

TABLE OF CONTENTS

VOLUME I

PREFACE	i
INTRODUCTION	1
<hr/>	
1. ABOUT THE FOURTH EDITION OF “FREIGHT CLAIMS IN PLAIN ENGLISH”	1
2. THE LEGAL PRINCIPLES GOVERNING FREIGHT CLAIMS.....	1
3. HOW TO USE THIS TEXT	2
4. HOW TO IDENTIFY AND EVALUATE LEGAL DECISIONS	3
THE IMPORTANCE OF LEGAL PRECEDENT	3
JURISDICTIONAL CONSIDERATIONS	3
DATE OF THE DECISION VS. DATE OF MOVEMENT	3
THE WEIGHT OF AUTHORITY.....	4
CITATIONS - COURT DECISIONS	5
WHERE TO FIND COURT DECISIONS.....	7
5. HOW TO IDENTIFY AND EVALUATE FEDERAL STATUTES AND REGULATIONS	8
FEDERAL STATUTES	8
LEGISLATIVE HISTORY	8
FEDERAL REGULATIONS.....	9
REGULATORY AGENCY CASES.....	9
6. RECODIFICATION OF THE INTERSTATE COMMERCE ACT.....	10
1.0 SURFACE CARRIER LIABILITY	11
<hr/>	
1.1 INTERSTATE AND FOREIGN COMMERCE	11
1.1.1 THE “CARMACK AMENDMENT”	12
1.2 INTRASTATE COMMERCE (VS. INTERSTATECOMMERCE).....	17
1.3 “EXEMPT” TRANSPORTATION	21
1.3.1 THE AGRICULTURAL AND FISHERY EXEMPTION	21
1.3.2 THE AGRICULTURAL COOPERATIVE EXEMPTION	22
1.3.3 COMMERCIAL ZONE EXEMPTIONS.....	23
1.3.4 MISCELLANEOUS EXEMPTIONS	23
1.3.5 MIXED EXEMPT AND REGULATED COMMODITIES	24
1.3.6 PRIVATE CARRIAGE	24
1.3.7 DOMESTIC FREIGHT FORWARDERS.....	25
1.3.8 EXEMPT RAIL TRANSPORTATION.....	25
2.0 COMMON CARRIER LIABILITY	29
<hr/>	
2.1 COMMON CARRIER VS. CONTRACT CARRIER (PRE-ICCTA)	29
2.1.1 STATUTORY PROVISIONS (PRE-ICCTA)	29
2.1.2 COMMON LAW TESTS.....	31
2.2 LIABILITY OF A COMMON CARRIER	33
2.3 LIABILITY OF A CONTRACT CARRIER	34
2.3.1 APPLICABILITY OF CARMACK TO CONTRACT CARRIERS	35
2.4 POST - ICCTA	36
3.0 BEGINNING AND ENDING OF CARRIER LIABILITY	37
<hr/>	
3.1 WHEN LIABILITY BEGINS	37
3.2 WHEN LIABILITY ENDS	38

FREIGHT CLAIMS IN PLAIN ENGLISH

4.0	CONTRACTS OF CARRIAGE AND BILLS OF LADING	41
4.1	TRANSPORTATION CONTRACTS	41
4.2	BILLS OF LADING	41
4.2.1	NEGOTIABLE AND NON-NEGOTIABLE BILLS OF LADING	42
4.2.2	INCORPORATION BY REFERENCE	43
4.2.3	THE UNIFORM STRAIGHT BILL OF LADING	43
4.2.4	SHORT FORM BILL OF LADING	45
4.2.5	OTHER FORMS OF BILLS OF LADING	47
4.2.6	SHIPPER-DEVELOPED BILLS OF LADING.....	47
4.2.7	THE “SHIPPER’S DOMESTIC TRUCK BILL OF LADING”.....	48
4.3	THROUGH VS. MULTIPLE BILLS OF LADING.....	49
4.4	FAILURE TO ISSUE BILL OF LADING	51
4.5	UNILATERAL AMENDMENTS	52
4.6	THE “APPARENT GOOD ORDER” CLAUSE.....	52
4.7	NOTATIONS ON BILLS OF LADING.....	53
4.7.1	PROTECT FROM HEAT OR COLD - TRUCK SHIPMENTS.....	53
4.7.2	PROTECT FROM HEAT OR COLD—RAIL SHIPMENTS	54
4.7.3	“SHIPPERS LOAD AND COUNT” NOTATIONS.....	55
4.7.4	MISDESCRIPTION OF GOODS.....	59
4.7.5	“HAZARDOUS MATERIAL” NOTATIONS.....	60
4.7.6	SPECIAL INSTRUCTIONS	60
5.0	BURDENS OF PROOF.....	63
5.1	THE “PRESUMPTION OF NEGLIGENCE”	63
5.1.1	LOSS OR SHORTAGE OF GOODS	65
5.1.2	CONDITION AT ORIGIN	66
5.1.3	SHIPPER’S LOAD & COUNT.....	70
5.1.4	SEALED TRAILERS OR CONTAINERS	72
5.1.5	CONDITION AT DESTINATION	74
5.1.6	DAMAGES.....	76
5.2	CONTRIBUTORY AND COMPARATIVE NEGLIGENCE.....	77
6.0	CARRIER DEFENSES TO LIABILITY.....	79
6.1	COMMON LAW DEFENSES.....	79
6.2	BILL OF LADING EXCEPTIONS	79
6.3	ACT OF GOD	79
6.4	PUBLIC ENEMY	81
6.5	ACT OR DEFAULT OF SHIPPER.....	82
6.5.1	SPECIFIC ACTS OF SHIPPERS	82
6.5.2	USED CONTAINERS	85
6.5.3	BLOCKING & BRACING – RAIL SHIPMENTS	87
6.6	AUTHORITY OF LAW	88
6.7	INHERENT VICE	89
6.8	STRIKES AND RIOTS	91

