

**Transportation Intermediaries Association
2018 TLA Annual Convention
Capital Ideas Conference
Palm Desert California, April 8-11, 2018**



LEARNING CENTER : “ SEE YOU IN COURT!” Strategies and ideas to help you win cargo claims at the court house. Assuming you win, how do you collect? It’s not always a matter of whose right, its whose left!

See you in Court!

- Tuesday April 10, 2018 3:30-4:00pm
- Presenter: Ronald H. Usem Esq.
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Court Culture:

- Use local counsel who knows the judges and local procedures. Your attorney should be “ 2d chair”.
- Make sure trial attorney is experienced in transportation law AND with the type of issues in dispute, i.e. motor carrier experience vs admiralty etc.

Court Culture:

- Have your attorney explain local procedures in detail. No surprises!
- Tell your attorney everything that you know about the claim, even if you think it is not important.

Court Culture:

- Jury selection process.

- If your attorney has decided on using a jury, you should be present, and participate in the selection process with your attorney.

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You may have information about jurors and their backgrounds that would be valuable for the attorney to know in the selection process.

Court Culture:

- Discuss with your attorney: the KEY issues, strategy, strength and weakness of your case and your opponent's case.
- What is the strategy to deal with them?
- Be clear....what facts are NOT disputed. Don't waste time and money proving facts not in dispute.

Court Culture:

- ◉ Jury instructions. Very important!
- ◉ Discuss use of pretrial motions: Motions in limine ...to preclude introduction of certain evidence.
 - For example prior criminal convictions.

Sample Case A:

- Assume: You are a broker/ or shipper suing a carrier for freight damage.
- Evidence: Prove relationship to carrier
 - Presumably a written contract showing carrier was hired to transport the cargo.
 - Load/ rate confirmations which identifies the shipment at issue.
- Are “verbal” agreements enforceable?
 - Yes..discuss.

Sample Case A:

- What are the legal elements required to be proven?
- **Cargo damage claims: Carmack 49 USC 14706**
- Suit started within limitation period of two years.

Sample Case A:

- ① 1. Cargo was in good condition when loaded on truck.
 - Bill of lading is SOME evidence of condition but not conclusive.
 - May use affidavit of shipper identifying the shipment and confirming good condition when delivered to carrier....or...
 - May have representative of shipper testify about condition. Photos can be extremely helpful if available.

Sample Case A:

- ◉ 2. Cargo was damaged while in possession and control of carrier.
 - May use affidavits or testimony of witnesses usually representative of consignee who signed BOL.
 - Bill of lading with notations describing damage very important.
 - Police and accident and other investigative reports may be necessary.

Sample Case A:

3. Damages.

- Documents proving value of cargo: sales agreements, invoices, receipts, cancelled checks, accounting entries showing payment, set off, chargebacks, or short pays and deductions. For goods not sold, proof of manufacturing costs, including administrative cost.
- Note: All documents...paper or electronic must be authenticated as true and correct. Persons who testify must speak based on 1st hand knowledge.

Sample Case A:

- **Anticipate: Most common defense of carrier? “ Fault of Shipper”**
 - Get shippers, packaging and loading specifications, and be able to prove they were followed for the load in dispute. Affidavits and or testimony of witnesses will be required. Don't overlook value of photos.
- **Witnesses: Pre- qualification crucial.**
 - Do they have 1st hand knowledge of the subject?
 - Are they sure?
 - How will they respond to cross examination?
 - What is their experience in court?

Sample Case B:

- **Breach of Contract Claim:**

- Violations of FDA regulations; late deliveries. Problems where there is no “physical” damage to cargo.

- **Samples: “Adulterated Food”**

- Get “ qualified person to investigate” ...
- **LATE DELIVERY** of exhibits to trade show.

- **Must prove existence of the “ contract” and terms allegedly breached.**

- Signed contract, affidavits, or testimony of witnesses.

Sample Case B:

- Proof of breach.
 - Affidavits, photos, videos, testimony of witnesses.
- Proof of damages... must be reasonably foreseeable...(not “ consequential” .)
- At close of trial: Post trial motions: summary judgment; directed verdict; judgement notwithstanding verdict...(make record for possible appeal.)

Sample Case B:

- Trial is a well orchestrated play. There is no substitute for being properly prepared.
- Judgement: Should include payment terms and allow for attorney fees incurred in the collection process.
- Collection procedures: attachment, garnishment. Post trial deposition with subpoena of financial records. (Very effective tool)

Sample Case B:

- Once money is collected ... watch out for bankruptcy and claims by trustee of “preferential” payments which can be recovered.
- Appeals: If you spend money to appeal, is it a wise investment?
 - How collectable is the judgement?
 - Do Credit assessment...and consider whether precedent is being established?
- All of the above information assumes a formal court case with judge and, perhaps, a jury.

Other Considerations:

- For small monetary claims use of “Small Claims Court” should not be overlooked.
 - Jurisdictional amounts vary by county and may be as little as \$2,000 or as much as \$25,000.
 - Contact your local court and ask:
 - Maximum \$ amount of claim that can be demanded
 - Whether the court has jurisdiction over foreign corporation or entities, and individuals who may not be residents of the state
 - Whether you must be represented by an attorney.
 - If the answers are yes, then use of this court is usually fast, informal and inexpensive.
 - Get case preparation assistance from a transportation attorney. The collection issues present in small claims cases are the same as in larger cases. Often a defendant will pay something in order to remove a judgement from the record which will impact on credit rating.