Statutory Appendix with Annotations, Carmack Amendment, Supporting Article: How Swiftly Carmack is Washed Away

Patrick M Talbot, Universitas Pelita Harapan

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APPENDIX

CARMACK LIABILITY AND RELATED ICC/STB JURISDICTIONAL PROVISIONS

[N.B. I have collected only what I considered to be the most important provisions, and the most important parts of those; i.e., the Carmack liability provisions and the related ICC/STB jurisdictional provisions. This Appendix is organized according to general periods of time to show progression. The selection of these categories is solely my own. Occasionally I have also emphasized some of the pertinent language in earlier versions which I believe support my arguments in the article. Finally I have footnoted or bracketed some information either to show relationships among various statutes, or to summarize less important statutory amendments.]

1887-1906, INITIAL PROVISIONS

I. EARLIEST ICC GENERAL JURISDICTIONAL PROVISIONS:

A. INTERSTATE COMMERCE ACT, ch. 104, § 1, 24 Stat. 379 (1887) [Initial jurisdictional provision]

AN ACT TO REGULATE COMMERCE. Section 1. That the provisions of this act shall apply to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used, under a common control, management or arrangement, for a continuous carriage or shipment, from one state or territory of the United States, or the District of Columbia, to any other state or territory of the United States or the District of Columbia, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: provided, however, that the provisions of this act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage or handling of property, wholly within one state, and not shipped to or from a foreign country from or to any state or territory as aforesaid.
B. HEPBURN ACT § 1, ch. 3591, 34 Stat. 584 (1906)

Sec. 1. That the provisions of this Act shall apply to any corporation or any person or persons engaged in the transportation of oil or other commodity, except water and except natural or artificial gas, by means of pipe lines, or partly by pipe lines and partly by railroad, or partly by pipe lines and partly by water, who shall be considered and held to be common carriers within the meaning and purpose of this Act, and to any common carrier or carriers engaged in the transportation of passengers or property wholly by railroad (or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment), from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States to an adjacent foreign country, or from any place in the United States through a foreign country to any other place in the United States, and also to the transportation in like manner of property shipped from any place in the United States to a foreign country and carried from such place to a port of transshipment, or shipped from a foreign country to any place in the United States and carried to such place from a port of entry either in the United States or an adjacent foreign country: Provided, however, That the provisions of this Act shall not apply to the transportation of passengers or property, or to the receiving, delivering, storage, or handling of property wholly within one State and not shipped to or from a foreign country from or to any State or Territory as aforesaid.

II. INITIAL CARMACK AMENDMENT, a part of Hepburn Act. § 7, ch. 3591, 34 Stat. 593, 595 (1906), amending ICA § 20

That any common carrier, railroad, or transportation company receiving property for transportation from a point in one state to a point in another state shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass; and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: Provided, that nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law. That the common carrier, railroad, or transportation company issuing such receipt or bill of lading shall be entitled
to recover from the common carrier, railroad, or transportation company on whose line the loss, damage, or injury shall have been sustained, the amount of such loss, damage, or injury, as it may be required to pay to the owners of such property, as may be evidenced by any receipt, judgment, or transcript thereof.

1915-1920

III. FIRST CUMMINS AMMENDMENT TO ICA and CARMACK, March 4, 1915, ch. 176, § 1, 38 Stat. 1196,1197 [amending in several ways, including full liability; requiring rail carriers to issue bills of lading for through shipments into adjacent foreign countries, and indicating liability therefor]\(^1\)

"That any common carrier, railroad, or transportation company subject to the provisions of this act receiving property for transportation from a point in one state or territory or the District of Columbia to a point in another state, territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one state, territory, or the District of Columbia to a point in another state or territory, or from a point in a state or territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation

\(^1\) Sometimes called the “First Cummins Amendment.” A “Second Cummins Amendment” in 1916 modified the “released value” provisions in Carmack after the First Cummins Amendment to better reflect the earlier (more generous to carrier) provisions discussed in Adams Express Co. v. Croninger, 226 U.S. 491 (1913); it is not directly applicable to the issues at hand. See 39 Stat. 441 (1916). The Cummins Amendments were incorporated into Carmack’s codification in 49 U.S.C. § 20(11). A complete history of the statutory changes and the texts of Carmack’s versions in 1906, 1915 and 1916 (the original text and its changes with the Cummins Amendments) is given in Household Goods Carriers’ Bureau v. IC.C., 584 F.2d 437, 443 and n.5, 448-50 and n. 8 (1978) (MacKinnon, J., concurring).
wholly within a territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, \textit{whether such receipt or bill of lading has been issued or not}, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass \textit{within the United States or within an adjacent foreign country when transported on a through bill of lading}, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void. \cite[several Provisos following are omitted]{italics added}