TABLE OF CONTENTS

7.0	DAMAGES	93
7.1	IN GENERAL	93
7.1.1	PROXIMATE CAUSE.....	93
7.1.2	SPECULATIVE, REMOTE AND UNCERTAIN.....	93
7.1.3	LIMITATIONS OF LIABILITY.....	94
7.1.4	DUTY TO MITIGATE LOSS	94
7.2	GENERAL DAMAGES	96
7.2.1	DESTINATION MARKET VALUE.....	96
7.2.2	OTHER VALUES	97
7.2.3	INVOICE VALUE	98
7.2.4	CONTRACT PRICE	99
7.2.5	MISCELLANEOUS EXPENSES WHICH HAVE BEEN ALLOWED	100
7.2.6	MANUFACTURER’S COST	100
7.2.7	RETAIL PRICES.....	102
7.2.8	STOCK TRANSFERS (WAREHOUSE-TO-WAREHOUSE, ETC.)	102
7.3	SPECIAL DAMAGES.....	103
7.3.1	“GENERAL” VS. “SPECIAL”	103
7.3.1.1	“SPECIAL DAMAGES” - NOT RECOVERABLE	105
7.3.2	GENERAL DAMAGES, NOT “SPECIAL”	107
7.3.3	“SPECIAL DAMAGES” - RECOVERABLE.....	110
7.3.4	TIME OF CONTRACTING VS. NOTICE AT LATER DATE	114
7.3.5	RIGHT OF REFUSAL TO TRANSPORT	115
7.4	SPECIFIC PROBLEMS.....	115
7.4.1	LOSS OF SALE	115
7.4.2	REPAIR COSTS (INCLUDING PROFIT, OVERHEAD, GENERAL AND ADMINISTRATIVE COSTS)	116
7.4.3	RENTAL INCOME.....	116
7.4.4	SPECIAL DESIGN EQUIPMENT	117
7.4.5	EXHIBITS AND DISPLAYS.....	117
7.4.6	REPLACEMENT WITH MISMATCHED COLORS, ETC.	117
7.4.7	PARTIAL LOSSES - PAIRS OR SETS.....	118
7.4.8	DISCOUNTS - TRADE VS. CASH	119
7.4.9	FREIGHT CHARGES	120
7.4.10	TOLERANCES.....	121
7.4.11	COMMISSIONS	121
7.4.12	MARKET DECLINE.....	122
7.5	INTEREST.....	122
7.6	PUNITIVE (EXEMPLARY) DAMAGES	123
7.7	ATTORNEY FEES	124
7.7.1	FEDERAL STATUTES.....	124
7.7.2	STATE STATUTES	125
7.7.2.1	ATTORNEY’S FEES AWARDED-NO FEDERAL PREEMPTION FOUND.....	125
7.7.2.2	ATTORNEY’S FEES DENIED	126
7.7.3	TARIFF OR CONTRACTUAL PROVISIONS.....	127
7.8	BENEFIT OF INSURANCE CLAUSES.....	127

