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Slouching Toward A Morass: The Case For Preserving Complete Carmack Preemption

George W. Wright¹

I. INTRODUCTION

For nearly a century, the Carmack Amendment ("Carmack") to the Interstate Commerce Act ("ICA") has governed the liability of interstate motor carriers. Carmack limits a carrier’s liability to the actual loss or injury to the property transported. Congress enacted Carmack in 1906 to end the inconsistent results of applying 50 different state law regimes to interstate transportation agreements and to stabilize carrier transportation rates.

Since Carmack’s passage, the federal courts have almost universally construed it to preempt state tort actions, including punitive damages, against interstate carriers arising from loss or damage to goods in transit and the processing of related claims. Historically, state law claims have been held preempted because their liability standards are incompatible with Carmack’s ‘actual loss’ standard. Relying on dicta in the First Circuit’s decision in Rini v. United Van Lines, Inc.,² however, a few courts have encouraged shippers to assert intentional tort claims that circumvent Carmack and bill of lading limitations of carrier liability.

To the extent Rini’s dicta and its progeny sanction intentional tort claims designed to increase carrier liability based solely on contractual conduct, these cases are wrongly decided and in conflict with Carmack and United States Supreme Court rulings that define Carmack’s preemptive scope. By focusing on claims for personal injuries that are supposedly distinct from loss or damage to the shipper’s goods, Rini’s dicta and the cases relying on it err by disregarding whether such injuries actually flow from the carrier’s non-performance of the bill of lading contract instead of a breach of a general duty of care to the public.

Recently, a bill was re-introduced in the 107th Congress that would exclude from Carmack preemption certain punitive damage suits

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². 104 F.3d 502 (1st Cir. 1997).
against interstate motor carriers for alleged unfair claim handling under state deceptive trade practices acts. Although the proposed bill is christened the “Moving Company Responsibility Act” (“MCRA”), it indiscriminately authorizes punitive damages against all motor carriers, household goods and general freight carriers alike, “for engaging in unfair or deceptive trade practices in the processing of claims relating to loss, damage, injury or delay in connection with transportation of property in interstate commerce.”

The extension of Rini’s dicta and the introduction of the MCRA in Congress are only the latest efforts to usurp Carmack’s exclusive dominion over interstate carrier bill of lading liability. Some years ago, the Massachusetts federal court rendered two decisions restricting the scope of Carmack preemption by dividing interstate shipping transactions into pre-move, move and post-move phases. The Massachusetts approach was generally rejected by the other federal courts and eventually overruled by the First Circuit in Rini. While closing one door, Rini left another slightly ajar by hinting at intentional tort theories as a way for shippers to skirt around Carmack.

Parts II through V review the ICA’s uniform federal liability scheme and the statutory and judicial evolution of the doctrine of Carmack preemption of state and common law. Parts VI and VII examine current procedures and remedies for resolving shipper-carrier disputes and how the proposed MCRA would actually subvert, not complement, the ICA. The author opines that there are no public policy considerations or empirical evidence justifying suspension of Carmack preemption with respect to any kind of interstate motor carrier transportation services, including claim handling. In Part VIII the author further concludes that the proposed MCRA would undermine the ICA’s time-tested policies and uniform federal remedies.

II. The Carmack Preemption Doctrine

The doctrine of preemption essentially means that when federal law regulates a particular activity, the states may not also regulate it with their own laws. The United States Supreme Court has held that the test of federal preemption “... is whether the matter on which the

6. 104 F.3d at 506 n.3.
State asserts the right to act is in any way regulated by the Federal Act. If it is, the federal scheme prevails.

A. Constitutional Origin of Preemption

The principle of federal preemption of inconsistent state laws is founded on the United States Constitution. Article I, Section 8, of the Constitution recites, "The Congress shall have the Power... To regulate Commerce... among the several States...[t]o make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers..." Article VII, the Supremacy Clause, provides, "...the Laws of the United States... shall be the supreme Law of the Land... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding."9

In the debates preceding ratification of the Constitution, future President James Madison argued in The Federalist Papers, in response to attacks on the Supremacy Clause, that "as the constitutions of the States differ much from each other, it might happen that a...national law...would interfere with some and not with other constitutions, and would consequently be valid in some of the States, at the same time that it would have no effect on others."10 Madison opined that a federal republic without federal law supremacy would become "a monster, in which the head was under the direction of the members."11

B. History of the ICA and Carmack Amendment

With the rapid development of interstate transportation in the late 19th century, the impossibility of reconciling inconsistent state laws in disputes between shippers and interstate carriers cried out for a uniform federal solution. Even before the ICA was enacted, the United States Supreme Court recognized the need for national laws governing interstate transportation. In 1883 the Supreme Court held:

What constitutes a contract of carriage is not a question of local law, upon which the decision of a State court must control. It is a matter of general law, upon which this Court will exercise its own judgment.

* * *

If we are to follow on this subject the ruling of the State courts, we should be obliged to give a different interpretation to the same act — the reception of goods marked for a place beyond the road of the

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9. U.S. Const. art. VI, cl. 2.
11. Id.
company – in different States, holding it to imply one thing in Illinois and another in Massachusetts.\footnote{12}

In 1885 the United States Supreme Court commented again on the need for uniform federal laws governing the rights, duties and liabilities of carriers providing interstate transportation services:

Necessarily that [Congressional] power alone can prescribe regulations which are to govern the whole country . . . Congress alone, therefore, can deal with such [interstate] transportation; its non-action is a declaration that it shall remain free from burdens imposed by State legislation.\footnote{13}

In 1887 Congress passed the ICA to regulate the interstate transportation of goods. In its original form, the ICA governed interstate carriers’ freight rates, but not their liability for loss and damage to goods. In 1903 the United States Supreme Court reviewed a case involving an equine shipment from New York to Pennsylvania. Departing from its earlier 1884 ruling in \textit{Hart v. Pennsylvania R.R. Co.},\footnote{14} which also involved a horse shipment, the Supreme Court held that a claim for damage to an interstate shipment did not present a federal question and, thus, the states could determine the liability of interstate carriers under their own laws.\footnote{15} The inconsistent decisions on interstate carrier liability in pre-Carmack cases, even in the United States Supreme Court’s own rulings, underscored the pressing need for a uniform federal liability scheme for the nation’s interstate transportation system.

In 1906 Congress passed the Hepburn Act amending the ICA. The Hepburn Act’s provisions governing interstate carrier liability, commonly known as the Carmack Amendment, were originally set out in Title 49 U.S.C. § 20(11). The Motor Carrier Act of 1935 extended Carmack to interstate motor carriers.\footnote{16} In 1978 the ICA was recodified, with Carmack then found at 49 U.S.C. §§ 10730 and 11707. The ICA was recodified again effective January 1, 1996, in the ICC Termination Act of 1995 ("ICCTA"),\footnote{17} where Carmack is now found at 49 U.S.C. § 14706. Section 14706(a) provides, in part, “The liability imposed under this paragraph is for the actual loss or injury to the property. . . .”\footnote{18}

\begin{itemize}
\item \footnote{13. Gloucester Ferry Co. v. Pennsylvania, 114 U.S. 196, 204 (1885).}
\item \footnote{14. 112 U.S. 331, 338 (1884) ("It is the law of this court that a common carrier may, by special contract, limit his common-law liability.").}
\item \footnote{15. Pa. R.R. Co. v. Hughes, 191 U.S. 477, 491 (1903).}
\item \footnote{17. Pub. L. No. 104-88, 109 Stat. 803 (1995).}
\item \footnote{18. 49 U.S.C. § 14706(a) (2002) (emphasis added).}
\end{itemize}
The 1978 recodification of the ICA was without substantive change to its original provisions at 49 U.S.C. § 20(11).19 In the 1978 statute, the word "injury" in former Section 11707(a)(1) was substituted for the original phrase "damage, or injury" as being more inclusive.20 The phrase "injury to the property" in the former Section 11707(a)(1), now continued in Section 14706(a)(1), encompasses more than mere physical loss or damage to goods. It includes any injury to or invasion of tangible or intangible property rights and economic loss not directly related to physical damage.21

C. The Carmack Amendment’s Uniformity Policy

By enacting the Carmack Amendment a century ago, Congress intended to cut through the Gordian knot of state laws and regulations that had long entangled interstate transportation contracts. Carmack’s uniform “actual loss” liability standard enables both interstate carriers and shippers to assess their transportation risks and allows carriers to predict their potential liability for damages.22 Carmack’s statutory scheme reflects Congress’ efforts to reach a deliberate balancing of shipper and carrier interests.

1. Carmack’s Uniform Burden of Proof

Under Carmack, shippers are relieved of traditional tort liability burdens, such as proving which of several involved carriers is responsible and whether a carrier’s conduct actually or proximately caused the loss.23 Carmack replaces tort principles with a type of strict carrier liability under which the carrier may assert only limited defenses.24 While carriers lost some of their common law defenses under Carmack, they gained the certainty that the rules governing proof of loss

20. Id. at 3205.
or damage and carrier liability would be uniformly applied throughout the nation regardless of the route a shipment might take.\textsuperscript{25}

The balance between shipper and carrier rights achieved by Carmack represents an equitable historic compromise that has worked well for the last century. A shipper may, without having to prove carrier negligence, recover its "actual loss" for goods lost, damaged or delayed in transit and no more. The carrier will be liable for the loss if the shipper establishes a \textit{prima facie} case\textsuperscript{26} to which none of the carrier's limited defenses applies. Not only do shippers and carriers benefit from Carmack, the general public also benefits from lower, more stable transportation rates and uniform, predictable carrier liability standards.