IV. ICC GENERAL JURISDICTIONAL AMENDMENT, the “Transportation Act,” (bi-directional), February 28, 1920, ch. 91, 41 Stat. 456, 474 (1920)\footnote{Initiated by Congress just before the Supreme Court’s decision in \textit{Galveston, Harrisburg & San Antonio Ry. Co. v. Woodbury}, 254 U.S. 357, 41 S.Ct. 114 (1920), and enacted about two months after. It rendered some consistency between the Court and Congress on the ICC’s jurisdiction over carriers operating to or from a foreign country, within the U.S.}

Sec. 400. The first four paragraphs of section 1 of the Interstate Commerce Act, as such paragraphs appear in section 7 of the Commerce Court Act, are hereby amended to read as follows:

“(1) That the provisions of this Act shall apply to common carriers engaged in -

(a) The transportation of passengers or property wholly by railroad, or partly by railroad and partly by water when both are used under a common control, management, or arrangement for a continuous carriage or shipment; or

(b) The transportation of oil or other commodity, except water and except natural or artificial gas, by pipe line, or partly by pipe line and partly by railroad or by water; or

(c) The transmission of intelligence by wire or wireless; -

from one State or Territory of the United States, or the District of Columbia, to any other State or Territory of the United States, or the District of
Columbia, or from one place in a Territory to another place in the same Territory, or from any place in the United States through a foreign country to any other place in the United States, or from or to any place in the United States to or from a foreign country, but only insofar as such transportation takes place within the United States. (emphasis added)

1926-TITLE 49 CODIFICATIONS

V. ICC GENERAL JURISDICTIONAL PROVISION, 49 U.S.C. § 1 (1926) [this was its codification until 1978]

[TEXT IS VIRTUALLY THE SAME AS THAT IN 1920, ABOVE, IV (except some changes either insignificant or inapplicable to the issues I am addressing in the article), and this included and codified earlier versions, supra]

VI. CARMACK AMENDMENT, 49 U.S.C. § 20(11) (1926) [in material part; it incorporated the initial Carmack version in 1906, as well as including the Cummins Amendments in 1915, 1916, supra; this was Carmack’s codification until 1978, and after separate legislation in 1935, its provisions also became applicable to motor carriers for the first time]

(11) Any common carrier, railroad, or transportation company subject to the provisions of this chapter receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever shall exempt such common carrier, railroad, or transportation company from the liability imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of

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iii In 1935, the Motor Carrier Act, ch. 498, 49 Stat. 543, 49 U.S.C. § 319 (Supp. I 1935) extended the Carmack Amendment’s liability scheme to motor carriers. Also in 1935, an ICC general jurisdictional provision for motor carriers was codified at 49 U.S.C. § 302(b) (Supp. I 1935) (later, in 1940, it changed to § 302(a)). Thus, Carmack was extended at this time to motor carriers by a separate statute.
Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to a point in an adjacent foreign country, or for transportation wholly within a Territory, or by any common carrier, railroad, or transportation company delivering such property so received and transported shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or statement filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is declared to be unlawful and void: [Provisos excepting the prohibitions against limitations of liability or released values for baggage and filed tariffs are omitted.]

1978 CHANGES


§ 10501. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation -

(1) by rail carrier, express carrier, sleeping car carrier, water common carrier, and pipeline carrier that is -

(A) only by railroad;

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment; or

(C) by pipeline or by pipeline and railroad or water when transporting a commodity other than water, gas, or oil; and
(2) to the extent the transportation is in the United States and is *between a place in -*

(A) a State and a place in another State;

(B) the District of Columbia and another place in the District of Columbia;

(C) a State and a place in a territory or possession of the United States;

(D) a territory or possession of the United States and a place in another such territory or possession;

(E) a territory or possession of the United States and another place in the same territory or possession;

(F) the United States and another place in the United States through a foreign country; or

(G) the United States and a place in a foreign country. (emphasis added)

B. 49 U.S.C. §10521 (Supp. II 1978), [Subchapter II, ch. 105] [ICC jurisdiction over Motor Carriage]

§ 10521. General jurisdiction

(a) Subject to this chapter and other law, the Interstate Commerce Commission has jurisdiction over transportation by motor carrier and the procurement of that transportation, except by a freight forwarder (other than a household goods freight forwarder), to the extent that passengers, property, or both, are transported by motor carrier—

