

TRANSPORTATION CARRIER LIABILITY FACT SHEET



MODE OF TRANSPORT	OCEAN - INTERNATIONAL	AIR CARGO - INTERNATIONAL	AIR CARGO - DOMESTIC US	RAIL CARGO - DOMESTIC US	MOTOR CARGO - DOMESTIC US	FREIGHT BROKERAGE (PROPERTY BROKER)
GOVERNING LAW	C.O.G.S.A. (Carriage of Goods by Sea Act)	WARSAW PACT	COMMON LAW, COURT DECISIONS	ICC TERMINATION ACT & CARMACK AMENDMENT, 49 U.S.C. 11706	ICC TERMINATION ACT & CARMACK AMENDMENT, 49 U.S.C. 14706	CARMACK AMENDMENT & STATE CONTRACT LAW, COURT DECISIONS
DATE	1936	1929 (US1934)	None	1995 (1906)	1995 (1906)	1995
BASIS OF LIABILITY	Proof of fault of transportation carrier	Presumed fault of transportation	Negligence	Strict Liability; Carmack applies to non-regulated commodities.	Strict Liability; Carmack does NOT apply to non-regulated commodities.	Broker is not liable for cargo loss and damage unless (a) they hold themselves out as a carrier, (b) breach of contract, or (c) agree by contract to assume liability.
BURDEN OF PROOF	Shipper must establish a prima facie case for liability: carrier's receipt of the goods and its failure to deliver them in the same condition and count; burden then shifts to carrier to prove defenses.	Once shipper has established a prima facie case for liability the Air Carrier must prove freedom from negligence	Once shipper has established a prima facie case for liability the Air Carrier must prove freedom from negligence	Shipper must establish a prima facie case for liability: good condition and value at origin, damage or nonarrival at destination, and amount of loss; burden then shifts to carrier to prove defenses.	Shipper must establish a prima facie case for liability: good condition and value at origin, damage or non-arrival at destination, and amount of loss; burden then shifts to carrier to prove defenses.	Shipper.
LIMITATIONS OF LIABILITY	\$500 per package or customary freight unit	19 SDR's, approximately \$12.33	Transportation carrier may limit liability in their rules tariff customer contract rules, if limitation is 'reasonable' and the shipper agrees.	Transportation carrier may limit liability in their rules tariff or customer contract terms if limitation is 'reasonable' and the shipper agrees.	Transportation carrier may limit liability in their rules tariff or customer contract rules, if limitation is 'reasonable' and the shipper agrees.	Brokers potential liability under its contract with client (shipper) may be limited by contractual terms.
SCOPE OF APPLICATION	To or from US ports in Foreign Trade; can be extended to inland portion of movement.	International	Domestic US	Interstate and certain foreign shipments	Interstate and certain foreign shipments	N/A
PERIOD OF APPLICATION	From acceptance through delivery or release	From acceptance through delivery or release	From acceptance through delivery or release	From acceptance through delivery	From acceptance through delivery	Contract based
DEFENSES (OTHER)	17 COGSA defenses include negligent navigation or management, fire unless carrier at fault, Perils of the sea, seizures under legal process, etc.	Freedom from Negligence; Negligent piloting or navigation	Freedom from Negligence	Common law defenses: Act of God; act of the public enemy; act of the shipper; act of a public authority; or inherent vice or nature of goods. Also Bill of Lading Exceptions; may be varied by agreement.		N/A
CARGO LIABILITY INSURANCE	Ocean carriers are not required to carry cargo liability insurance. See Limitations of Liability.	Air carriers are not required to carry cargo liability insurance. See Limitations of Liability.	Air carriers are not required to carry cargo liability insurance. See Limitations of Liability.	Railroads are not required to carry cargo liability insurance. See Limitations of Liability.	Motor carriers are not required to carry cargo liability insurance. See Limitations of Liability.	None, although brokers must be bonded to guarantee their payment of the motor carrier's charges.