

## Recent preemptive caselaw and cargo claims

by Ben Llaneta, Corporate Counsel

The Carmack Amendment specifies duties for shippers and carriers so each is aware of their rights and liabilities when an issue regarding cargo damage or cargo loss arises. The Carmack Amendment is federal law which preempts all state and common law with regards to remedies relating to cargo loss or damage in an interstate shipment.

Prior to the Carmack Amendment, there was no uniformity in determining liability to carriers. In 1913, the Supreme Court ruled in the *Adams Express Co. v. Croninger* (226 U.S. at 505-06), “That the legislation supersedes all the regulations and policies of a particular state upon the same subject results from its general character... 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.” Motor carriers rely on federal preemption as a way to limit to their liability in cases involving cargo loss or damage.

Below we will summarize some recent cases that demonstrate how the Carmack Amendment and federal preemption is a valuable defense in handling cargo claims.

*Crypto Crane, LLC v. FedEx Ground Package Systems, Inc.*, 2018 WL 6816104 (E.D. Mich. Nov. 7, 2018) involved the alleged non-delivery of cryptocurrency mining equipment that FedEx was transporting from Michigan to Canada. Crypto Crane contacted FedEx customer service where a customer service representative allegedly told Crypto Crane to reimburse its customer the equipment’s total purchase price of \$124,000 and then submit a claim to FedEx. FedEx offered Crypto Crane \$1,985 based on its limitation of liability. Crypto Crane sued FedEx for the total purchase price claiming that the FedEx customer service representative created an oral contract that superseded FedEx’s bill of lading which incorporates its limitation of liability. On FedEx’s motion, the Court dismissed the case holding that the Carmack Amendment preempted state law claims including “all liability stemming from damage or loss of goods, *liability stemming from the claims process*, and liability related to the payment of claims.” (Italics added). The *Crypto Crane* case illustrates that preemption under the Carmack Amendment encompasses not only all liability related to the payment for the loss or damage to goods but also any liability that may arise out of the claims handling process.

In *Security USA Services, Inc. v. United Parcel Service, Inc.*, \_\_\_ F.Supp.3d \_\_\_, 2019 WL 1051017 (D. N.M. Mar. 5, 2019), Security USA sued UPS in state court for breach of contract and bad faith under common-law for the denial of its claim for the loss of a computer server and damage to another. UPS was transporting the servers to a security convention in Dallas. UPS removed the case to federal court where Security USA amended its complaint to include a Carmack claim and further moved to add a claim

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under New Mexico's Unfair Practices Act. On UPS's motion, the Court dismissed the common-law bad faith claim and denied the motion to add the state statutory claim. The Court held that the claims under state common law and statute were preempted by the Carmack Amendment. This case shows that state common-law and statutory bad faith claims for a carrier's denial of cargo loss or damage claims against it are preempted by the Carmack Amendment.

Finally, *Secura Insurance Mutual Co. v. Old Dominion Freight Line, Inc.*, 2019 WL 1114887, 2019 U.S. Dist LEXIS 38153 (W.D. Ky. Mar. 11, 2019) was a subrogation claim by Secura against Old Dominion to recover payment that Secura made to its insured for the damage to custom glass windows. Old Dominion was transporting the windows for Secura's insured from New York to Kentucky and were delivered in allegedly damaged and unusable condition. Secura sued Old Dominion under the Carmack Amendment. But it also included claims under common-law bailment and breach of contract. Old Dominion moved to dismiss or strike the bailment and breach of contract claims as preempted by Carmack. The issue is whether the bailment and breach of contract claims arose from "separate and independently actionable harms that are distinct from the loss of, or the damage to, the goods" so as to avoid preemption under the Carmack Amendment. The Court held that the broad preemptive scope of Carmack encompasses both the bailment and breach of contract claims which arise out of the same incident as the Carmack claim. The *Secura* case suggests that in order to survive preemption, claims under state law must be separate and independently actionable from the loss or damage to goods actionable under Carmack.

These cases highlight the importance of preemptive law when motor carriers handle cargo claims. If you have any questions regarding cargo claims and the Carmack amendment, please contact your local Avalon representative.

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