

LEGAL UPDATES

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## Husch Blackwell Secures Dismissal of State Law Claims in Cargo Loss Case as Court Reaffirms Carmack Amendment's Preemptive Power and Limits on Insurer Liability

On October 30, 2025, Husch Blackwell secured a significant win for client Kurtex Logistics, Inc. (Kurtex) in the U.S. District Court, Western District of Wisconsin. The court dismissed with prejudice all state law claims and the direct claim against Kurtex's insurer, further clarifying the broad preemptive reach of the Carmack Amendment and the limits of direct actions against insurers in federal cargo loss litigation.

### Case Background and Procedural History

The dispute arose after Advanced Concrete, Inc. (Advanced Concrete) alleged that an oversized shipment, arranged for delivery by Kurtex, was damaged and rendered unusable when Kurtex struck an overpass bridge during transit. Advanced Concrete filed suit in Wisconsin state court, asserting claims against Kurtex for breach of contract, negligence, and liability under the Carmack Amendment (49 U.S.C. § 14706), and naming Kurtex's insurer as a defendant. The case was timely removed to federal court.

Advanced Concrete challenged the removal, arguing that Kurtex had not properly joined the removal notice. Defendants responded by demonstrating Kurtex's consent to removal through multiple means, including counsel declarations and post-removal filings. Kurtex moved to dismiss all state law claims as preempted by the Carmack Amendment, and the insurer moved to dismiss the Carmack claim against it, asserting that the statute does not create a cause of action against insurers.

## **Court's Rulings: Preemption and Proper Parties**

The court denied Advanced Concrete's motion to remand, holding that procedural defects in the removal process had been adequately cured and that the case was properly before the federal court. The court cited Seventh Circuit precedent allowing for correction of removal defects after the 30-day statutory period, so long as jurisdiction existed at the time of removal.

On the merits, the court granted Kurtex's motion to dismiss all state law claims (breach of contract, negligence, and declaratory judgment), reaffirming that the Carmack Amendment preempts any state law claim about damage to an interstate shipment unless the shipper and carrier expressly waive application of the amendment. The court found no such express waiver in the contract at issue; in fact, the contract expressly invoked Carmack liability, rejecting arguments that broader contractual remedies or implied waivers could overcome preemption.

The court also granted the insurer's motion to dismiss, holding that the Carmack Amendment provides a cause of action only against carriers, not their insurers. State statutes permitting direct actions against insurers in negligence cases were found inapplicable, as the negligence claims were themselves preempted by federal law and the Carmack Amendment does not authorize suit against insurers.

## **Takeaways and Impact**

This decision underscores several key principles for transportation and logistics stakeholders:

Carmack preemption remains broad and robust: State law claims for damages to goods lost or damaged in interstate commerce are categorically preempted absent an express, written waiver by both shipper and carrier. Contractual provisions that merely supplement or diverge from Carmack's terms do not constitute such a waiver.

Procedural defects in removal can be cured: The Seventh Circuit allows post-deadline correction of procedural defects in removal, as long as all defendants ultimately consent and jurisdiction existed at the time of removal.

Insurers are not proper defendants under Carmack: The Carmack Amendment does not authorize direct claims against carriers' insurers, and state statutes cannot be used to circumvent this federal limitation.

The ruling provides important clarity for carriers, brokers, shippers, and insurers navigating cargo loss disputes and reinforces the importance of careful contract drafting and claim strategy.

The Husch Blackwell litigation team was composed of partner Julie Maurer, senior counsel Aaron Schepler, and associate Alyssa Goehring.

## **Contact Us**

For questions about this case, the Carmack Amendment, or federal transportation law, please contact Julie Maurer, or a member of your Husch Blackwell Transportation team.