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asdfadfs

sdfdfs

File No. sdfsd

Creditor: sdfdfs

Debtor: sdfdfs

Pro No. sdfsd

Amount Due: sdfsd

This is to advise you that our office represents sdfdfs ("sdfgdsf") with respect to unpaid freight charges. sdfgdsf, the Carrier, was not paid by sdfdfs, the original bill-to party, for the sdfsd of transportation services rendered, which are memorialized by the documents attached hereto and made a part hereof.

Based on the controlling legal precedent described on the reverse, since sdfdfs did not pay the freight bill, sdfgdsf must look to their contract, the bill of lading, to ascertain the next party responsible for payment. Per the applicable bill of lading, the Consignee, sdfsd, is responsible.

Please pay the sdfsd of unpaid freight charges by sdfsd in any of the following methods:

1. Mail – draft a check payable to sdfdfs with file number sdfsd on the memo line and mail the check to our office at the address below
2. Online* – pay with check or credit card with our processor: <https://www.afm-usa.com/payment>
3. Phone* – pay with check or credit card by contacting our office at **(847) 259-4700**.

*A convenience fee will be assessed for both check or credit card payments made online or by phone.

If we do not receive payment by sdfsd, then sdfgdsf will consider taking further action to recover the amount due. Please note that all communications and payments must now be directed to our office. sdfgdsf hopes for a prompt resolution of this matter.

Thank you,

sdfdsf

sdfsd

sdfsd sdfsd

P.O. Box 31579, Chicago, IL 60631

P: (847) 259-4700 | F: (847) 259-9434

dfsgdfs

This is an attempt to collect a debt by a debt collector. Any information obtained will be used for that purpose.

This transmittal may contain confidential information belonging to the sender which is legally privileged and/or exempt from disclosure. The information is intended only for the use of the individual or entity named above. If you are not the intended recipient, you are hereby notified that any disclosure, copying, distribution or the taking of any action in reliance on the contents is strictly prohibited. If you received this transmittal in error, please call the sender immediately to arrange for the return of this letter.

Legal Precedent

"The bedrock rule of carriage cases is that, absent malfeasance, the carrier gets paid by the shipper or the consignee." *Excel Transportation Services, Inc v. CSX Lines, LLC*, 280 F.2d 617 (S.D. Tex 2003). Further, the court in *Excel* explained the policy reasons supporting this common law rule: It is superficially unfair that the consignee or shipper must pay for the shipments twice. However, allowing them the benefit of carriage without compensating the carrier would eventually cripple the shipping industry, and the economy generally. The entire point of the tariff regime – promoting commerce by removing shippers' creditworthiness from a carrier's list of concerns – would be eviscerated. *Excel*, 280 F.2d at 619.

The Bill of Lading is the basic transportation contract between the shipper/consignor, the consignee and the carrier, the terms and conditions of which bind the shipper, the consignee and all connecting carriers. *Estes Exp. Lines v. Unites States*, 739 F.3d 689, 693-94 (Fed. Cir. 2014); *S. Pac. Trans. Co. v. Commercial Metals Co.*, 456 U.S. 336, 342 (1982).

To determine if there is a contractual promise to pay [courts] look primarily to the bills of lading; bearing in mind that the instrument serves both as a receipt and as a contract." *Marx Transport, Inc. v. Air Express International Corporation*, 882 N.E.2d 1281, 2187-88 (App. Ct. 1st District 2008). Further, it is undisputed that the industry standard is the uniform straight bill of lading. *Oak Harbor Freight Lines, Inc. v. Sears Roebuck & Co.*, 513 F.3d 949, 955 (2008).

Under the uniform straight bill of lading terms, the consignee is primarily liable if the bill of lading is marked collect. *Id.* at 955; *S. Pac. Transp.*, 456 U.S. at 342; *Bestway Systems, Inc. v. Gulf Forge Co.*, 100 F.3d 31, 34 (5th Cir. 1996). To the contrary, if the bill of lading is marked prepaid, then the shipper is primarily liable while the consignee remains secondarily responsible until the carrier receives payment. *Id.* In *Harms Farms Trucking v. Woodland Container*, 2006 WL 3483920 at 3 (D. Neb. 2006), the Court held that "by operation of law, a consignee can be held liable for freight charges when it accepts delivery of shipments, even in the absence of a contract with the carrier." In other words, the uniform bill of lading terms are consistent with common law rules in that a consignee who accepts delivery is also liable for freight charges. *Harms*, 2006 WL at 3.

Shippers and consignees, where they have already paid, raise estoppel as a defense. Double payment alone is not enough to establish estoppel. To avoid liability, the consignee must prove the existence of a further arrangement by carrier that shipper alone would be responsible for freight charges and the carrier had waived the protection of the uniform straight bill of lading. The carrier's waiver in this regard may be express or implied, but may not be presumed from the silence of the parties nor, in and of itself, from the use of the phrase 'freight prepaid' on the bills of lading in question. *Arizona Feeds v. Southern Pac. Transp. Co.*, 21 Ariz.App.346, 354 (1974).

Moreover, with regards to an intermediary whose trustee or secured creditors claims the unpaid freight charges as either assets of the debtor's bankruptcy estate or sums due the secured creditor, rather than the carrier, one must look to trust principles and *In re Penn Central Trans. Co.*, 486 F.2d 519 (3rd Cir. 1973). There, the Court recognized, based upon federal common law, monies collected by a bankrupt railroad for payment to other railroads that had handled interline shipments were not the property of the estate but were held in trust for payment to the other railroads without whom the freight transportation, and thus the right to payment for same, would not have been accomplished. *In re Penn Central Transp.* 486 F.2d at 524.

In a similar, though non-bankruptcy context, an interline motor carrier prevailed over another interline motor carrier's secured lender in regard to freight charges which were deemed to be trust funds and, thus, not subject to the defendant bank's security interest. *Parker Motor Freight v. Fifth Third Bank*, 116 F.3d 1137, 1140 (6th Cir. 1997) (*holding that the federal common law trust principles recognized in In re Penn Central applied to motor carriers*).