2. Carmack's Omission of Punitive Damages Remedy

Carmack contains no proviso for punitive relief to shippers.\textsuperscript{27} In giving effect to a statute, a court may not read into its terms that which the legislature has excluded.\textsuperscript{28} The United States Supreme Court's early decisions and the United States Circuit Courts of Appeals that have recently addressed the issue have held that the ICA and ICCTA do not authorize punitive damages and that such damages are incompatible with the federal law's basic goals of stable interstate transportation rates and a uniform national carrier liability policy.

A few years after Carmack was passed, the United States Supreme Court observed that it does not authorize punitive relief against carriers. In \textit{Pennsylvania Railroad Co. v. International Coal Mining Co.}\textsuperscript{29} the Court held with reference to the ICA:

There were many provisions in the statute for imprisonment and fines. On the civil side the Act provided for compensation — \textit{not punishment}.

\* \* \*

\textsuperscript{25} Hughes, 829 F.2d at 1415; see also Air Prods. & Chems., Inc. v. Ill. Cent. Gulf R.R. Co., 721 F.2d 483, 486 (5th Cir. 1983) (purpose of Carmack is to provide a "paramount and uniform national law" of carrier liability).

\textsuperscript{26} D.P. Apparel Corp. v. Roadway Express, Inc., 736 F.2d 1 (1st Cir. 1984) (the shipper's burden is to prove delivery in good condition to the carrier, arrival at destination short, damaged or delayed and the amount of damages).

\textsuperscript{27} 49 U.S.C. §14706 (2002).

\textsuperscript{28} In re Borba, 736 F.2d 1317, 1320 (9th Cir. 1984); Marsano v. Laird, 298 F. Supp. 280, 283 (E.D.N.Y. 1969), rev'd, 412 F.2d 65 (2d Cir. 1969); Occidental Life Ins. Co. of Cal. v. Fried, 245 F. Supp. 211, 217 (D. Conn. 1965).

\textsuperscript{29} 230 U.S. 184 (1913).
Instead of giving the shipper the right to recover a penalty fixed in amount or measure, the statute made the guilty carrier liable for the full amount of damages sustained . . .

3. Adams Express Establishes Complete Carmack Preemption

The same year the high Court decided Pennsylvania R.R., it considered whether a carrier’s bill of lading liability for loss of a package containing a diamond ring was governed by Carmack or by Kentucky law which forbade contractual limitations of liability.31 After reviewing the ICA’s history in Adams Express Co. v. Croninger,32 the Court characterized the pre-Carmack provincialization of interstate carrier liability as follows:

Some states allow carriers to exempt themselves from all or part of the common-law liability . . . others did not. The Federal courts sitting in the various states were following the local rule, a carrier being held liable in one court when, under the same state of facts, he would be exempt from liability in another. Hence this branch of interstate commerce was being subjected to such a diversity of legislative and judicial holding that it was practically impossible for a shipper . . . to know, without considerable investigation and trouble, and even then oftentimes with but little certainty, what would be the carrier’s actual responsibility as to goods delivered to it for transportation from one state to another.33

The Adams Express court recognized that Carmack’s purpose was to abolish the multistate legal patchwork governing interstate carrier liability under bills of lading through a complete supplanting of state law:

The congressional action has made an end to this diversity, for the national law is paramount and supercedes all state laws as to the rights and liabilities and exemptions created by such transactions.34

The Adams Express court held with respect to the carrier’s contractual liability to the shipper that the ICA’s preemptive scope is comprehensive because of its general nature:

That the legislation supercedes all the regulations and policies of a particular state upon the same subject results from its general character. It embraces the subject of the liability of the carrier under a bill of lading which he must issue, and limits his power to exempt himself by rule, regulation or contract. Almost every detail of the

30. Id. at 199-200, 206 (emphasis added).
32. 226 U.S. 491.
33. Id. at 505 (emphasis added) (quoting S. Pac. Co. v. Crenshaw Bros., 63 S.E. 865, 870, 5 Ga. App. 675, 687 (Ct. App. 1909)).
34. Id. (emphasis added).
subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject, and supercede all state regulation with reference to it.\textsuperscript{35}

\textit{Adams Express} explained the close relationship between Carmack's uniform liability standard and its complete preemption of state law:

To hold that the liability [of a carrier under a bill of lading] therein declared may be increased or diminished by local regulation or local views of public policy will either make the provision less than supreme, or indicate that Congress has not shown a purpose to take possession of the subject. The first would be unthinkable, and the latter would be to revert to the uncertainties and diversities of rulings which led to the [Carmack] amendment. \textit{The duty to issue a bill of lading, and the liability thereby assumed, are covered in full, and though there is no reference to the effect upon state regulation, it is evident that Congress intended to adopt a uniform rule and relieve such contracts from the diverse regulation to which they had been theretofore subject.}

What is the liability imposed on the carrier? It is a liability to any holder of the bill of lading . . . ‘for any loss, damage, or injury to such property caused by it’ . . . \textit{The liability thus imposed is limited to ‘any loss, injury, or damage caused by it’ . . . and plainly implies a liability for some default in its common-law duty as a common carrier.}\textsuperscript{36}

\textit{Adams Express} established the bedrock principles that under Carmack: (1) the interstate carrier's liability under its bill of lading is limited to the actual loss or damage to the goods; and (2) the carrier's liability is limited with respect to any default in its common law duty to the shipper. In other words, \textit{Adams Express} did not merely hold that Carmack authorizes shippers and carriers to limit the carrier's liability to a sum stipulated in the bill of lading. Rather, \textit{Adams Express} held that Carmack established a \textit{uniform national standard of maximum carrier liability} measured by the actual loss or damage to the property.

\textit{Adams Express} also held that the ICA's proviso\textsuperscript{37} saving to the shipper its common law rights and remedies ("savings clause") must be interpreted to mean only the shipper's rights under federal law, not state law. Otherwise, the Court reasoned, saving the shipper's state law remedies would "maintain the confusion of the diverse regulation

\textsuperscript{35} Id. at 505-506 (emphasis added).
\textsuperscript{36} \textit{Adams Express}, 226 U.S. at 506-07 (emphasis added).
which it was the purpose of Congress to put an end to.”

It was quite obvious to the Court that “the act cannot be said to destroy itself.”

4. Preemption of Remedy-Enlarging State Laws

The Supreme Court’s application of the principles set out in Adams Express has remained consistent. In Charleston & Western Carolina Railway Co. v. Varnville Furniture Co., the Supreme Court struck down a South Carolina statute imposing a $50 penalty on any carrier that failed to notify a shipper within 40 days of delivery of the circumstances of damage to goods and pay the shipper’s claim. Writing for a unanimous bench, Justice Oliver Wendell Holmes wrote that, although the state law “overlaps the Federal act in respect of... the extent of [carrier] liability for loss”, the state law improperly increased the carrier’s liability “by a fine difficult to escape.”

The Court expressly held that post-shipment claim handling by an interstate carrier falls within Carmack’s purview. Consequently, the South Carolina penalty was an unlawful interference with federal authority:

The penalty... was exacted for a failure to pay both claims, within forty days, irrespective of the question whether adequate investigation had been possible, as required by the Interstate Commerce Commission’s rulings...

***

The state law was not contrived in aid of the policy of Congress, but to enforce a state policy differently conceived; and the fine of $50 is enough to constitute a burden [citation omitted]. But that is immaterial. When Congress has taken the particular subject-matter in hand, coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go. [citations omitted]. The legislation is not saved by calling it an exercise of the police power, or by the proviso in the Carmack Amendment saving the rights of holders of bills of lading under existing law [citation omitted].

Carmack’s conflict with the South Carolina law at issue in Varnville plainly foreshadowed Carmack’s many collisions with state consumer acts and other local laws in the years to come. Justice Holmes’s opinion served notice that state law may not be used to punish an inter-

38. Adams Express, 226 U.S. at 507.
39. Id.
41. Id.
42. Id. at 603.
43. Id. at 603-04.
44. Varnville, 237 U.S. at 604 (emphasis added).
state carrier's post-shipment claim handling through the imposition of fines that are in addition to the carrier's "extent of liability" established in Carmack. Under Varnville, Carmack's exclusive "actual loss" liability standard extends to the carrier's claim adjusting and the states may not "help" regulate that conduct with their own laws. In sum, Varnville held that state statutes are preempted by the Carmack Amendment if they "in any way enlarge the responsibility of the carrier' for loss or 'at all affect the ground of recovery, or the measure of recovery.'"  

Although Varnville declared a $50 fine against a carrier under South Carolina law to be an excessive burden on interstate commerce, just one year earlier, in Missouri, Kansas & Texas Railway Co. v. Harris, the Supreme Court held that Carmack did not bar a $20 attorney fee award to a shipper under Texas law. In Harris, the Court reasoned that the attorney fee award did not increase the carrier's liability for loss of the goods and "only incidentally affects the remedy for enforcing that responsibility." 

Harris has been cited as authority for the contention that awarding shippers punitive damages under state consumer laws for "carrier recalcitrance" in the claim process does not clash with Carmack because such state laws do not govern loss or damage to the goods. This reading of Harris, however, overlooks that part of the Court's decision explicitly rejecting the imposition of a penalty on the carrier. Harris upheld the Texas law authorizing attorneys' fees because it imposes not a penalty, but a compensatory allowance" to the shipper of only "a moderate increment" in suit costs.

