

JOHN SMITH (CA) - EXAMPLE CONTACT
20 BAY STREET
11TH FLOOR
TORONTO, ON M5J 2N8

JOHN SMITH (CA) - EXAMPLE CONTACT
20 BAY STREET
11TH FLOOR
TORONTO, ON M5J 2N8

Richard T Avis, Attorney
& Associates, LLC

Richard T Avis

Barry Serota (1948-2009)

P.O. Box 31579
Chicago, IL 60631

Phone: (847) 259-4700
Fax: (847) 259-9434

kjhjkh

khjhkhkhjk
File No. hkhjkhkhjk
Creditor: hjkhkhkhjk
Debtor: hjkhkhkhjk
Pro No. hjkhjk
Amount Due: hjkjhj

This is to advise you that our office represents hjkhkhkhjk ("hjkjhj") with respect to unpaid freight charges. hjkhjk, the Carrier, was not paid by hjk, the original bill-to party, for the hjkhjk 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 hjk did not pay the freight bill, hjkhjk must look to their contract, the bill of lading, to ascertain the next party responsible for payment. Per the applicable bill of lading, the Shipper, hjkhjk, is responsible.

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

1. Mail – draft a check payable to hjkhkhkhjk with file number hkhjkhkhkhjk 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 hjk, then hjkhjk will consider taking further action to recover the amount due. Please note that all communications and payments must now be directed to our office. hjkhjk hopes for a prompt resolution of this matter.

Thank you,

hjkjhj

hjkjhkhjk
hjkjhkhkhkhjk hjkhkhkhkhjk
P.O. Box 31579, Chicago, IL 60631
P: (847) 259-4700 | F: (847) 259-9434
hjkjhkhjk

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, the carrier gets paid, primarily by the shipper, secondarily by 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 a shipper or consignee must pay for the shipments twice. However, allowing them [shippers and consignees] the benefit of the 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 and the carrier, the terms and conditions of which bind the shipper 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 straight uniform bill of lading terms, by default, the shipper/consignor is liable for payment unless the bill of lading is marked collect and the non-recourse (Section 7) provision is signed. *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). If the BOL is marked prepaid and the non-recourse, Section 7, provision is signed, then courts are faced with interpreting these inconsistent bill of lading notations. In *Jones Motor Co. v. Teledyne*, 732 F.Supp.490 (D. Del. 1990), the Court found the shipper liable. In *Jones*, the Court held that a bill of lading marked both "prepaid" and "nonrecourse" binds the shipper to pay for the "line haul" freight charges. *Id.* at 492.

Shippers and consignees, where they have already paid, raise estoppel as a defense. Double payment alone is not enough to establish estoppel. *S. Pac. Transp.*, 456 U.S. at 351-52. Based on case law, shippers, as compared to consignees, have a more difficult time proving estoppel. In *Southern Pacific Transportation*, the Court refused to grant an estoppel defense to a shipper because (a) the shipper was paid for the goods but the carrier was not paid for its services; and (b) the shipper, having failed to mark the bill of lading as "nonrecourse," remained primarily liable for the freight charges. *Id.* at 351-52.

The Third, Fourth, Fifth and Eleventh Circuits have all reached the same conclusion that a shipper should bear the risk when it chooses to pay for freight charges through a broker rather than directly to the carrier. *Oak Harbor*, 513 F.3d at 959; *Hawspere Shipping Co. v. Intamex, S.A.*, 330 F.3d 225, 237-38 (4th Cir. 2003); *Strachan Shipping Co. v. Dresser Indus., Inc.*, 701 F.2d 483, 489-90 (5th Cir. 1983); *Nat'l Shipping Co. of Saudi Arabia v. Omni Lines, Inc.*, 106 F.3d 1544, 1546-47 (11th Cir. 1997). "As those courts have explained, the shipper, and not the carrier, is in the best position to avoid liability for double payment by dealing with a reputable freight forwarder, by contracting with the carrier to eliminate the shipper's liability, or by simply paying the carrier directly." *Oak Harbor*, 513 F.3d at 959; *Nat'l Shipping*, 106 F.3d at 1547 (recommending using reputable freight forwarders or contracting with carriers to eliminate liability); *Hawspere*, 330 F.3d at 237 (recommending paying carrier directly).

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).