FREIGHT CLAIMS IN PLAIN ENGLISH

8.0	LIMITATIONS OF LIABILITY	129
8.1	BACKGROUND AND HISTORY	129
8.1.1	THE COMMON LAW	130
8.1.2	STATUTORY PROVISIONS	131
8.1.3	RELEASED, AGREED, ACTUAL, AND DECLARED VALUES.....	133
8.2	SURFACE CARRIERS (TRUCK AND RAIL)	134
8.2.1	COMMON CARRIERS	134
8.2.1.1	INTERSTATE COMMERCE ACT.....	134
8.2.1.2	I.C.C. CRITERIA FOR RELEASED RATES	134
8.2.1.3	REQUIREMENTS FOR VALID LIMITATION OF LIABILITY	135
8.2.1.3.1	ACTUAL OR CONSTRUCTIVE NOTICE.....	136
8.2.1.3.2	CHOICE OF FULL VS. LIMITED LIABILITY	138
8.2.1.3.3	WRITTEN AGREEMENT	140
8.2.1.3.4	AGREEMENT PRIOR TO SHIPMENT.....	141
8.2.1.3.5	REASONABLE RELATIONSHIP BETWEEN RATES	143
8.2.2	“DEREGULATION” CHANGES.....	145
8.2.2.1	MOTOR CARRIER ACT OF 1980	145
8.2.2.1.1	NO REQUIREMENT FOR PRIOR I.C.C. APPROVAL	145
8.2.2.1.2	COLLECTIVELY-MADE RELEASED RATES	145
8.2.2.1.3	CHOICE OF RATES	146
8.2.2.2	TRUCKING INDUSTRY REGULATORY REFORM ACT OF 1994	146
8.2.2.3	FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT OF 1994	146
8.2.2.4	I.C.C. TERMINATION ACT OF 1995	147
8.2.2.5	STAGGERS RAIL ACT OF 1980	148
8.2.2.5.1	LIMITED VALUE RATES.....	148
8.2.2.5.2	DEDUCTIBLES	149
8.2.3	INTRASTATE REGULATION	149
8.2.3.1	UNIFORM COMMERCIAL CODE.....	149
8.2.4	CONTRACT CARRIAGE	150
8.2.4.1	COMMON VS. CONTRACT CARRIAGE.....	150
8.2.4.2	MOTOR CARRIERS	151
8.2.4.3	RAIL CARRIERS.....	151
8.2.5	EXEMPT MOVEMENTS.....	152
8.2.5.1	MOTOR CARRIERS	152
8.2.5.2	RAIL CARRIERS.....	153
8.2.6	HOUSEHOLD GOODS CARRIERS	155
8.2.7	EXPRESS & PACKAGE CARRIERS	158
8.2.8	BUS CARRIERS.....	160
8.2.9	FREIGHT FORWARDERS.....	161
8.3	OCEAN CARRIERS	162
8.4	AIR CARRIERS	162
8.5	AIR FREIGHT FORWARDERS	162
8.5.1	“AIR” VS. “SURFACE” MOVEMENTS	162
8.5.2	INTERNATIONAL MOVEMENTS	163
8.6	CARRIERS AS WAREHOUSEMEN	163
8.7	INTERMODAL MOVEMENTS	164
8.8	SPECIFIC PROBLEMS.....	164
8.8.1	NOTICE – ACTUAL OR CONSTRUCTIVE	164
8.8.2	“SOPHISTICATED SHIPPER”	168
8.8.3	PARTIAL LOSSES.....	172

TABLE OF CONTENTS

8.8.4	FORM OF BILL OF LADING	174
8.8.5	TARIFF NOT ON FILE.....	176
8.8.6	TARIFF NOT APPLICABLE.....	177
8.8.6.1	TARIFF RATE NOT CHARGED (NEGOTIATED RATE)	178
8.8.6.2	MINIMUM CHARGE	179
8.8.6.3	CLASS VS. EXCEPTION RATINGS.....	179
8.8.7	TARIFF NOT “POSTED”	180
8.8.8	AMBIGUOUS NOTATIONS	180
8.8.9	MISDELIVERY	181
8.8.10	DEVIATION	181
8.8.11	FUNDAMENTAL BREACH.....	183
8.8.12	WILFUL MISCONDUCT	184
8.8.13	“AUTOMATIC” RELEASES & “INADVERTENCE” RULES	184
8.8.14	“HIGH VALUE” SHIPMENTS	187
8.8.15	GOVERNMENT SHIPMENTS.....	187
8.8.16	DRUGS & TOILET PREPARATIONS.....	187
8.8.17	MISREPRESENTATION OR FRAUD	187
8.8.18	CONVERSION.....	188
8.8.19	SHIPPER’S SIGNATURE	188
8.8.20	INSURANCE VS. VALUATION CHARGES.....	189
8.8.21	THE NMFC AND RATES DEPENDENT ON VALUE.....	189
8.8.21.1	RELEASED VALUE ITEMS	190
8.8.21.2	ACTUAL VALUE ITEMS.....	190
8.8.21.3	ITEM 172 – LIMITATION WHERE VALUE IS NOT DECLARED BY SHIPPER	191
8.8.21.3.1	ITEM 60000 – CLASS-70 – DRUGS, CHEMICALS MEDICINES TOILET PREPARATIONS AND OTHER ARTICLES.....	191
9.0	TIME LIMITS (SURFACE MODES)	193
9.1	MOTOR COMMON CARRIAGE – INTERSTATE	193
9.1.1	CLAIM FILING TIME LIMITS.....	196
9.1.1.1	STARTING THE TIME LIMIT	196
9.1.1.2	ESTOPPEL.....	198
9.1.1.3	ACTUAL NOTICE – THE “HOPPER PAPER” CASE	201
9.1.1.4	COMPUTATION OF TIME LIMITS.....	202
9.1.2	SUIT-FILING TIME LIMITS	202
9.1.2.1	STARTING THE TIME LIMITS	202
9.1.2.2	“DISALLOWANCES” DEFINED.....	203
9.1.2.3	INSURERS’ DISALLOWANCES	205
9.1.2.4	MAILING VS. RECEIPT OF DISALLOWANCES	206
9.1.2.5	IMPROPER DISALLOWANCES	207
9.1.2.6	ESTOPPEL – SUIT FILING TIME LIMITS.....	208
9.2	CONTRACT CARRIAGE	210
9.2.1	COMMON VS. CONTRACT STATUS FOR MOTOR CARRIERS.....	210
9.3	EXEMPT TRANSPORTATION	210
9.3.1	EXEMPT BILLS OF LADING & CONTRACTS	210
9.3.2	U.C.C. PROVISIONS	211
9.3.3	COMMON LAW.....	212
9.3.3.1	FILING OF CLAIMS.....	212
9.3.3.2	COMMENCEMENT OF SUIT	213
9.3.4	FREIGHT FORWARDERS.....	213
9.4	INTERLINE SUITS	214