The Supreme Court's decisions during the next several years after Varnville expanded the principle that Carmack completely preempts all state law that might otherwise increase an interstate carrier's liability under its bill of lading. In Georgia, Florida & Alabama Railway

45. Id. at 603.
46. Id. at 603-04.
47. Id.
48. 234 U.S. 412 (1914).
49. Id. at 420. See also A.T. Clayton & Co. v. Missouri-Kansas-Texas R.R. Co., 901 F.2d 833, 835 (10th Cir. 1990) (attorney fee award against a carrier under state law upheld as an "incidental compensatory allowance").
51. Harris, 234 U.S. at 421. The consumerist theory that punitive damages may be used to enforce the carrier's Carmack duties was similarly rejected by the Second Circuit on the ground that punitive awards "could have a dramatic impact on a carrier's liability and seriously enlarge a shipper's remedy." Cleveland v. Beltman N. Am. Co., 30 F.3d 373, 379 (2d Cir. 1994).
Co. v. Blish Milling Co. the Court held that Carmack is "comprehensive enough to embrace responsibility for all losses resulting from any failure to discharge a carrier's duty as to any part of the agreed transportation..." In Missouri Pacific Railroad Co. v. Stroud the Court declared, "[T]here can be no divided authority over interstate commerce and ... the acts of Congress on that subject are supreme and exclusive." Two years later the Court held in Missouri Pacific Railroad Co. v. Porter, with respect to Carmack, that "Congress must be deemed to have determined that the rule laid down and the means provided to enforce it are sufficient and that no other regulation is necessary."

Quoting Blish Milling, the Court held in Southeastern Express Co. v. Pastime Amusement Co. that the ICA's mission was to establish reasonable and uniform interstate freight rates and a consistent national standard so that carriers can predict their risks and liabilities in setting rates:

The words of the [Carmack Amendment] 'are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination' ... The underlying principle is that the carrier is entitled to base rates upon value and that its compensation should bear a reasonable relation to the risk and responsibility assumed. The broad purpose of the federal act is to compel the establishment of reasonable rates and to provide for their uniform application.

Since Carmack's enactment in 1906, the Supreme Court has generally held that federal law excludes all other rights and remedies with respect to interstate transportation agreements. Moreover, the carrier's rights and obligations defined by its published tariff cannot be enlarged by any alleged tort of the carrier.

52. 241 U.S. 190 (1916).
53. Id. at 196.
54. 267 U.S. 404 (1925).
55. Id. at 408.
57. Id. at 345-46.
58. 299 U.S. 28 (1936).
59. Id. at 29. See also Vaigneur v. W. Union Tel. Co., 34 F. Supp. 92, 93 (E.D. Tenn. 1940) (dismissing emotional distress claims as preempted by federal law meant to establish uniform rates).
A small minority of courts and commentators have opined that Carmack was not intended to completely preempt state law remedies for unfair claim handling and other alleged carrier misconduct. This theory is usually based on the narrow premise that some carrier conduct is not directly related to the actual movement of the goods or their physical loss or damage. Such a blinkered view of Carmack, however, does not square with ICCTA's broad definition of "transportation" and its explicit preemption of state law with respect to all interstate carrier "services." The "ordinary," or limited, preemption interpretation of Carmack often relies on faulty parallels between ICCTA and other federal laws that, unlike Carmack, do not prescribe specific remedies for violations of federal standards. As set forth in Adams Express and the long line of federal appellate and trial court decisions that follow it, Carmack does provide the exclusive remedy for a shipper suing the carrier for any breach of the bill of lading agreement causing loss, damage or delay of the goods.

III. ICA's Comprehensive Legislative and Regulatory Schemes

ICCTA is among the most comprehensive legislative and regulatory schemes that Congress has ever enacted. Carmack supplants all other rules of obligation with respect to interstate shipments. The Federal Motor Carrier Safety Administration ("FMCSA") regulations govern interstate motor carrier claims handling and ICCTA prescribes a $500 per day civil penalty for a violation of the FMCSA's regulations, if no other civil penalty is applicable. Federal agency regulations have the same preemptive effect as federal statutes. Therefore, interstate carrier conduct governed by federal agency regulations is not ordinarily subject to liability under state law. The Su-

62. See, e.g., Kaiser, supra note 50, at 295, 297, 303.
64. 49 U.S.C. § 14501(c) (2002). See discussion infra Part III.
68. 49 C.F.R. §370 (2002).
Supreme Court has held that federal regulatory “pre-emption will lie only if the federal regulations substantially subsume the subject matter of the relevant state law.” As discussed below, the federal regulations governing interstate carriers’ contractual and claim-handling activities leave no room for states’ laws to interfere.

A. ICCTA’s Broad Definition of “Transportation”

ICCTA defines regulated “transportation” to mean not only the actual physical movement of property, but all carrier services related to the movement. These services include, but are not limited to, arranging for, receipt, delivery, transfer, storage, handling, packing, unpacking and interchange of the property. ICCTA further provides that a state may not enact or enforce any law relating to a motor carrier’s price, route or service with respect to the interstate transportation of property. ICCTA’s expansive definition of regulated “transportation” and its express preemption of state law with respect to any carrier “service” clearly reflect the supremacy of federal over state law in the area of interstate transportation.

B. The FMCSA’s Comprehensive Regulations

The FMCSA’s regulations accompanying ICCTA govern the entire transaction between the shipper and interstate carrier. Shippers’ and carriers’ regulated activities include the following:

1. Pre-contract information, documents and carrier conduct (49 C.F.R. §§375.2-375.6, 375.11, 375.17);
2. Furnishing binding/non-binding estimates (49 C.F.R. §375.3(a) and (b));
3. Order for service (49 C.F.R. §375.5);
4. Issuance of bill of lading (49 C.F.R. §375.6);
5. Non-assumption of carrier liability in excess of bill of lading limitations (49 C.F.R. §375.12);
6. Sale of insurance to shipper (49 C.F.R. §375.11);
7. Restrictions on carrier advertising (49 C.F.R. §375.17);
8. Processing of shipper cargo claims (49 U.S.C. §14706 and 49 C.F.R. § 370);
9. Processing of shipper overcharge claims (49 C.F.R. §378);

74. See Deerskin Trading Post, Inc. v. UPS, Inc., 972 F. Supp. 665, 668 (N.D. Ga. 1997) (Congress intended Section 14501(c) to have same broad preemptive effect as the Airline Deregulation Act).
(10) Filing of shippers' complaints against carriers with the FMCSA (49 U.S.C. §13907(c)(1));
(11) Civil and criminal penalties against carriers for violations of ICCTA and FMCSA regulations (49 U.S.C. §§14901(e); 14914).

The comprehensive, detailed statutory and regulatory framework governing interstate carrier transportation services, including claim processing, manifests an obvious congressional intent to regulate all carrier commercial conduct to the exclusion of state statutes and regulations.

IV. Federal Appellate Court Decisions on Carmack Preemption

A. A Case Chronology

In 1981 the Tenth Circuit held that, under the ICA's savings clause, the plaintiff could assert common and state law claims against the carrier for “reckless” handling of the goods and “dilatory” processing of the plaintiff's damage claim. Eight years later, the Tenth Circuit overruled that decision in Underwriters at Lloyd's of London v. North American Van Lines, Inc. and rejected the savings clause as authority for tort claims against a carrier for breach of the bill of lading contract. After considering the Supreme Court's rulings on Carmack and the savings clause, the Court of Appeals declared:

[T]he Supreme Court and other authorities have described the Carmack Amendment in broad, preemptive terms, and have relegated the proviso [Section 10103] relating to other remedies to a category of almost total insignificance.

The Tenth Circuit held that the savings clause preserves only those common law shipper rights that are consistent with ICA. The Court further held in Underwriters at Lloyd's that Carmack provides the sole remedy for any loss resulting from breach of the carrier's duty under a transportation agreement and there can be no tort cause of action for the same breach.

77. 890 F.2d 1112 (10th Cir. 1989).
78. Id.
79. Id. at 1116. Accord Ting-Hwa Shao v. Link Cargo (Taiwan) Ltd., 986 F.2d 700, 705-06 (4th Cir. 1993); Hughes v. United Van Lines, Inc., 829 F.2d 1407, 1413-14 (7th Cir. 1987); Wirth, Ltd. v. Silvretta, 575 F. Supp. 1274, 1277 n.1 (N.D. Ill. 1984).
80. Underwriters at Lloyd's, 890 F.2d at 1119-1120.
Several other United States Circuit Courts of Appeals have held that Carmack’s actual loss liability standard broadly applies to the carrier’s pre-shipment contract negotiations and post-shipment claim handling. In *Hopper Furs, Inc. v. Emery Air Freight Corp.*, the Eighth Circuit held:

All actions against a common carrier, whether designated as tort or contract actions, are governed by the federal statute, and “no recovery can be had in excess of the amount permitted by [the] terms” of the contract.

In *Hughes v. United Van Lines*, the plaintiffs asserted state claims against the carrier for negligence, conversion and negligent infliction of emotional distress as a result of fire damage to their household goods. The plaintiffs also alleged state claims for misrepresentation and breach of “insurance” contract in connection with the parties’ released valuation agreement in the bill of lading. Affirming the dismissal of the state claims, the Seventh Circuit Court of Appeals held with respect to Carmack:

The purpose of this statute is to establish uniform federal guidelines designed in part to remove the uncertainty surrounding a carrier’s liability when damage occurs to a shipper’s interstate shipment. To permit a shipper to choose among various types of remedies would cause confusion and insurmountable problems and defeat the Act’s purpose of eliminating uncertainty as to a carrier’s liability by injecting uncertainty back into this area of transportation Congress has sought to regulate.

