

# **CARGO UPDATE NEWSLETTER**

**A CARRIER OPERATING ILLEGALLY MAY NOT LIMIT LIABILITY – December, 2012**

Motor Carriers are required to have proper and current operating authority from the Federal Motor Carrier Safety Administration (FMCSA). This requires that the motor carrier file an application with the FMCSA, file evidence of proper insurance, designate a registered agent for service of process in all jurisdictions through which the carrier operates, and comply with the FMCSA's safety regulations.

The question often arises whether a carrier has current and proper operating authority or whether the carrier is operating illegally. In fact, this is one of the first things to check when there is a cargo claim against a particular motor carrier and can be done by going to the FMCSA website, [www.fmcsa.dot.gov](http://www.fmcsa.dot.gov). It is not at all uncommon to check on a carrier's status only to find that the carrier's authority to operate has been revoked. The most common reasons for revocation are failure of the carrier to maintain proper and current insurance and failure to maintain a satisfactory safety rating. Carriers who continue to operate without proper authority from the FMCSA are in effect operating illegally.

The law is clear that it is unlawful to provide transportation or service subject to jurisdiction of the Surface Transportation Board without holding an appropriate certificate, permit or license. 49 U.S.C. § 13901. *Quality Exchange, Inc. v. Universal Air Freight, Inc.*, 574 F. Supp. 622 (W.D. N.C. 1983). It follows that a carrier that is operating illegally may not limit liability for cargo loss or damage. At least one court has held that a non-certified carrier who engages in carriage in interstate commerce is precluded from claiming the benefits of a contractual limitation of liability. *Hamilton v. Dean Van Lines, Inc.*, 228 F. Supp. 671 (E.D. Pa. 1964), *modified on other grounds*, 343 F.2d 453 (3<sup>rd</sup> Cir. 1965). This also holds true for brokers who hold themselves out and act like a carrier. The Carmack Amendment, 49 U.S.C. § 14706, allows only carriers as defined by the Act to limit liability. Although failure to have carrier authority does not preclude a finding that the party (broker) was a carrier, an entity licensed as a broker but not as a carrier may not limit liability in the manner specified by the Act. *See, Arco Automation Systems, Inc. v. Iscont Shipping Limited*, 706 F. Supp. 413, 419 (D. Md. 1989).

To summarize, it is important to determine early on whether a particular carrier holds current and proper authority to operate or whether the carrier in fact is operating illegally. If the carrier lacked proper operating authority at the time of a cargo loss or damage, the argument can be made that the carrier is not entitled to limit liability. Each State's rules, decisions, and laws are different, so professional advice should be sought with regard to which rules, decisions and laws are applicable to your particular State and to your particular circumstances.

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