FREIGHT CLAIMS IN PLAIN ENGLISH

10.0	CLAIMS PROCEDURES & ADMINISTRATION	215
10.1	NOTICE OF CLAIM - REQUIREMENT OF A CLAIM IN WRITING	215
10.1.1	STATUTES AND REGULATIONS	215
10.1.2	BILL OF LADING PROVISIONS.....	215
10.1.3	TARIFFS AND CONTRACTS.....	215
10.2	WHAT CONSTITUTES A CLAIM.....	216
10.2.1	THE FEDERAL CLAIM REGULATIONS.....	216
10.2.2	SUFFICIENCY OF NOTICE OF CLAIM	216
10.2.3	NO FORMAL CLAIM FILED	216
10.2.4	CLAIM FILED, BUT SUFFICIENCY DISPUTED	218
10.2.4.1	APPLICABILITY OF FEDERAL REGULATIONS.....	219
10.2.4.2	FACTS SUFFICIENT TO IDENTIFY SHIPMENT	219
10.2.4.3	ASSERTING CARRIER LIABILITY	220
10.2.4.4	DEMAND FOR PAYMENT	221
10.2.4.5	SPECIFIED OR DETERMINABLE AMOUNT	221
10.2.4.6	“NOTICE OF INTENT”	224
10.3	WHAT IS NOT A CLAIM	226
10.4	AMENDMENTS	227
10.5	WHO MAY FILE A CLAIM OR SUIT	227
10.5.1	RISK OF LOSS.....	228
10.5.2	FILING CLAIMS.....	229
10.5.3	BRINGING SUITS.....	230
10.6	PROPER CARRIER FOR CLAIMS AND SUITS	230
10.6.1	JOINT AND SEVERAL LIABILITY	230
10.6.2	NON-CARRIERS AND INTERMEDIARIES	232
10.6.3	BANKRUPT CARRIERS	233
10.7	WHAT CONSTITUTES FILING	233
10.8	CLAIM DOCUMENTATION	235
10.8.1	NECESSARY DOCUMENTS	235
10.8.2	BONDS OF INDEMNITY	236
10.8.3	PROOF OR VERIFICATION OF LOSS.....	236
10.9	REJECTION VS. ACCEPTANCE OF DAMAGED SHIPMENTS	237
10.9.1	THE “PRACTICALLY WORTHLESS“ TEST	237
10.9.2	WRONGFUL REJECTIONS	238
10.9.3	INSPECTIONS	239
10.10	SALVAGE PROCEDURES	240
10.10.1	SALVAGE RULES AND REGULATIONS.....	240
10.10.2	SALVAGE VALUE	241
10.10.3	CARRIERS’ RIGHT TO SALVAGE.....	241
10.10.4	NOTICE OF REFUSED FREIGHT	242
10.10.5	TIME LIMIT - SALVAGE PROCEEDS.....	243
10.10.6	PRODUCT LIABILITY CONSIDERATIONS	243
10.10.7	TRADE MARK AND BRAND NAME CONSIDERATIONS.....	244
10.10.8	SALVAGE ON RELEASED VALUE SHIPMENTS.....	245
10.11	ACCEPTANCE OR DEPOSIT OF CLAIM CHECKS (ACCORD AND SATISFACTION)	245