In *Salzstein v. Bekins Van Lines, Inc.*, the Fifth Circuit held that Carmack and the ICC’s regulations govern carrier claim processing to the exclusion of state law. Soon after its decision in *Salzstein*, the Fifth Circuit affirmed the dismissal of numerous state law claims against a carrier, including emotional distress, deceptive trade practices and unfair claim handling. In *Moffitt v. Bekins Moving & Storage*, the District Court held that Carmack “has long been held to preempt state law causes of action arising from or related to [the] move” and that any legal duty on the part of the carrier “arose solely

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81. 749 F.2d 1261 (8th Cir. 1984).
82. Id. at 1264.
84. Id. at 1412 n.5.
85. Id. at 1415. *See also* Intech, Inc. v. Consol. Freightways, Inc., 836 F.2d 672, 677 (1st Cir. 1987) (emphasis added) (Carmack provides exclusive remedy for “damages incidental to” carrier’s breach of contractual duty).
86. 993 F.2d 1187 (5th Cir. 1993).
87. Id. at 1189.
out of” the carrier’s order for service and bill of lading. Affirming on preemption grounds, the Fifth Circuit held that allowing the plaintiffs to pursue their state law claims “could only lead to *the morass that existed before the Carmack Amendment,*” whose purpose “was to create uniformity out of disparity.”

A year later, the Second Circuit again examined Carmack’s uniform liability scheme in *Cleveland v. Beltman North American Co., Inc.* The plaintiffs asserted a federal common law count against a carrier for alleged breach of an implied covenant of good faith and fair dealing in handling a claim for damage to their household goods. After trial in the District Court, the jury awarded the plaintiffs $28,000 in compensatory and $50,000 in punitive damages. The Second Circuit Court of Appeals reversed the punitive award, but found little guidance in the cases involving Carmack preemption of state law claims because the District Court’s award was purportedly based on federal common law. The Court defined the relevant issue as whether a claim for punitive relief “substantively enlarges the carrier’s responsibility for the loss.” *Cleveland* held that punitive damages were not preserved as a federal common law remedy under the savings clause in former Section 10103 because they conflict with Carmack’s uniform liability standard.

*Cleveland* rejected the notion that judicially created federal common law can supplement Carmack:

>[I]n the context of interstate commerce, Congress has spoken directly and comprehensively, creating no need to develop rights judicially to ensure that Congress’ aim is fulfilled.

* * *

Consequently, because the issue of a shipper’s compensation for actual loss or injury to its property has been comprehensively and directly addressed by the Carmack Amendment, a federal common

90. *Id.* at 180-81.
92. 30 F. 3d 373 (2d Cir. 1994).
93. *Id.* at 376.
94. *Id.*
95. *Id.* at 377-81.
96. *Cleveland,* 30 F.3d at 379.
97. *Id.* (noting that “[a]s simply evidenced by the verdict in this case, punitive damage awards could have a dramatic impact on a carrier’s liability and seriously enlarge a shipper’s remedy. A claim for breach of the implied covenant of good faith and fair dealing resulting in an award of punitive damages could well thwart one of the primary purposes of the Carmack Amendment; that is, to provide some uniformity in the disposition of claims brought under a bill of lading. Because the availability of punitive damages would frustrate the uniformity goal of the Carmack Amendment, the Cleveland’s appeal to the savings clause does them no good.”) (emphasis added) (citation omitted).
law cause of action — even assuming such exists — is displaced by the Act that has established those remedies Congress deems appropriate in this field.98

The *Cleveland* panel recognized that where Congress has "comprehensively" addressed the issue of the carrier's liability in Carmack's "actual loss" standard, the further imposition of punitive damages against the carrier would nullify that standard.99

*Cleveland* was preceded by another decision four months earlier in which the Tenth Circuit denied exemplary relief under another section of the ICA. In *Overbrook Farmers Union Cooperative Association v. Missouri Pacific Railroad Co.*100 the Court held that punitive damages are not recoverable for a railroad's alleged failure to maintain service:

The ICC has set its face against punitive damages for violations of the [Interstate Commerce] Act [citation omitted].

* * *

A number of Supreme Court decisions and ICC determinations limit, by way of *dicta*, carrier liability to actual damages for rate violations remedied by 49 U.S.C. § 11705(b) (formerly § 8) [citations omitted].

* * *

[W]e are unpersuaded that punitive damages are available for a § 11101(a) service violation under the § 10103 savings clause. The Supreme Court has determined that § 11705 remedies are solely compensatory. . . .101

In 1997, the First Circuit handed down a significant decision on the scope of Carmack preemption in *Rini v. United Van Lines, Inc.*102 Since the *Rini* case has prompted the introduction of the MCRA in Congress, its facts and holding deserve close scrutiny. The plaintiff booked an interstate shipment of her household goods with the carrier and declared a total released valuation of $60,000 on the carrier's bill of lading.103 At destination, the plaintiff signed the carrier's delivery inventories without exceptions, but reported the next day that she was unable to locate eleven pieces of artwork.104 A month later, the plaintiff submitted an unsupported written claim to the carrier for $134,000—an amount she acknowledged was a "guesstimate".105 A year after the shipment, the plaintiff provided the carrier with two

98. *Id.* at 380-81.
99. *Id.* at 381.
100. 21 F.3d 360 (10th Cir. 1994).
101. *Id.* at 364.
102. 104 F.3d 502 (1st Cir. 1997).
105. *Id.* at 227.
appraisals totaling $57,000 for six of the eleven allegedly missing items.\textsuperscript{106} The plaintiff rejected the carrier's offer to submit the dispute to the American Arbitration Association.\textsuperscript{107} Ten months after the carrier offered to arbitrate, the plaintiff's attorney wrote to the carrier demanding $120,000 (double the $60,000.00 declared valuation for the entire shipment) and advising of the plaintiff's intention to sue for treble damages and attorney's fees under Massachusetts General Laws Chapter 93A, the state's deceptive trade practices act.\textsuperscript{108}

In her suit against the carrier, the plaintiff alleged state claims for negligence, fraud, misrepresentation, intentional infliction of emotional distress, and violation of Chapter 93A, in addition to a Carmack claim.\textsuperscript{109} After the plaintiff's suit was tried before a jury, she was awarded $50,000 for her property loss.\textsuperscript{110} The plaintiff and carrier were held 30\% percent and 70\% percent negligent, respectively, in the conduct of the claim process.\textsuperscript{111} The jury awarded the plaintiff an additional $100,000 in damages on her claim for the carrier's alleged intentional misrepresentations during the claim process, although there was no specific evidence of any additional monetary loss during that process.\textsuperscript{112} The jury denied the plaintiff recovery on her claim for intentional infliction of emotional distress.\textsuperscript{113} Applying Chapter 93A, the trial judge trebled the plaintiff's $100,000 non-Carmack award for alleged claim misrepresentation to $300,000 and awarded plaintiff $146,950 in attorneys' fees, $7,359.60 in costs, and $100,000.00 in prejudgment interest, for a total judgment of $604,309.60.\textsuperscript{114} The final judgment increased by more than 12-fold the jury's award of $50,000 to the plaintiff in actual damages liability under the bill of lading. The final judgment against the carrier was more than 10 times the $60,000 released value declared on the bill of lading by the plaintiff for all her goods.

In its examination of the carrier's appeal, the First Circuit, citing Varnville and Cleveland, reversed and held that Carmack preempts any state law increasing the liability of the carrier for loss or damage and affecting the ground or measure of recovery.\textsuperscript{115} The Court of Ap-

\begin{thebibliography}{15}
\bibitem{106} Background information provided by defendant.
\bibitem{107} \textit{Rini}, 903 F. Supp. at 229 & n.4 (noting that United only informed Rini of the existence of United's arbitration program).
\bibitem{108} Background information provided by defendant.
\bibitem{109} \textit{Rini}, 903 F. Supp. at 225.
\bibitem{110} \textit{Id.} at 231.
\bibitem{111} \textit{Id.} at 231 n.5.
\bibitem{112} \textit{Id.} at 231.
\bibitem{113} \textit{Rini}, 903 F. Supp. at 231.
\bibitem{114} \textit{Id.} at 233-34, 239.
\bibitem{115} \textit{Rini}, 104 F.3d at 505-07.
\end{thebibliography}
peals further noted that Carmack and its accompanying regulations govern both the transportation of goods and the claim process. The *Rini* panel, in *dicta*, suggested a narrow hypothetical exception to Carmack preemption where the shipper alleges an injury “independent from the loss or damage to goods” such as assault or intentional infliction of emotional distress, although the *Rini* jury rejected the plaintiff’s latter cause of action.

In its *dicta*, the *Rini* decision sought to strike a balance between “protecting the federal government’s exclusive jurisdiction over the shipper-carrier relationship,” which includes the claim process, and preserving the shipper’s rights in situations where a carrier’s intentional misconduct may cause physical or severe emotional injury to the shipper that is unrelated to the carrier’s transportation of the goods or handling of the shipper’s claim. To the extent, however, that *Rini’s dicta* has been misconstrued by some as authorizing shipper claims for intentional infliction of emotional distress and other torts arising solely from the carrier’s handling of the goods or the claim process, such a reading of *Rini* is contrary to its actual holding, which affirmed Carmack’s preemption of any state law purporting to enlarge a carrier’s liability for breach of the bill of lading.

