



---

# SPECTOR RUBIN

---

ATTORNEYS AT LAW

DOMESTIC TRANSPORTATION PANEL

NCBFAA CONFERENCE

Las Vegas, Nevada

APRIL 8, 2014

Andrew R. Spector, Partner  
Logistics and Transportation Practice

# Legal Roles

## Domestic Transportation: Carmack

- Carrier
- Freight Forwarder
- Arranger Forwarder
- Broker / Forwarder distinction
- Domestic Bill of Lading vs. Terms and Conditions
- FMCSA registration



# Carmack Amendment: Broker

- 49 U.S.C. 13102: Sells, offers for sale, negotiates for, or holds itself out by solicitation, advertisement, or otherwise as selling, providing, or arranging for, transportation by motor carrier for compensation.

# Carmack Amendment: Freight Forwarder

- Freight Forwarder: a person holding itself out to the general public...to provide transportation of property for compensation and in the ordinary course of its business:
  - (A) assembles and consolidates, or provides for assembling and consolidating, shipments and performs or provides for break-bulk and distribution operations of the shipments;
  - (B) assumes responsibility for the transportation from the place of receipt to the place of destination; and
  - (C) uses for any part of the transportation a carrier subject to jurisdiction under this subtitle
- **Carrier.**— The term “carrier” means a motor carrier, a water carrier, and a freight forwarder

# Broker vs. Carrier

- Distinction often blurred
  - Fact-intensive
- Courts look to how the entity holds itself out to the shipper and to the public
  - Assumption of responsibility beyond merely retaining the carrier
  - Advertising carrier service
  - Assuring responsibility for the safe transport
  - Exercising control over the carrier, driver, route

# Liability Issues Under Carmack

- Notice of claim: 9-month minimum
- Statute of limitations: 2 year minimum from rejection
  - Carmack only prohibits carriers from fixing shorter periods
- Limitation of Liability
  - Carrier liable for full value
  - But can limit liability if:
    - Files tariff; OR
    - Provides to shipper, upon request, a copy of the rates, rules and classifications

# Domestic U.S. Transportation Issues

- Identity theft
- Conflicts between different terms and conditions
- Conflicting terms between MSA and B/L
  - Merger clauses
- Worker's compensation claims
- Intermodal Transport
- Map-21
- State laws – California Reefer Act
- Food Safety Modernization Act

# MAP-21

- Moving Ahead for Progress in the 21<sup>st</sup> Century Act
- Features:
  - Disclosure of family relationships amongst carriers/brokers
  - Must be registered for each service
    - Forwarder who performs brokerage services must have broker license
  - Minimum driver standards
  - Bonds increased to \$75,000
- Liability imposed upon:
  - Company, Owners, Officers, Directors



## MAP-21 (Cont.)

- Broker license NOT required for:
  - Intra-state moves
  - Transport prior to or subsequent to movement by air
  - Commercial zone moves
  - NVOCCs, customs brokers and IACs
    - BUT – only to extent the domestic transport is ancillary to a greater international shipment
    - ISSUE: Does cargo need to moving under a through-bill of lading?
      - TBD: NCBFAA has sought clarification

# Subcontracting

- **Do subcontractors likely have limits of liability or legal protections?**
  - Subcontractor agreements: broker/carrier, owner/operator
- **Does liability should mirror customer agreement – preserve pass-through indemnity?**
- **KEY ISSUE = recovery against subcontractor**
  - Undercapitalized
  - Underinsured
  - Bankruptcy
  - Negligent selection
- Review: qualifications, insurance, credit
  - Continuing review during relationship

# Downstream Risks

- Loss of Control
- Assumption by Provider of contractual liability for the value of the cargo
- Subcontracts
  - Broker/Carrier agreement
    - Frequently between broker (or logistics provider acting as broker) and another broker
    - Subsequent broker assumes carrier liability
      - Enters into broker/carrier agreement with motor carrier
- Indemnification
  - Do all agreements provide for full indemnity rights
    - Pass-through to logistics provider from ultimate carrier



---

# SPECTOR RUBIN

---

ATTORNEYS AT LAW

**For more information, please contact:**

**Andrew R. Spector, Partner**

Continental Plaza , 3250 Mary Street, Suite 304

Miami, FL 33131

[andrew.spector@spectorrubin.com](mailto:andrew.spector@spectorrubin.com)

305.537.2002

[www.spectorrubin.com](http://www.spectorrubin.com)