TABLE OF CONTENTS

11.0	SPECIFIC CLAIM PROBLEMS	247
11.1	CONCEALED DAMAGE	247
11.2	DELAY CLAIMS (REASONABLE DISPATCH)	252
11.2.1	PERISHABLES	253
11.2.2	NON-PERISHABLES	255
11.2.3	PUBLISHED SCHEDULES	257
11.2.4	“GUARANTEED” DELIVERY	257
11.2.5	MECHANICAL BREAKDOWNS	258
11.3	NON-DELIVERIES	259
11.3.1	SHORTAGES AND PILFERAGE	260
11.3.2	ROBBERIES, THEFTS, HIJACKINGS AND IMPOSTOR THEFTS.....	261
11.3.3	UNDELIVERABLE FREIGHT AND MISDELIVERIES	262
11.4	PIGGYBACK SERVICE (TOFC/COFC)	264
11.5	CONTAMINATED SHIPMENTS	266
11.6	C.O.D. (COLLECT ON DELIVERY) SHIPMENTS.....	267
12.0	AIDS TO CLAIM RECOVERY	269
12.1	GOVERNMENTAL AGENCIES	269
12.1.1	CARGO INSURANCE REGULATIONS.....	269
12.1.1.1	THE BMC 32 ENDORSEMENT.....	269
12.1.1.2	SELF-INSURANCE	270
12.1.2	ADJUDICATION OF CLAIMS.....	271
12.1.3	CLAIM PROCESSING RULES (EX PARTE NO. 263)	271
12.2	ARBITRATION	272
12.3	COURT ACTIONS	273
12.3.1	WHERE TO BRING AN ACTION (VENUE)	273
12.3.2	JURISDICTIONAL LIMITS IN FEDERAL COURTS.....	275
12.3.3	WHO TO SERVE (SERVICE AGENTS).....	276
12.3.4	FORM OF COMPLAINT	276
12.3.5	PREEMPTION OF COMMON-LAW REMEDIES	276
12.3.6	COUNTERCLAIMS AND SETOFFS.....	277
12.3.6.1	BANKRUPT MOTOR CARRIERS.....	279
12.3.6.2	BANKRUPT RAIL CARRIERS.....	281
12.3.7	SMALL CLAIMS COURTS.....	281
12.3.8	ACTIONS AGAINST INSURERS	282
12.3.8.1	DIRECT ACTION AGAINST INSURERS.....	282
12.3.8.2	ACTIONS BASED ON THE BMC 32 ENDORSEMENT.....	283
12.3.8.3	OTHER ACTIONS AGAINST INSURERS AND INSURANCE BROKERS.....	284
13.0	LIABILITY OF SURFACE FREIGHT FORWARDERS AND INTERMEDIARIES	285
13.1	SURFACE FREIGHT FORWARDERS.....	285
13.2	BROKERS	288
13.3	SHIPPERS’ AGENTS.....	294
13.4	SHIPPERS’ ASSOCIATIONS	295