In *Gordon v. United Van Lines, Inc.*, the Seventh Circuit affirmed the dismissal of state law claims against the carrier for alleged fraudulent procurement of the transportation agreement and bad faith claim handling. Relying on *Rini*, the Seventh Circuit held that “the claims process is directly related to the loss or damage to the goods that were shipped. Indeed, people would not be involved in the process unless either loss or damage had occurred.” Further citing the *Rini dicta*, however, *Gordon* held that the plaintiffs’ claim for intentional infliction of emotional distress, which *Rini* apparently inspired, was not preempted and remanded that claim for further proceedings.

In *Gordon*, the Seventh Circuit cited its prior decision in *North American Van Lines, Inc. v. Pinkerton Sec. Systems*, Inc. for the principle that intentional infliction of emotional distress is “separate and distinct” from damage to the goods. *Pinkerton*, however, relied

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116. *Id.* at 505.
117. *Id.* at 506.
118. *Id.* at 507.
119. 130 F. 3d 282 (7th Cir. 1997).
120. *Id.* at 290.
121. *Id.* at 289-90.
122. 89 F.3d 452 (7th Cir. 1996).
123. *Id.* at 289.
on two lower court cases that were expressly overruled by *Rini*.\(^{124}\) Thus, both *Gordon* and *Pinkerton* are of questionable precedential value on this issue. Similar to *Rini*, *Gordon* offers no guidance as to what kind of carrier conduct is sufficiently egregious and divorced from the carrier's broadly defined transportation services to be actionable for emotional distress.

In *Morris v. Covan Worldwide Moving, Inc.*,\(^{125}\) the Fifth Circuit revisited the recoverability of emotional damages. The plaintiffs sued the carrier for punitive damages, lost wages and mental anguish after their shipment was destroyed in a truck fire.\(^{126}\) The Fifth Circuit, concurring with *Cleveland* and *Gordon*, held that "federal common law remedies preserved by the savings clause can afford no greater relief than provided by [former] section 11707."\(^{127}\) Accordingly, the Fifth Circuit held that the plaintiff's claims for compensatory, emotional and punitive damages based on the carrier's alleged "egregious conduct in the course of discharging its duties under the shipping contract" were preempted.\(^{128}\)

The Eleventh Circuit recently joined the majority of United States Courts of Appeals through its adoption of a broad view of Carmack preemption in *Smith v. United Parcel Service*.\(^{129}\) Significantly, *Smith* did not involve a claim for actual loss or damage to goods, but rather, the carrier's alleged failure to provide service to the plaintiffs.\(^{130}\) UPS refused to continue regular deliveries to the plaintiffs after one of them called a driver "an unflattering and derogatory name."\(^{131}\) After the incident, UPS held the plaintiffs' packages for irregular deliveries by other drivers under "will call" notices mailed to the plaintiffs.\(^{132}\) One of the plaintiffs, however, was legally blind and unable to read the notices, which resulted in some packages being returned to the senders.\(^{133}\) The plaintiffs sued UPS and its driver alleging fraud, negligence, wantonness, outrage, discrimination and conspiracy, to which the defendants asserted the defense of Carmack preemption.\(^{134}\)


\(^{125}\) 144 F. 3d 377 (5th Cir. 1998).

\(^{126}\) Id.

\(^{127}\) Id. at 382.

\(^{128}\) Id. at 383.

\(^{129}\) 296 F.3d 1244 (11th Cir. 2002).

\(^{130}\) Id. at 1247.

\(^{131}\) Id. at 1245.

\(^{132}\) Id.

\(^{133}\) *Smith*, 296 F.3d at 1245-46.

\(^{134}\) Id. at 1246.
Affirming the District Court’s dismissal of the case, the Eleventh Circuit rejected the savings clause (Section 15103) as a basis for the plaintiffs’ state law claims against UPS. Moving to the core of its holding, the Court of Appeals stated that only “conduct separate and distinct from the delivery, loss of, or damage to goods escape preemption.” The Court further explained, “separate and distinct conduct rather than injury must exist for a claim to fall outside the preemptive scope of the Carmack Amendment.” As the carrier’s purported misconduct was its failure to deliver goods, the Eleventh Circuit concluded that none of the plaintiffs’ state law claims were actionable. Smith correctly held that the carrier’s contractual or service-related conduct is the litmus test for Carmack preemption and rejected an illusory preemption standard based on the plaintiff’s denomination of his claim for injury or the alleged severity of the carrier’s acts.

B. The Misuse of Rini’s Dicta

What started out as a purely hypothetical proposition by the First Circuit in Rini has, in a few cases, become a means of evading negotiated contractual liability limits, Carmack’s “actual loss” standard and Carmack federal subject matter jurisdiction. Taking a cue from Rini’s dicta, the plaintiffs in Gordon and several subsequent cases asserted mental anguish claims against carriers to circumvent stipulated bill of lading liability limitations or avoid federal jurisdiction over their suits. In suggesting that a claim for severe emotional distress can give a shipper an additional source of damages beyond the actual loss to the goods, where the carrier’s conduct amounts to no more than a contractual failure to provide agreed transportation services, Rini’s dicta and Gordon err in disregarding the scope of Carmack preemption established by the Supreme Court. Furthermore, Rini’s dicta poses a hypothetical situation that is irrelevant to the vast majority of shipper-carrier disputes.

In short, Rini’s dicta and Gordon disregard the Supreme Court’s ruling in Adams Express, which held that Carmack fully covers the carrier’s liability for any “default in its common-law duty as a common carrier,” which was intended to end the “diverse regulation” of the states. They further disregard Varnville’s holding that state law may

135. Id. at 1246-49.
136. Id. at 1249.
137. Smith, 296 F.3d at 1249.
138. Id.
139. See cases discussed infra Part V.B.
not enlarge the ground or measure of recovery against the carrier under the bill of lading. They also disregard *Blish Milling*'s holding that Carmack comprehensively covers the carrier's liability for "all losses resulting from any failure" to perform the transportation agreement.\(^\text{141}\) According Carmack complete preemptive effect on state law is essential to establishing reasonable uniform rates for interstate transportation services.\(^\text{142}\)

C. **The Viability of Rini-Type Mental Distress and Other Tort Claims for Carrier Contractual Conduct**

Shipper attempts to avoid carrier bill of lading limitations of liability with emotional distress claims are often flawed. Short of having a carrier's employee commit a criminal act, it is difficult to envision conduct so far removed from the transportation services and claim process that it would fall outside the carrier's normal contractual obligations under the bill of lading. Moreover, intentional infliction of severe emotional distress is not actionable under most state laws for ordinary offensive conduct and the usual subjective reactions to it.\(^\text{143}\) Thus, the twin elements of extreme willful misconduct and seriously debilitating emotional injury necessary to prove intentional infliction of emotional distress are rarely, if ever, found in situations involving only a carrier's loss of or damage to property, or mere rudeness or failure to pay a claim as demanded. In any event, the debate over shipper emotional distress claims, which *Rini's dicta* and *Gordon* prompted, still remains an academic one. To date, no reported case has yet held an interstate motor carrier liable to a shipper for intentional infliction of emotional harm for the mere handling of goods or a claim.

V. **Lower Court Decisions on Carmack Preemption**

A. **Cases Upholding Carmack Preemption**

The scope of Carmack preemption has been frequently examined in federal and state trial court opinions. All but a handful of courts have held that Carmack's uniform "actual damages" liability standard preempts punitive claims under state consumer fraud and deceptive trade practices acts arising from loss or damage to goods in transit, as


\(^{143}\) *Restatement (Second) of Torts* § 46 cmt. (1965) (elements of intentional infliction of emotional distress are extreme and outrageous conduct intentionally or recklessly causing severe emotional distress).
well as from the carrier’s pre-shipment and post-shipment services related to the actual transportation. Other courts have held that emotional distress claims are similarly preempted insofar as they are based on the carrier’s contractual duties and conduct under the bill of lading.

1. Consumer Fraud and Other State Law Claims

The decision of state legislatures to enact consumer fraud and deceptive trade practices statutes, beginning in the 1960’s, inevitably led to shippers’ suits that sought to apply these laws to interstate carriers in cases involving transportation of goods. By and large, the federal and state courts have dismissed such claims against carriers on pre-emption grounds in many states, including Colorado,\textsuperscript{144} Connecticut,\textsuperscript{145} Florida,\textsuperscript{146} Georgia,\textsuperscript{147} Idaho,\textsuperscript{148} Illinois,\textsuperscript{149} Maryland,\textsuperscript{150} New Jersey,\textsuperscript{151} New Mexico,\textsuperscript{152} North Carolina,\textsuperscript{153} South Carolina,\textsuperscript{154}


\textsuperscript{151} Orlick v. J.D. Carton & Son, Inc., 144 F. Supp. 2d 337, 345 (D.N.J. 2001) (New Jersey Consumer Fraud Act claim held preempted by Carmack because all claims “arise from the contractual relationship”); Indus. Risk Ins. v. UPS, 746 A.2d 532 (N.J. Super. Ct. App. Div. 2000) (Carmack scope not limited to period when goods are “on the highway” and applies to the carrier’s “entire body of services” related to transportation.).