(1) *between a place in*—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or
(E) the United States and a place in a foreign country to the extent the transportation is in the United States;

VIII. CARMACK RECODIFICATION, 49 U.S.C. § 11707(a)(1), (b) (Supp. II 1978), 92 Stat. 1453 (1978) [covering both rail and motor carriers in a single provision, while ICC jurisdictional provisions for rail and motor carriers were in separate provisions, as indicated in VII., immediately above]

§ 11707. Liability of common carriers under receipts and bills of lading

(a)(1) A common carrier providing transportation or service subject to the jurisdiction of the Interstate Commerce Commission under subchapter I, II, or IV of chapter 105 of this title shall issue a receipt or bill of lading for property it receives for transportation under this subtitle. That carrier and any other common carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Commission under subchapter I, II, or IV are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (1) the receiving carrier, (2) the delivering carrier, or (3) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and applies to property reconsigned or diverted under a tariff filed under subchapter IV of chapter 107 of this title. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) A freight forwarder is both the receiving and delivering carrier. [freight forwarder provisions are omitted]

(b) The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.
The ICC TERMINATION ACT (1995), 109 Stat 803, substituted the ICC with the STB, and located the jurisdictional provisions affecting rail and motor carriers in separate sections. It also located the Carmack liability provisions for rail and motor carriers also in separate sections, and this is the current situation.


§ 10501. General jurisdiction

(a)(1)Subject to this chapter, the Board has jurisdiction over transportation by rail carrier that is -

(A) only by railroad; or

(B) by railroad and water, when the transportation is under common control, management, or arrangement for a continuous carriage or shipment.

(2) Jurisdiction under paragraph (1) applies only to transportation in the United States between a place in -

(A) a State and a place in the same or another State as part of the interstate rail network;

(B) a State and a place in a territory or possession of the United States;

(C) a territory or possession of the United States and a place in another such territory or possession;

(D) a territory or possession of the United States and another place in the same territory or possession;

(E) the United States and another place in the United States through a foreign country; or

(F) the United States and a place in a foreign country. (emphasis added)

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier—

(1) *between a place in*—

(A) a State and a place in another State;

(B) a State and another place in the same State through another State;

(C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;

(D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or

(E) the United States and a place in a foreign country to the extent the transportation is in the United States; (emphasis added)

XI. **CARMACK AMENDMENT RECODIFICATION 1995, LIABILITY FOR RAIL CARRIERS, 49 U.S.C. § 11706(a)**

Liability of rail carriers under receipts and bills of lading

(a) A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall issue a receipt or bill of lading for property it receives for transportation under this part. That rail carrier and any other carrier that delivers the property and is providing transportation or service subject to the jurisdiction of the Board, under this part are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this subsection is for the actual loss or injury to the property caused by

(1) the receiving rail carrier;

(2) the delivering rail carrier; or

(3) another rail carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading.
Failure to issue a receipt or bill of lading does not affect the liability of a rail carrier. A delivering rail carrier is deemed to be the rail carrier performing the line-haul transportation nearest the destination but does not include a rail carrier providing only a switching service at the destination.

XII. CARMACK AMENDMENT RECODIFICATION 1995, LIABILITY FOR MOTOR CARRIERS, 49 U.S.C. § 14706(a)(1), (b)

§ 14706. Liability of carriers under receipts and bills of lading

(a) General liability.--

(1) Motor carriers and freight forwarders.--A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or chapter 105 are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property caused by (A) the receiving carrier, (B) the delivering carrier, or (C) another carrier over whose line or route the property is transported in the United States or from a place in the United States to a place in an adjacent foreign country when transported under a through bill of lading and, except in the case of a freight forwarder, applies to property reconsigned or diverted under a tariff under section 13702. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. A delivering carrier is deemed to be the carrier performing the line-haul transportation nearest the destination but does not include a carrier providing only a switching service at the destination.

(2) Freight forwarder.—[omitted]

(b) Apportionment.--The carrier issuing the receipt or bill of lading under subsection (a) of this section or delivering the property for which the receipt or bill of lading was issued is entitled to recover from the carrier over whose line or route the loss or injury occurred the amount required to be paid to the owners of the property, as evidenced by a receipt, judgment, or transcript, and the amount of its expenses reasonably incurred in defending a civil action brought by that person.