FREIGHT CLAIMS IN PLAIN ENGLISH

14.0	WAREHOUSEMAN'S LIABILITY	297
14.1	PUBLIC WAREHOUSEMAN - GOVERNING LAW AND DEFINITION	297
14.2	FORMS OF WAREHOUSE RECEIPT	298
14.3	LIABILITY OF A WAREHOUSEMAN	299
14.3.1	DUTY OF CARE	299
14.3.2	BURDEN OF PROOF	300
14.4	LIMITATIONS OF LIABILITY	301
14.5	TIME LIMITS	303
14.6	CARRIER AS WAREHOUSEMAN	304
14.7	CHANGE FROM CARRIER'S TO WAREHOUSEMAN'S LIABILITY	304
14.7.1	TENDER TO CONSIGNEE	307
14.7.1.1	RAIL SHIPMENTS	307
14.7.1.2	TRUCK SHIPMENTS	309
15.0	THE IMPACT OF DEREGULATION	313
15.1	INTRODUCTION	313
15.2	THE MOTOR CARRIER ACT OF 1980	314
15.2.1	BROADENING EXEMPTIONS	314
15.2.2	FOOD TRANSPORTATION	315
15.2.3	AIR FREIGHT SURFACE MOVEMENTS	315
15.2.4	LIMITATIONS ON LIABILITY (RELEASED RATES)	317
15.2.5	COLLECTIVELY-MADE RELEASED RATES	317
15.2.6	CARMACK AMENDMENT CHANGES	318
15.2.6.1	"DISALLOWANCE" DEFINED	318
15.2.6.2	INSURER'S DISALLOWANCES	318
15.2.7	CLAIM AND CARGO INSURANCE REGULATIONS	318
15.3	I.C.C.'S IMPLEMENTATION OF THE MOTOR CARRIER ACT OF 1980	319
15.4	THE STAGGERS RAIL ACT OF 1980	320
15.4.1	LIMITATIONS ON LIABILITY	321
15.4.1.1	FULL VALUE VS. LIMITED LIABILITY	321
15.4.1.2	DEDUCTIBLES	321
15.4.1.3	EXEMPTION POWERS OF THE I.C.C.	322
15.4.2	CARMACK AMENDMENT CHANGES	323
15.4.2.1	VENUE	323
15.4.2.2	OTHER CHANGES MADE IN THE MOTOR CARRIER ACT AFFECTING RAILROADS	324
15.4.3	THE I.C.C./ATTORNEY GENERAL STUDY OF RAILROAD LIABILITY - EX PARTE NO. 403	325
15.5	I.C.C.'S IMPLEMENTATION OF THE STAGGERS ACT	325
15.5.1	EXEMPTION OF TOFC/COFC TRAFFIC - EX PARTE NO. 230	325
15.5.2	RAIL RATES BASED ON LIMITED LIABILITY - EX PARTE NO. 390	326
15.5.3	RAIL CARRIER CARGO LIABILITY STUDY - REPORT TO CONGRESS - EX PARTE NO. 403	326
15.6	THE HOUSEHOLD GOODS TRANSPORTATION ACT OF 1980 - DISPUTE SETTLEMENT PROGRAM	328
15.7	THE NEGOTIATED RATES ACT OF 1993	329
15.8	THE TRUCKING INDUSTRY REGULATORY REFORM ACT OF 1994	329
15.9	INTRASTATE DEREGULATION OF MOTOR CARRIERS - THE FEDERAL AVIATION ADMINISTRATION AUTHORIZATION ACT OF 1994	330
15.10	INTERSTATE COMMERCE COMMISSION TERMINATION ACT OF 1995 (ICCTA)	331
15.11	CHANGES TO THE CARMACK AMENDMENT FOR MOTOR CARRIER TRANSPORTATION	333

TABLE OF CONTENTS

16.0	AIR CARRIER LIABILITY	339
16.1	DIFFERENCES BETWEEN SURFACE AND AIR CARRIER LIABILITY	339
16.2	DOMESTIC AIR CARRIERS.....	339
16.2.1	BASIC LIABILITY STANDARDS	340
16.2.2	STATUS OF AIR CARRIER TARIFFS.....	341
16.2.3	LIABILITY LIMITATIONS	343
16.2.3.1	PASSENGER BAGGAGE.....	343
16.2.3.2	AIR FREIGHT.....	346
16.2.3.3	PARCEL AND EXPRESS.....	351
16.2.3.4	MATERIAL DEVIATION	355
16.2.4	TIME LIMITS - FILING LOSS AND DAMAGE CLAIMS	356
16.2.5	TIME LIMITS - FILING SUIT	357
16.2.6	TIME LIMITS - OVERCHARGE CLAIMS	358
16.2.7	NOTICE OF CONCEALED LOSS OR DAMAGE	358
16.2.8	SPECIAL DAMAGES	358
16.2.9	PROTECTIVE SERVICES	360
16.2.10	THE “AVERAGE DECLARED VALUE” RULE.....	360
16.2.11	ELIMINATION OF THE DUTY TO SERVE	362
16.2.12	POST-DEREGULATION SERVICE RULES	362
16.2.13	LAWFULNESS ISSUES	363
16.3	DOMESTIC AIRFREIGHT FORWARDERS	366
16.4	INTERNATIONAL AIR CARRIERS AND AIRFREIGHT FORWARDERS.....	367
16.4.1	THE D.O.T.’S POWERS	367
16.4.2	THE WARSAW CONVENTION AND MONTREAL CONVENTION OF 1999	369
16.4.3	WHEN THE THE INTERNATIONAL TREATY GOVERNS.....	372
16.4.3.1	LOSS OR DAMAGE DURING “TRANSPORTATION BY AIR”	373
16.4.4	LIABILITY LIMITATIONS	375
16.4.5	WILLFUL MISCONDUCT OR DEFAULT.....	382
16.4.6	TIME LIMITS - FILING LOSS AND DAMAGE CLAIMS	384
16.4.7	TIME LIMITS - FILING SUIT	387
16.4.8	TIME LIMITS - OVERCHARGES	388
16.4.9	GOLD VS. U.S. DOLLARS AS THE LIMITATION OF LIABILITY	388
16.4.10	VENUE	388
16.5	AIR WAYBILLS - DOMESTIC AND INTERNATIONAL	390
16.5.1	DECLARATION OF VALUE.....	390
16.5.2	VALUATION CHARGES	391
16.6	SURFACE/AIR TRAFFIC.....	392
16.7	SUBSTITUTION OF TRUCKS.....	394
17.0	WATER CARRIER LIABILITY	395
17.1	DOMESTIC WATER MOVEMENTS -THE HARTER ACT.....	395
17.1.1	SCOPE AND PURPOSE.....	395
17.1.2	EXCULPATORY CLAUSES	397
17.1.3	SEAWORTHINESS, STOWAGE AND DELIVERY.....	398
17.1.4	NEGLIGENT NAVIGATION OR MANAGEMENT	399
17.1.5	TARIFFS AND BILLS OF LADING	400
17.1.6	TIME LIMITS	401
17.2	FOREIGN WATER MOVEMENTS — THE CARRIAGE OF GOODS BY SEA ACT (COGSA)	401
17.2.1	APPLICABILITY	402
17.2.2	RESPONSIBILITIES AND LIABILITIES OF CARRIER.....	403