Two of the federal court decisions upholding Carmack preemption are instructive. In Margetson v. United Van Lines, Inc., the plaintiff sued the carrier alleging that her move was not performed in accordance with the carrier’s promises prior to the shipment. The plaintiff demanded punitive damages for the carrier’s alleged fraud, recklessness and violation of state deceptive trade practices laws. The New Mexico District Court rejected the plaintiff’s contention that Carmack applies only to the carrier’s conduct during the actual transportation and held that Carmack applied to all “...services generally performed by a common carrier...” The Court further held that the imposition of punitive damages with respect to such services would frustrate the legislative intent of the Carmack Amendment.

In Schultz v. Auld, the Idaho District Court dismissed the plaintiff’s claim against the carrier under the Idaho Consumer Protection Act as preempted. Interestingly, the Court rejected the plaintiff’s argument that Carmack did not preempt state consumer law because Congress did not regulate the field of consumer protection in 1906 when it enacted the Carmack Amendment. The Court reasoned that applying state consumer law to interstate carrier conduct would be “totally incongruous with the purposes of the Carmack Amendment.”

If this Court were to adopt Plaintiff’s position, the uniformity and certainty of the national scheme would be compromised. The position asserted by Plaintiff would enable one moving from any state to the State of Idaho to proceed under the Idaho Consumer Protection Act. Such a rule would create an entirely new scheme of potential liability for a carrier, as the right to assert additional causes of action would fortuitously depend on from where or to where the shipper moved. It is not difficult to imagine that every suit brought against a carrier of household goods would include allegations of intentional conduct or fraud in an effort to avoid the preemptive...
effect of the Carmack Amendment. Moreover, to account for increased liabilities occasioned by the exception, carriers would necessarily be required to increase their rates, thus further defeating congressional policy to encourage reasonable rates for transportation.165

2. Emotional Distress Cases

In *Rockholt v. United Van Lines*,166 the Idaho District Court, citing Carmack’s preemption of the action, dismissed the plaintiff’s claims against the carrier for emotional distress and punitive damages.167 The Court reviewed Supreme Court and federal appellate court precedents to conclude that such claims are incompatible with Carmack’s “limited liability” standard as defined in *Adams Express*.168

The Maryland District Court’s decision in *Richter v. North American Van Lines*169 provides an instructive analysis of a plaintiff’s claim against the carrier for intentional infliction of emotional distress. The Court refrained from deciding whether Carmack preempted the emotional distress claim and held that the carrier’s conduct was not “opprobrious,” so as to be actionable under state law.170 The Court observed that there is almost always some mental vexation of the plaintiff with any contractual breach and that allowing mental distress claims in interstate transportation cases could be “paralyzing to commerce.”171

In *Hull v. United Van Lines*172 a Georgia federal court, following the Eleventh Circuit’s decision in *Smith v. UPS*,173 recently dismissed as preempted the plaintiff’s state law claims for intentional infliction of emotional distress based on the carrier’s alleged mishandling of her goods and purported attempt to conceal the damage. Applying the Eleventh Circuit’s conduct-based preemption test, *Hull* held “...it matters not whether an injury is distinct and separate – to one’s person, for example, and not to property – if the underlying conduct caus-

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165. Id.
167. Id. at 386-89.
168. Id. at 387.
170. Id. at 411-12.
173. 296 F.3d 1244 (11th Cir. 2002).
ing the injury is itself not separate and distinct.” 174 The Court further reasoned that “the underlying conduct plaintiff alleges is not separate and distinct from a failure to properly transport and deliver goods . . . the allegations of fraud that plaintiff focuses on – as well as her other factual allegations – simply describe the outrageous manner in which defendants failed to carry out their duties under the contract.” 175 Hull rejected the preemption analysis of a pre-Smith decision by the same District Court in Hubbard v. All States Relocation Serv., Inc., which is discussed below.

B. Cases Rejecting Carmack Preemption

Three recent federal court decisions relying on Rini’s dicta and Gordon have taken a narrow view of Carmack preemption and permitted shippers to pursue state law tort claims against carriers directly relating to the carriers’ interstate transportation services. 176

In Hubbard v. All States Relocation Serv., Inc., the plaintiff alleged claims for “damages to his goods and severe emotional distress.” 177 178 In its decision, the Georgia District Court characterizes Carmack’s scope as extending only to “claims for damages to goods.” 177 Hubbard cites Rini and Gordon for the proposition that a claim for damages for “injuries separate and apart from the loss or damage of goods” may not be preempted. 179 According to Hubbard, a claim for injury “to the shipper personally,” 180 such as intentional infliction of emotional distress, is not preempted. The decision, though, does not recite that the plaintiff presented any facts or allegations suggesting that his emotional distress claim was based on anything more than the alleged loss of his property, that is, the carrier’s alleged breach of the bill of lading.

It is unclear whether Hubbard’s holding is limited to claims for intentional infliction of emotional distress or, as implied in the opinion, whether the Court considered even alleged negligent infliction of emotional distress based solely on the carrier’s handling of the shipper’s goods or claim to be free from Carmack preemption. Furthermore, Hubbard’s reliance on the Massachusetts District Court’s

175. Id.
177. 76 Hubbard, 114 F. Supp. 2d at 1376.
178. Id. at 1377.
179. Id. at 1379.
180. Id. at 1381.
decisions in Sokhos and Mesta, which the First Circuit expressly overruled in Rini, compromised the ruling’s value.\textsuperscript{181}

Hubbard recites that the Fifth Circuit’s decision in Morris\textsuperscript{182} “does not explain why the plaintiffs in that case failed to prove a separate [emotional] injury” that would survive Carmack preemption.\textsuperscript{183} Morris, however, clearly holds that the plaintiffs’ mental anguish claim failed because the alleged emotional suffering was “incurred by the Morrices as a result of the destruction of their household goods” and not from any intentional misconduct of the carrier separate from its contractual duties.\textsuperscript{184} Therefore, Hubbard’s reliance on Morris as authority for allowing a claim for mere negligent infliction of emotional distress is misplaced. Finally, Hubbard’s precedential value is highly doubtful in light of the Eleventh Circuit’s subsequent adoption of the carrier conduct-based preemption test in Smith v. United Parcel Service.\textsuperscript{185}

In Lamm v. Bekins Van Lines Co.,\textsuperscript{186} an Alabama federal court considered the scope of Carmack preemption on the plaintiffs’ remand motion challenging federal removal jurisdiction.\textsuperscript{187} The Court remanded the action to the state court on the ground that Carmack did not completely preempt the plaintiffs’ claims for ‘outrage’ and emotional distress.\textsuperscript{188} The Court held that the plaintiffs asserted a separate non-preempted claim for emotional distress as a result of allegedly “witnessing the [movers’] drunken, brawling behavior that put their heirlooms at risk” while the goods were being packed for shipment.\textsuperscript{189} The Court reasoned that, because the goods were not actually damaged during pre-shipment handling, the plaintiffs’ outrage and emotional distress claims were not preempted.\textsuperscript{190} The Court, however, offered no theory of how the carrier’s alleged failure to properly handle the plaintiffs’ goods during packaging could be based on any legal duty other than a contractual one. Additionally, the Court did not acknowledge ICCTA’s broad statutory definition of “transportation,” which includes all carrier “handling” and “pack-

\begin{itemize}
\item[\textsuperscript{181}] Rini v. United Van Lines, Inc., 104 F.3d 502, 506 n.3 (1st Cir. 1997).
\item[\textsuperscript{182}] Morris v. Covan Worldwide Moving, Inc., 144 F.3d 377 (5th Cir. 1998).
\item[\textsuperscript{183}] Hubbard, 114 F. Supp. 2d at 1380.
\item[\textsuperscript{184}] Morris, 144 F.3d at 383.
\item[\textsuperscript{185}] 296 F.3d 1244 (11th Cir. 2002).
\item[\textsuperscript{186}] 139 F. Supp. 2d 1300.
\item[\textsuperscript{187}] Id.
\item[\textsuperscript{188}] Id. at 1312-13.
\item[\textsuperscript{189}] Id. at 1302, 1312-13.
\item[\textsuperscript{190}] Lamm, 139 F. Supp. 2d at 1313.
\end{itemize}
ing," in concluding that the plaintiffs had a viable state law claim based on the carrier's pre-shipment packing of the goods.

Lamm further justified the remand on the possibility that, because of one of the plaintiffs' active military status, Carmack may not govern the action. Lamm, however, contains no specific finding that Carmack was inapplicable and does not cite any statutory or contractual provision rendering Carmack inapplicable to that case.

In a puzzling discussion, Lamm dismisses the Supreme Court's 1913 ruling in Adams Express as "anachronistic" because, according to the Lamm court, the ICA's savings clause at that time was narrower than its modern recodified version. The Lamm court, however, does not explain how any textual evolution of the original savings clause has made Adams Express outdated or non-binding on the lower courts. The Lamm decision further contends that the ICA's savings clause should not be construed as a "nullity." Lamm, however, disregards the federal appellate court decisions that correctly follow Adams Express on this point, including the Tenth Circuit's decision noting that most courts have relegated the savings clause to a position of "almost total insignificance."

In Rosenthal v. United Van Lines, LLC the plaintiffs asserted various state law claims against an interstate van line and its disclosed household goods agents alleging property damage and tort claims directly stemming from the carrier's transportation services. The plaintiffs asserted claims for intentional infliction of emotional distress and loss of companionship as a result of the carrier's alleged failure to deliver the goods as agreed. The plaintiffs further averred that the carrier's moving crew blocked "non-union" workers from completing the delivery.

