

# The Carried Camaro

Seventy years ago, the Academy Award for Best Picture was won by *You Can't Take It With You*, based on the Pulitzer Prize-winning play by George S. Kaufman and Moss Hart. For car collectors, there may be times when you can't – or prefer not to – take your beloved automobile with you across a great distance. In such circumstances, one option is to engage a transport company to get it there for you.

As is the case whenever you entrust your property to another, there is always the chance that something can go wrong. Which takes us to the case of *Mosso v. Dependable Auto Shippers, Inc.*, decided on September 18, 2007 by the United States District Court for the Eastern District of California.

According to the Court, Michael Mosso owned a 1973 Chevrolet Camaro. Mosso contracted with Dependable to transport the Camaro from Michigan to California. Mosso alleged that, while in transit, the Camaro sustained damage, including theft of a DVD player, an oil stain on the driver's side of the car, a scratched front wheel well, and the bottoming out of the driver's side rear corner panel. He also alleged that Dependable drove the Camaro approximately 175 miles without authorization.

Mosso sued Dependable, seeking damages in excess of \$20,000 plus pre-judgment interest, costs, and attorney's fees.

Dependable filed a motion to dismiss Mosso's complaint to the extent it sought damages in excess of \$250 and attorney's fees.

In its ruling, the Court denied Dependable's motion.

Mosso had claimed that he had purchased valuation coverage from Dependable, providing up to \$50,000 in coverage; that he had made a claim with Dependable for damages immediately after the Camaro arrived; and that attorney's fees were recoverable pursuant to the terms of the bill of lading used.

Dependable contended that damages in excess of \$250 and attorney's fees were not recoverable under the contract, nor under the Carmack Amendment to the Interstate Commerce Act.

The Court noted: "The Carmack Amendment to the Interstate Commerce Act establishes motor carrier liability for the actual loss or injury to the property a carrier transports."

"Carmack" would seem a very appropriate name for a statute applicable to truck transport of an automobile.]

With regard to Mosso's claim for attorney's fees, the Court pointed to a provision in the "Contract Terms and Conditions" printed on the back of the bill of lading: "In any dispute regarding this Contract, the prevailing party shall be entitled to payment by the losing party of all

attorneys' fees, legal fees, and court costs associated with the dispute."

The Court noted: "The bill of lading operates as both the receipt and the basic transportation contract between the shipper-consignor and the carrier, and its terms and conditions are binding. . . . [Dependable]'s claim the contract at issue does not provide for attorney's fees is meritless."

The Court observed that, although the Carmack Amendment did not affirmatively provide for attorney's fees, based on a review of the case law it did not appear that the Amendment prevented the parties from agreeing to a contractual/bill of lading provision allowing them. Thus, "[Dependable]'s motion to dismiss Mosso's [complaint] to the extent it seeks attorney's fees is DENIED."

With regard to Mosso's claim for damages in excess of \$250, the Court noted that "The Carmack Amendment permits a carrier to establish rates for the transportation of property (other than household goods) under which the liability of the carrier is limited to a value established by a written or electronic declaration of the shipper or by written agreement between the carrier and shipper if the value would be reasonable under the circumstances surrounding the transportation."

"Here, the [agreement] indicate[s] if the Shipper does not enter the Actual Cash Value on Form A and pay additional charges for valuation coverage in advance of shipment, the [contractual] \$250.00 limitation of liability . . . shall apply.

"Form A, however, was not completed. This oversight, according to [Dependable], limits its liability to \$250. This argument fails. For [Dependable] to limit its liability to \$250, Mosso must (1) fail to enter the Actual Cash Value on Form A, and (2) fail to pay additional charges for valuation coverage. Here, Mosso did not complete the Actual Cash Value in Form A, but he did pay for valuation coverage. A letter from [Dependable] indicates valuation coverage was purchased. The letter further indicated that '[t]he liability of DAS is limited to \$250.00, unless you have purchased Valuation coverage at an additional cost.'"

Noting that the contract "is strictly construed [i.e., literally interpreted] against the carrier . . . [Dependable]'s motion to dismiss Mosso's [complaint] to the extent it seeks damages in excess of \$250 is DENIED."

Although Mosso was able to defeat Dependable's motion to dismiss, allowing his lawsuit to go forward, the case illustrates the need to read and understand contemplated contracts and other agreements carefully and completely, to avoid a result contrary to your expectations.