FREIGHT CLAIMS IN PLAIN ENGLISH

17.2.2.1	SEAWORTHINESS	403
17.2.2.2	STOWAGE AND DELIVERY	403
17.2.2.3	BILL OF LADING	403
17.2.2.4	TIME LIMITS FOR CLAIMS AND SUITS	404
17.2.2.5	LIMITATION OF LIABILITY FOR NEGLIGENCE.....	406
17.2.3	BURDEN OF PROOF (<i>PRIMA FACIE</i> CASE).....	407
17.2.4	CARRIER DEFENSES TO LIABILITY	409
17.2.4.1	UNSEAWORTHINESS	409
17.2.4.2	“UNCONTROLLABLE CAUSES OF LOSS” (DEFENSES).....	410
17.2.4.3	NEGLIGENT NAVIGATION	411
17.2.4.4	THE “FIRE DEFENSE”	412
17.2.4.5	PERILS, DANGERS, AND ACCIDENTS OF THE SEA	415
17.2.4.6	ACT OF GOD	416
17.2.4.7	ACT OF PUBLIC ENEMIES.....	417
17.2.4.8	ARREST OR RESTRAINT OF PRINCES	417
17.2.4.9	QUARANTINE RESTRICTIONS.....	417
17.2.4.10	ACT OF OMISSION OF THE SHIPPER.....	418
17.2.4.11	INHERENT VICE	419
17.2.4.12	INSUFFICIENCY OF PACKING	419
17.2.4.13	LATENT DEFECTS	419
17.2.4.14	THE “Q” DEFENSE.....	420
17.2.4.15	OTHER DEFENSES	421
17.2.5	LIMITATION OF LIABILITY	421
17.2.5.1	NOTICE OF LIMITATION.....	421
17.2.5.2	GOODS SHIPPED IN “PACKAGES”.....	424
17.2.5.3	CONTAINERIZED SHIPMENTS	426
17.2.5.4	DEVIATION	429
17.2.5.5	FUNDAMENTAL BREACH	432
17.2.6	INFLAMMABLE, EXPLOSIVE OR DANGEROUS CARGO	432
17.2.7	INCREASE OF LIABILITIES.....	432
17.2.8	CHARTER PARTY	433
17.2.9	GENERAL AVERAGE.....	434
17.2.10	LIABILITY PRIOR TO LOADING OR AFTER DISCHARGE	434
17.2.10.1	STEVEDORES’ LIABILITY.....	435
17.2.10.2	TERMINAL OPERATORS AND WAREHOUSEMEN	436
17.2.10.3	CONNECTING CARRIERS	438
17.2.11	OCEAN FREIGHT FORWARDERS.....	440
17.2.12	NON-VESSEL OPERATING COMMON CARRIERS (NVOCC’S).....	441
17.2.13	TARIFFS AND BILLS OF LADING - FOREIGN COMMERCE.....	443
17.2.14	FORUM SELECTION CLAUSES	444
17.2.15	PUNITIVE DAMAGES	445
17.3	MARINE INSURANCE.....	445
17.4	JURISDICTION TO IMPEAD NON-MARITIME PARTIES TO MARITIME ACTION	447
18.0	INTERMODAL AND MULTIMODAL LIABILITY	449
18.1	DOMESTIC MOVEMENTS (“TOFC/COFC”).....	449
18.1.1	SUBSTITUTED SERVICE	451
18.1.2	THROUGH VS. MULTIPLE BILLS OF LADING.....	452
18.2	INTERNATIONAL MOVEMENTS	453
18.2.1	OCEAN/SURFACE MOVEMENTS	453
18.2.1.1	COMBINED TRANSPORT AND MULTIMODAL BILLS OF LADING	453
18.2.1.2	EXPORT SHIPMENTS - “NONADJACENT” FOREIGN COUNTRY	457