Rosenthal begins its preemption analysis with a notation that "the weight of the authority [in the Eleventh Circuit] supports the complete preemptive force of the Carmack Amendment as it relates to claims for damages or loss of property involved in interstate transpor-
The Court acknowledged that the plaintiffs’ emotional distress claims were based on “the Defendant’s alleged actions in delivery of their belongings.” In other words, the plaintiff’s mental distress claims were based on the carrier’s conduct in connection with its regulated delivery “services.”

Relying on Rini, Gordon, Hubbard and Lamm, however, the Rosenthal court held that the plaintiffs’ claims for emotional distress and loss of consortium were non-preempted because “these claims do not directly seek relief for the loss of or damage to the household goods . . .” The Court concludes in an ambiguous passage that the plaintiffs’ tort claims, “although arguably related to the household shipment and delivery, assert emotional distress for more than that related to the damage to their goods.” In attempting to define Carmack’s scope by relying on flawed precedents, Rosenthal becomes lost in semantics. The Rosenthal court, like Lamm, also cites the savings clause in Section 13103 as authority for holding that the plaintiffs’ tort claims against the carrier were consonant with Carmack. The Rosenthal court later vacated its opinion in accordance with the parties’ settlement.

Rini, Gordon, Hubbard, Lamm and Rosenthal perpetuate the fallacy that Carmack does not bar tort claims alleging personal injuries “separate” from “direct” property loss or damage, even if the purported injuries result from the carrier’s regulated contractual “services” that the bill of lading covers. These cases disregard the Supreme Court’s ruling in Adams Express that Carmack limits a carrier’s liability for any default in its common law duty to the shipper under the bill of lading. They are out of step with the great majority of recent federal court decisions holding that Carmack completely preempts all state law claims based on a carrier’s alleged breach of its contractual duties under the interstate bill of lading agreement.

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201. Id. at 1336.
204. Id.
205. Id.
VI. The Moving Industry's Claim Arbitration Program

Most of the cases that have generated litigation against interstate motor carriers alleging consumer fraud and emotional distress claims involve household goods disputes. Thus, a brief review of the moving industry's national claim statistics and ICCTA's arbitration program is in order.

A. An Overview of Moving Claims

The American Moving and Storage Association (AMSA), an association of 3,500 international, interstate and local moving and storage companies, estimates that approximately 1.3 million household goods shipments are transported annually in interstate commerce. In 1996, the AMSA's predecessor organization, the American Movers Conference (AMC), conducted a study of claims that interstate movers received and paid. The AMC found that 121,909 claims were filed with eight major interstate movers on a total of 557,543 national account, collect-on-delivery (COD) and government shipments. The AMC further determined that carriers paid about 96% of all claims that were filed. The average claim was filed for $972.00 and the average settlement payment was $610.00.

The author's survey of moving industry sources, shipper associations and private and public consumer groups has not disclosed any statistical data on the frequency of shipper complaints against interstate movers for unfair claims handling. In 2000, the United States Department of Transportation (DOT) logged some 4,000 consumer complaints of all types against movers for which the FMCSA has investigative responsibility.

B. ICCTA's Alternative Dispute Resolution Provision

ICCTA provides for arbitration of household goods claims as the preferred alternative to lawsuits. Section 14708(a) requires, as a condition of registration, that household goods carriers offer shippers a dispute settlement program that impartial persons administer.

211. Id.
212. Id.
213. Id.
Section 14708(b)(8) requires the arbitrator to render a decision within 60 days of receiving written notification of the dispute.\textsuperscript{218} Section 14708(d) provides for an award of attorneys fees to a shipper in a court action after an arbitration if: (a) the shipper has filed a claim with the carrier within 120 days of delivery; (b) the shipper prevails on its suit and either (c) an arbitration decision was not rendered within the mandatory 60-day period; or (d) the shipper must file suit to enforce the arbitration award.\textsuperscript{219} The clear intent of Section 14708 is to foster arbitration in lieu of litigation. Voluntary settlement of shipper claims has always been one of the objectives of the ICA and the ICC's and FMCSA's claim-filing regulations.\textsuperscript{220}

According to the AMSA, of the 3,159 shipper requests for arbitration during 1996 through 2001, arbitration through the AMSA's Dispute Settlement (Arbitration) Program resolved 1,330 cases.\textsuperscript{221} Arbitration did not actually resolve most of the cases because they were settled, shippers withdrew them, carriers declined them as previously settled, or they were non-eligible for arbitration for various reasons. The AMSA further reported that during the 1996-2001 period, the average amounts claimed in its arbitration program ranged from $4,785 to $6,264 while the average award ranged from $1,220 to $2,104.\textsuperscript{222} Section 14708 arbitration requests have steadily increased from 96 requests in 1996 to 721 requests in 2001.\textsuperscript{223} As a percentage of approximately 900,000 national account and COD interstate shipments in 2001, the 721 arbitration requests filed that year with the AMSA averaged less than one per 1,000 shipments.\textsuperscript{224} These statistics indicate that ICCTA's goal of affording shippers an economic and expeditious alternative to court litigation is being fulfilled.

\textsuperscript{218} 49 U.S.C. § 14708(b) (2002).
\textsuperscript{220} See also Pathway Bellows, Inc. v. Blanchette, 630 F.2d 900, 904 (2d Cir. 1980), cert. denied, 450 U.S. 915 (1981) ("[T]he ICC's principal aim in promulgating these regulations was to encourage parties to settle claims instead of resorting to costly time-consuming litigation . . . ."); Wis. Packing Co. v. Ind. Refrigerator Lines, Inc., 618 F.2d 441, 445 (7th Cir. 1980) (en banc), cert. denied, 449 U.S. 837 (1980) ("[I]t is apparent that the purpose of the regulation was to make claim settlement more expeditious by providing procedures for the voluntary disposition of claims by carriers.") (emphasis added).
\textsuperscript{221} AMSA Consumer Assistance Programs, American Moving and Storage Association (Jan. 2002).
\textsuperscript{222} Id.
\textsuperscript{223} Id.
\textsuperscript{224} D. Hauenstein, Don't Get Caught: Movers Likely to be Targets of Increased Enforcement Activity by FMCSA, Direction, Jan. 2002, 24, at 29.
VII. THE KERRY BILL: A PROCRUSTEAN BED?

In Greek mythology Poseidon's evil son Procrustes is said to have forced travelers to stretch or lop off their limbs in order to fit into his iron bed. Thus, Procrustes' bed has become a metaphor for any scheme into which something is arbitrarily forced regardless of individual circumstances or differences. The proposed MCRA presently pending before Congress would, in Procrustian fashion, effectively sever the "actual loss" liability standard in Section 14706(a) and refit ICCTA with a new Section 14706(h) authorizing punitive damages to shippers for alleged unfair carrier claim handling — just as state law defines! The Kerry Bill is not only reflexive and ahistorical in its conception, it is fundamentally incompatible with ICCTA's general scheme.

A. The MCRA's Provisions

When the MCRA was first introduced in the Senate in 2000, its sponsor acknowledged that it was the result of lobbying efforts by the plaintiff involved in the Rini case. The proposed bill would amend Title 49 U.S.C. Section 14706 to include the following new subsection (h):

Nothing in this section limits the liability of a carrier for punitive damages authorized under applicable State law for any act or omission of the carrier in connection with the investigation, settlement, adjudication, or other aspect of the processing of a claim under this section that constitutes an unfair or deceptive trade practice under such State law.

The proposed amendment to Section 14706 would be retroactive to January 1, 1990, coincidentally the same year the plaintiff in Rini shipped her goods and well before timely claims could still arise under standard bill of lading terms or even most state laws.

B. The Irrelevance of State DTPAs to Interstate Transit Claims

In weighing the wisdom of incorporating state Deceptive Trade Practices Acts (DTPAs) en masse into Carmack, as the MCRA aspires to do, it is worth recalling the origins and intent of the DTPAs. In 1964 and 1966, the National Conference of Commissioners on Uniform State Laws and the American Bar Association approved the original and Revised Uniform Deceptive Trade Practices Act. Al-

226. Id.
227. Id.
though one authority describes the kinds of acts constituting “deceptive” or “unfair” business conduct as “notoriously undefined,” the purpose of the Uniform DTPA was to deter trademark infringement, passing off goods and services as those of competitors and false advertising.\textsuperscript{229} There is no suggestion in the text of the Uniform DTPA, or its history, that it was designed or intended to regulate the processing of property claims of any kind, let alone interstate transit claims.

In general, the states’ DTPAs are unsuitably vague legal standards for adjudicating suits alleging improper claim handling. These laws are especially inappropriate guides for resolving disputes arising out of interstate transportation and related carrier services. In a federal case involving unfair competition claims, the Second Circuit long ago recognized the difficulty of applying state law to interstate transactions. The Court of Appeals commented, “[s]ince most cases involve interstate transactions, perhaps some day the much needed federal statute or uniform laws on unfair competition will be passed.”\textsuperscript{230} Where federal uniformity is already well developed under Carmack and ICCTA’s regulations governing loss and damage claims against interstate motor carriers, the wholesale transplanting of state DTPAs into federal law would be illogical and highly destabilizing to the federal scheme.

