CARGO UPDATE NEWSLETTER

UPDATE*- 4TH CIRCUIT REJECTS RAILROAD'S LIMITATION OF LIABILITY – September 2013

In a far reaching decision, the Fourth Circuit Court of Appeals in *ABB, Inc. vs. CSX Transportation, Inc*., recently declined to uphold a railroad's limitation of liability and held that the railroad was subject to full liability under the Carmack Amendment.

The case involved the shipment of an electrical transformer from Missouri to Pennsylvania that was damaged during the rail transit. ABB brought suit against CSX for the full value of the damage, which was in excess of $550,000.00. The District Court held that liability was limited to $25,000.00 pursuant to the bill of lading, which had been prepared by ABB. In vacating the District Court's limitation of liability ruling, the Fourth Circuit found that Carmack subjected CSX to full liability since the bill of lading did not manifest a written agreement to limit liability as required by Carmack. The bill of lading contained standard language certifying that the shipper was familiar with and agreed to "the classification or tariff which governs the transportation of this shipment." Relying on this language, CSX argued that a $25,000.00 limitation of liability contained in a separate Price List was incorporated in the bill of lading by reference. Although the space on the bill of lading labeled "product value" listed a value of $1,384,000, the space for agreed "declared value" was blank. Additionally, the bill of lading did not contain a price for the shipment and the space labeled "rate authority" was blank. ABB claimed not to be aware of the Price List prior to the loss and that it had attempted to obtain the rate information prior to shipment but was unable to do so. Testimony from CSX indicated that the Price List did not provide varying rates with different levels of liability, but rather, to obtain full liability coverage, a shipper must negotiate a rate directly with CSX.

In ruling against CSX, the Court reinforced that the burden of securing limited liability is on the carrier and that to overcome the presumption of full liability imposed by Carmack, the parties must have a written agreement sufficiently specific to manifest the shipper's agreement to limited liability. CSX's failure to specifically reference the Price List in the bill of lading prevented it from relying on the limitation of liability. The Court further rejected CSX's argument that the parties' alleged past course of dealing could serve as a substitute for a written limitation of liability for a particular shipment. Finally, the Court noted that the fact that the shipper prepared the bill of lading did not alter its decision. Although the case involved rail carriage, the opinion also cites and references motor carrier cases. Motor carriers are subject to a separate provision of Carmack that contains a similar "written agreement" requirement in order to limit liability. The decision potentially has far reaching effect, but each Circuit's decisions and rulings may be different, so professional advice should be sought with regard to your particular Circuit and to your particular circumstances.

***UPDATE- CERT. DENIED. On January 21, 2014, the United States Supreme Court denied CSX's Petition for Writ of Certiorari (the Court declined to review), and accordingly, the 4th Circuit's ruling stands.**