TABLE OF CONTENTS

18.2.1.3	EXPORT SHIPMENTS - U.S. TERRITORIES, POSSESSIONS, ETC.....	462
18.2.1.4	IMPORT SHIPMENTS.....	463
18.2.2	CANADA AND MEXICO.....	483
18.2.2.1	EXPORT SHIPMENTS - CANADA & MEXICO.....	483
18.2.2.2	IMPORT SHIPMENTS - CANADA & MEXICO.....	485
19.0	CANADIAN ANNOTATIONS	489
19.1	SURFACE CARRIER LIABILITY.....	489
19.1.1	INTER-PROVINCIAL AND INTERNATIONAL.....	489
19.1.1.1	INTRA-PROVINCIAL.....	490
19.1.1.2	MUNICIPAL.....	490
19.1.1.3	CONDITIONS OF CARRIAGE REGULATIONS.....	491
19.1.1.4	PRIVATE CARRIAGE.....	492
19.2	BILLS OF LADING.....	492
19.2.1	GENERALLY.....	492
19.2.2	INTERMODAL TRANSPORTATION.....	494
19.2.3	"IMPLIED BILL OF LADING".....	496
19.2.4	UNILATERAL AMENDMENTS.....	497
19.2.5	"HAZARDOUS MATERIALS" NOTATIONS.....	498
19.2.6	SPECIAL INSTRUCTIONS.....	498
19.2.7	BURDENS OF PROOF.....	500
19.2.8	CONTRIBUTORY NEGLIGENCE.....	501
19.3	BILL OF LADING EXCEPTIONS.....	501
19.3.1	ACT OR DEFAULT OF SHIPPER, OWNER OR CONSIGNEE.....	501
19.3.2	SHIPPER LIABILITY FOR DAMAGE DUE TO DEFECTIVE CONTAINERS.....	502
19.3.3	ACTS OF GOD.....	502
19.3.4	INHERENT VICE.....	503
19.3.5	PUBLIC ENEMY.....	503
19.4	MEASURE OF DAMAGES.....	503
19.4.1	GENERAL DAMAGES.....	503
19.4.2	SPECIAL DAMAGES.....	507
19.4.3	PUNITIVE (EXEMPLARY) DAMAGES.....	508
19.5	CHANGE FROM CARRIER TO WAREHOUSEMAN'S LIABILITY.....	508
19.6	TIME LIMITS.....	509
19.6.1	TRUCK AND RAIL.....	509
19.6.2	OCEAN CARRIERS.....	510
19.6.3	AIR CARRIERS.....	511
19.6.4	INTERLINE SUITS.....	511
19.7	SPECIFIC CLAIM PROBLEMS.....	511
19.7.1	CONCEALED DAMAGE.....	512
19.7.2	DELAY CLAIMS.....	512
19.8	AIDS TO CLAIM RECOVERY.....	513
19.8.1	COURT ACTIONS.....	513
19.9	ATTORNEY'S FEES.....	516
19.10	AIR CARRIER LIABILITY.....	516
19.10.1	DOMESTIC.....	516
19.10.2	AIR FREIGHT FORWARDERS - DOMESTIC.....	516
19.10.3	INTERNATIONAL AIR FREIGHT.....	516
19.11	WATER CARRIER LIABILITY.....	518

FREIGHT CLAIMS IN PLAIN ENGLISH

20.0	MEXICAN ANNOTATIONS	521
20.1	MEXICAN NAVIGATION ACT AND THE CIMTG	521
20.2	LIABILITY LIMITATIONS FOR SHIPMENTS UNDER MULTIPLE BILLS OF LADING	522
20.2.1	MOTOR CARRIERS	522
20.2.2	RAIL CARRIERS.....	523
20.2.3	AIR CARRIERS.....	524
20.2.4	MARITIME CARRIERS	525
20.3	MEXICAN INTERNATIONAL MULTIMODAL TRANSPORTATION REGULATION	525
20.4	INSURANCE IN MEXICO.....	525
20.5	LAW GOVERNING A CROSS-BORDER MOTOR CARRIER SHIPMENT.....	527
20.5.1	TRAFFIC FROM THE U.S. TO MEXICO.....	527
20.5.2	TRAFFIC MOVING FROM MEXICO TO THE U.S.	528
20.6	NEGOTIATION OF A UNIFORM MOTOR CARRIER CROSS-BORDER LIABILITY REGIME	528

VOLUME II

APPENDICES

(SEE DETAILED TABLE OF CONTENTS IN VOL. II)

INCLUDING:

- FEDERAL STATUTES, INTERPRETATIONS AND LEGISLATIVE HISTORY
- FEDERAL REGULATIONS AND RULINGS
- CONTRACTS OF CARRIAGE & TARIFFS
- COURT PROCEEDINGS, FORMS AND DECISIONS
- ARBITRATION PROCEDURES AND FORMS
- CLAIM PROCEDURES, FORMS AND CHARTS
- PROPOSED INTERNATIONAL TREATIES