery “resulted from conduct incidental to the interstate transportation of goods” and, therefore, was “not wholly preempted by the Carmack Amendment.”²⁴


Further, some District Courts have internal divisions as to how to handle Carmack preemption of real property damage claims. For instance, the District of New Jersey held in 2012 that because alleged damages to a residence related to “losses resulting from [a carrier's] failure to properly discharge its duties under some part—any part—of the parties' contract,” the real property damage claim was preempted by the Carmack Amendment.²⁵ Only a few years later, however, a different district judge came to the exact opposite conclusion in *Brudnak v. A.A. Moving*.²⁶ The Court in *Brudnak* noted that the plaintiffs had alleged that the carrier damaged their hardwood floors, walls, and door frames. The Court held that “the Carmack Amendment does not bar claims involving damage to persons or property that arise outside of the carrier's contractual duty to the shipper.”²⁷ The Court noted that “Plaintiffs did not contract with Defendants to move their floors, walls or door frames” and held that “Plaintiffs may maintain an action for negligence to recover for the damage to their house.”²⁸ The case was remanded to state court shortly thereafter, as the plaintiffs decided to drop their cargo-related claims and sue only for damage to housing fixtures allegedly caused by the carrier during delivery.²⁹ Surely, the defendant carriers did not anticipate losing access to the federal court system or the protections offered by the Carmack Amendment in a dispute so closely intertwined with interstate shipping.

Conclusion

Federal Courts have failed to agree on a uniform treatment of real property damage under the Carmack Amendment. District Courts throughout the United States disagree (and often with little explanation) as to whether real property damage is preempted under the Carmack Amendment. These inconsistencies undermine the intent of Congress to provide uniform liability. In contrast, the Ninth Circuit's broad interpretation

of the Carmack Amendment, and focus upon the *conduct* rather than the *harm*, establishes that state law negligence actions based on

alleged damage to real property during pick up or delivery of interstate cargo are preempted. Such reasoning is consistent with

the purpose of the Carmack Amendment: to achieve national uniformity in the liability assigned to carriers.³⁰ 

Endnotes

- 1 See *Adams Express Co. v. Croninger*, 226 U.S. 491, 505-06 (1913) ("Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all state regulation with reference to it").
- 2 See, e.g. *Smith v. UPS*, 296 F.3d 1244, 1249 (11th Cir. 2002); *Rini v. United Van Lines*, 104 F.3d 502, 507 (1st Cir. 1997); *Gordon v. United Van Lines*, 130 F.3d 282, 284 (7th Cir. 1997).
- 3 While the cases discussed in this article deal with damage to real property by household goods carriers, the same general analyses can apply to other shipper/cARRIER relationships and damage to commercial rather than residential property.
- 4 See *Express Co. v. Pastime Amusement Co.*, 299 U.S. 28, 29 (1936).
- 5 476 F.3d 683, 689 (9th Cir. 2007) (citing *Pastime Amusement Co.*, 299 U.S. at 29).
- 6 543 F.3d 581, 585 (9th Cir. 2008) (citing *Smith v. United Parcel Serv.*, 296 F.3d 1244, 1248-49 (11th Cir. 2002) and *Moffit v. Bekin Van Lines Co.*, 5 F.3d 305, 306 (5th Cir. 1993)).
- 7 *White*, 543 F.3d at 585 (citing *Rini v. United Van Lines, Inc.*, 104 F.3d 502, 506 (1st Cir. 1997) and *Gordan v. United Van Lines, Inc.*, 130 F.3d 282, 289 (7th Cir. 1997)).
- 8 *White*, 543 F.3d at 585-86 (quoting *Pastime Amusement*, 299 U.S. at 29).
- 9 *Id.*, at 586 (finding that the Carmack Amendment was broad enough to preempt a claim for "intentional infliction of emotional distress to the extent that it arises from the same conduct as the claims for delay, loss or damage to shipped property").
- 10 *Waller v. Gary Koby Transp.*, 2008 U.S. Dist. LEXIS 85955, at *1-2 (E.D. Cal. Sep. 12, 2008).
- 11 *Id.*, at *2-3 (in addition to seeking attorneys' fees).
- 12 *Id.*, at *19-20 (finding that the "Ninth Circuit has applied such preemption where the claims arise from events other than loss or damage to the property shipped").
- 13 See *Waller v. Gary & Koby Transp., Inc.*, 2008 U.S. Dist. LEXIS 84578, at *1-2 (E.D. Cal. Oct. 17, 2008).
- 14 2017 U.S. Dist. LEXIS 41348 at *1-2 (D. Nev. Mar. 20, 2017).
- 15 *Id.*, at *1
- 16 300 F. Supp. 2d 408, 415 (W.D. Va. 2004). *Id.*, at *2-4.
- 17 *Id.*
- 18 *Id.*
- 19 *Id.*
- 20 The Court also dismissed the defendants' argument that express preemption of state laws related to a price, route, or service of any motor carrier with respect to the transportation of property under 49 USC § 14501 (commonly referred to as FAAAA preemption) showed congressional intent to preempt real property damage claims. The Court noted that Section 14501 included an express provision that the preemptive directive "does not apply to the transportation of household goods." *Id.* at 416 (quoting 49 USC § 14501(c)(2)(B)).
- 21 *Id.* at 416.
- 22 *Id.*
- 23 *Id.* at 415.
- 24 *Gale v. Ramar Moving Sys.*, 2013 U.S. Dist. LEXIS 100645, at *5 (D. Md. July 16, 2013) (citing *Rehm* and holding that "[t]here is no indication that the Amendment was meant to preempt claims based on damages aside from those to the 'goods' shipped in interstate commerce"). Read in its entirety, the *Gale* decision is ultimately focused on the type of damage (damage to real property, rather than to shipped goods) as opposed to "conduct."
- 25 *Raineri v. N. Am. Van Lines, Inc.*, 906 F. Supp. 2d 334, 340 (D.N.J. 2012).
- 26 *Brudnak v. A.A. Moving & Storage, Inc.*, 2015 U.S. Dist. LEXIS 36359, at *10 (D.N.J. Mar. 24, 2015) (unpublished decision).
- 27 *Id.*
- 28 While it is important to note that the defendants in the *Brudnak* case apparently conceded that the real property damages "do not fall under Carmack," the Court went out of its way to concur with the parties and explain how the defendants were "correct." *Id.*
- 29 *Id.*, at *3.
- 30 *Adams Express Co. v. Croninger*, 226 U.S. 491 (1913) ("In enacting the Carmack amendment it is evident that Congress intended to adopt a uniform rule as to the liability imposed upon interstate carriers by state regulations of bills of lading and to relieve such contracts from the diverse regulation to which they had theretofore been subject").