C. The MCRA’s Conflict with ICCTA and Other Federal Laws

Application of state consumer laws to interstate carrier liability under bills of lading would completely undo Carmack’s ‘actual loss’ standard. Under Carmack’s uniform standard, the carrier is liable for an amount up to the shipper’s actual loss regardless of the carrier’s subjective intent or state of mind while processing the shipper’s claim for the loss. Under the terms of the MCRA’s proposed subsection (h), however, the courts would be required to divine whether the carrier’s hard bargaining or refusal to pay the shipper’s claim as demanded is “unfair” or a “deceptive” act under state law.\textsuperscript{231}

Many states do not recognize a right to recover punitive damages for mere contractual breaches, regardless of the breacher’s motive, unless the offending conduct entails some additional intentional misconduct amounting to an independent tort. In other words, the same conduct constituting a contractual breach cannot also give rise to a

\textsuperscript{229} Id.
\textsuperscript{230} Am. Safety Table Co. v. Schreiber, 269 F.2d 255, 271 (2d Cir. 1959).
\textsuperscript{231} 146 CONG. REC. S2347-02 (daily ed. Apr. 6, 2000) (statement of Sen. Kerry).
tort claim without jeopardizing the integrity of contracts.\textsuperscript{232} Simply put, punitive damages are not ordinarily recoverable for a breach of contract.\textsuperscript{233} Therefore, even under most state laws, the mere failure of a motor carrier to pay a claim would not support a cause of action in tort, let alone the imposition of punitive damages.

Aside from the obvious conflict between state punitive damages laws and Carmack’s ‘actual loss’ liability standard, the proposed MCRA’s incompatibility with other ICCTA provisions\textsuperscript{234} also merits attention. The enactment of subsection (h) would inevitably lead to conflicts between the multitude of state consumer codes and the FMCSA’s federal claim-processing regulations. For instance, what would happen under the MCRA if, as in \textit{Varnville}, some ninety years ago, a state consumer law imposes a penalty on a carrier for failing to investigate and pay a shipper’s claim within 40 days while the existing federal regulations give a carrier 120 days\textsuperscript{235} to investigate and pay or decline a claim? More to the point, why would anyone want to implant Carmack with a ‘catch-all’ provision that would generate endless conflicts between federal laws and state DTPAs?

Under the MCRA, damages awards against carriers, in cases where Carmack’s uniform liability standard supposedly governs, would turn unpredictably on which of the 50 states happens to be the origin or destination of an interstate shipment, where the shipper’s suit is filed and which state’s law the court applies. Would the applicable law be that of the state where the shipment is booked, the state where the goods are picked up or delivered, the state where the claimant happens to reside or the state where the carrier’s allegedly unfair claim adjuster is employed? If the MCRA became law, the shipper would naturally seek to file suit against the carrier in the state with the most punitive consumer laws to maximize his damages for the carrier’s alleged breach of the bill of lading contract.

Replacing Carmack’s uniform claim and suit filing periods\textsuperscript{236} with an assortment of state DTPA statutory periods would frustrate ICCTA’s objective of bringing predictability and certainty to the disposition of loss and damage claims. Under the MCRA, Carmack-au-

\begin{itemize}
  \item \textsuperscript{232} First Trust Nat’l Ass’n v. First Nat’l Bank of Commerce, 220 F.3d 331, 335 (5th Cir. 2000); Future Tech Int’l., Inc. v. Tae Il Media, Ltd., 944 F. Supp. 1538, 1566 (S.D. Fla. 1996) (“[T]ort law and contract law must be held apart in order to foster the reliability of commercial transactions.”).
  \item \textsuperscript{233} 5 \textit{Corbin}, Contracts § 1077 (1964).
  \item \textsuperscript{234} See §§ 49 U.S.C. 14501(c), 14708 (2002).
  \item \textsuperscript{235} 49 C.F.R. § 370.9(a) (2002).
  \item \textsuperscript{236} The carrier may require the shipper to file a pre-suit claim within nine months of delivery and file suit within two years after declination of the claim. 49 U.S.C. § 14706(e) (2002).
\end{itemize}
authorized tariff and bill of lading limitation periods would be meaningless if state consumer laws take precedence. Eventually, the MCRA would revive the very kinds of shipper preferences that the ICA was meant to abolish. Indeed, the ICA’s original anti-preference policy remains particularly vital in the interstate transportation of household goods for which the ICCTA requires carriers to set out their rules and rates in published tariffs.237

Some proponents of more stringent regulation of the moving industry call for Congress to install an expeditious system for resolving consumer claims.238 As discussed above,239 Section 14708 already provides one. The proposed Section 14706(h), however, would undermine Section 14708 by encouraging shippers to forego arbitration with movers in favor of potentially more lucrative punitive damages litigation. Considering ICCTA’s national policy of providing uniform compensation to shippers rather than punishment of carriers, the omission of private punitive remedies from the ICCTA and the FMCSA regulations was not an oversight. By offering shippers a financial incentive to pursue court litigation, the MCRA’s authorizing of punitive awards against carriers would frustrate ICCTA’s policy of encouraging settlements through informal dispute resolution.

The proposed MCRA’s multiplier effect on the carrier’s bill of lading liability could also result in a dramatic increase in the volume of Carmack cases in the federal courts. Presently, the federal courts have original jurisdiction over Carmack suits in which the amount in dispute exceeds $10,000 per bill of lading, excluding costs and interest.240 The reason Congress established the $10,000 per bill of lading jurisdictional amount was to limit the number of small cases filed in or removed to the federal courts.241 If a carrier’s potential liability under its bill of lading could be trebled or more under state law, the $10,000 per bill of lading limitation would become a meaningless threshold.

In sum, allowing recovery of exemplary damages against interstate carriers for alleged unfair claim handling, deceptive trade practices, emotional distress and other such state law causes of action would nullify the uniform federal scheme governing carrier liability. Any carrier’s claim declination or tough negotiating stance would invite a suit for consumer fraud. In its net effect, the Kerry Bill’s impact on

238. Kaiser, supra note 50, at 309.
239. See supra Part VI.B.
240. 28 U.S.C. §§ 1337(a), 1445(b) (2002).
interstate carriers’ rate structures would result in shippers, whose states have more draconian consumer laws, being subsidized by shippers in states with less punitive or no such laws at all.

In view of the arbitration remedy afforded shippers under Section 14708 and the lack of empirical data on alleged carrier bad-faith claim handling, the MCRA seems to be a solution in search of a problem. To paraphrase Moffit, the MCRA would, under the guise of consumer protection, return the shipper-carrier relationship to the pre-Carmack ‘morass’ that existed before 1906. The proposed amendment to ICCTA could also lead to the erosion of uniform liability standards in the federal laws governing other modes of interstate and international transportation.

VIII. Conclusion

The doctrine of complete federal preemption of state law claims with respect to interstate carriers’ transportation and related services is embodied in ICCTA and its supplemental federal regulations. ICCTA and Carmack have met the need for stable interstate carrier rates and a national uniform standard of carrier liability that covers the entire contractual relationship between the shipper and carrier of which claim handling is an integral part. Carmack’s reach extends to the point at which the carrier steps beyond its contractual obligations to the shipper through a breach of its general duty of care that is owed to the public at large.

Rini retired the dubious notion that interstate shipments can be trifurcated so as to limit Carmack only to the intermediate phase, that is, the actual movement of the goods. Rini’s vague dicta, however, seeks to define a class of non-preempted claims that could arise where intentional carrier misconduct might cause physical or mental harm beyond what the interstate bill of lading contract could reasonably contemplate. The problem is that Rini’s dicta provides no real guidance in the vast majority of cases where all provable shipper damages stem directly from the carrier’s handling of the goods. Gordon and other courts have compounded Rini’s confusion through their implication that the carrier’s regulated services and contractual conduct can somehow give rise to intentional tort liability.

The proposed MCRA raises the question whether Congress should amend Carmack to permit the 50 states to impose their diverse standards of consumer law liability on interstate carriers for claim handling conduct that is already federally regulated and an integral part of the carrier’s statutory and contractual duties under its bill of lading. The proposed Section 14706(h) does not mesh with ICCTA’s preemp-
cition provision in Section 14501(c) that applies to all carrier 'services'. With its punitive damages incentive, the MCRA also thwarts Congress's effort to promote shipper-carrier arbitration under Section 14708.

The advocates for expanding state law into the interstate shipper-carrier relationship have not made a persuasive case for abolishing Carmack's uniform liability standard and overriding the federal claim-processing regulations with state DTPAs and consumer statutes. Considering the nominal amounts typically involved in loss and damage claims and the infrequency of allegations against interstate movers for bad faith claim adjusting, the existing statutory and regulatory remedies provide sufficient deterrents to unreasonable carrier conduct and an expeditious arbitration procedure for resolving disputes in lieu of protracted, expensive lawsuits.

Even if available, shipper remedies were shown to be inadequate, replacing existing federal standards with the chequered laws of the 50 states would not serve the public interest in maintaining stable uniform freight rates, standard carrier liability rules, carrier financial stability and judicial economy. Rather, the appropriate response would be to amend the federal law applied evenly to shippers and carriers throughout the nation. Any federal law provision for punitive damages against carriers would clash with Carmack's 'actual loss' liability standard.

In the final analysis, Congress must decide whether to maintain a uniform system of carrier liability and promote informal resolution of shipper claims under Section 14708, or instead, encourage claimants to pursue rancorous litigation that is driven solely on the prospect of punitive windfalls. ICCTA cannot fulfill its intended goals of establishing uniform rates and carrier liability and promoting arbitration of household goods disputes while, at the same time, offering shippers an array of state law remedies for maximizing carrier liability with punitive awards. In the interest of preserving a coherent national transportation policy, Congress should not abdicate to the states its Constitutionally-mandated duty to regulate interstate commerce and its power to 'make all Laws' necessary to carry out that duty.