

NO REAL CONSUMER PROTECTION POSSIBLE
WITHOUT ROLLBACK OF CARMACK
State Enforcement Authority Needed in the Moving Industry
Kay F. Edge
May 4, 2006

In the summer of 2001 I hired a moving company to move my belongings from New Haven, Connecticut to Radford, Virginia. I used the internet to hire the company but since I like to think of myself as a savvy consumer, I did extensive research before actually paying them a deposit and setting a moving date. I checked their licensing and insurance status on the DOT website; I called the DOT and asked some specific questions about weight tickets and verification of weight, and I checked with the Better Business Bureau to make sure they had a clean record. None of this research turned up any red flags about this company. I later learned that this is because companies are able to close under one name and easily reopen under another name, thereby avoiding the consequences of a bad reputation. They're even able to avoid DOT fines levied against them by simply reopening under a new name and a new DOT number. The company's estimate for moving my things from Connecticut to Virginia was \$2230, all inclusive. So I hired them to do the move on August 11. On moving day, they loaded their truck with my belongings, locked it up and presented me with a bill for \$4745. I tried to argue and reason with them but there were five of them and one of me, they had all of my belongings on their truck, and I had to get out of my apartment, get to Virginia and start a new job. Once I reached Virginia I tried again to reason with the moving company owner to no avail. She threatened to place my belongings in storage and sell everything.

My goods were held hostage for a week while I tried to reason with the company and while I tried to get law enforcement and regulatory agencies involved. Since, from my perspective, my belongings were being stolen, I contacted the city police, the state police and even the FBI; they all told me this was a civil matter and that I would have to hire an attorney and take the matter to court. The lawyers I contacted were at least honest enough to tell me that their fees would far exceed any settlement I might get from the moving company – this is due to, as the moving industry well knows, the Carmack Amendment. They recommended that I pay the ransom and get over it. The FMCSA was also unable to assist me. This is from a letter I received from the New York division of the FMCSA: "The Federal Motor Carrier Safety Administration has jurisdiction over violations of the FMC Safety Regulations and Hazardous Materials Regulations by carriers and drivers. We have no authority to intercede in matters such as contract disputes. You would need to bring a civil action against the company...We are sorry we could not be of assistance to you." They seemed only able to call the moving company and *suggest* that they do the right thing. In the end, I did in fact have to pay the amount they demanded, the ransom in cash, in order to get my things back. The movers had the power to name their price, and they knew it. I had no choice but to pay it, all the while being just about forced to scrape and bow to my own extortionist for fear of the safety of my property and of their raising the price even higher.

There are thousands of people like me. Some stories are worse than mine. Consumer protection is practically non-existent in the moving industry, which has been increasingly deregulated since 1980 and essentially unregulated since 1995. The need for protection is urgent, and has two critical components: (1) stringent, robust laws with real penalties so as to punish and deter wrongdoing; and (2) enforcement authority by those many

entities out there that are ready, willing and able to hold moving companies to those laws, but whose hands currently are tied. These two components are equally crucial, and so far, the legal regime that is out there purportedly as “consumer protection” utterly fails the consumer on both counts. As for the stringent laws, the FMCSA is charged with promulgating regulations to implement the Household Goods Transportation Act of 1980, which authorizes “binding estimates” as a consumer protection measure. The FMCSA’s predecessor, the Federal Highway Administration, acknowledged its abilities and limitations in protecting the consumer in its May 15, 1998 introduction to the proposed rules, where it stated:

Hostage Freight

The FHWA has been receiving an increasing number of complaints from individual shippers who claim carriers refuse to deliver their goods after the individual shippers offer to pay 110 percent of the estimate as prescribed by 49 CFR 375.3(d). These so-called hostage freight situations defeat the protections of the 110-percent rule and cause serious inconvenience to individual shippers. The FHWA does not have the resources to seek court injunctions to require these carriers to comply with the regulations and release the household goods. The FHWA, therefore, proposes changes to enhance an individual shipper’s claim for damages based upon expenses incurred as a result of the carrier’s refusal to deliver the household goods, reduce the number of disputes contributing to delays in delivery, and restore price certainty to the transaction.

But not only are the existing laws weak insofar as they do not provide for meaningful penalties against moving companies who break the rules, they are not being enforced anyway. Last I checked, there were 9 DOT investigators in the whole country to respond to thousands of complaints; that’s up from the 3 investigators employed by the DOT when this first happened to me.

As I alluded to earlier, the lynchpin here is the Carmack Amendment. State laws concerning fraud and deceptive practices are currently preempted by the Carmack Amendment. As you know, this outdated amendment lets moving companies off the hook because it prevents consumers from suing in civil court for fraud, extortion, negligence and intentional misrepresentation. No relief that state laws would otherwise offer to the consumer, including the punitive damages that all agree the abusers so well deserve, is available to the consumer. Even if the consumer just wants her goods back for the agreed-upon price and is not interested in suing after the fact, she cannot even call the police and get them to force the moving company to release the hostage goods, again because of Carmack. Even in those states, such as Florida, which have enacted laws to allow the police to intervene in what would otherwise be a “civil matter,” the police still cannot intervene if the move happened to be interstate. They can get involved only in moves within Florida (intrastate). The private right of action that Carmack gives to a consumer to sue in civil court after the fact is meaningless. That’s because the typical ransom demand – from a few hundred to a few thousand dollars per shipper – is still less than what the legal fees would be if the consumer sues after paying the ransom. And, since the only recovery the consumer can get under Carmack is the return of the ransom money, the so-called right of a consumer to sue the moving company is virtually foreclosed.

In other words, currently the only consequence moving companies have to pay for cheating the customer is to give back what they stole, and that's only if they get caught. This is a non-consequence. This situation does not deter abuses and scams. It encourages them. Is it any wonder that so many stories of nightmare moves, over-reaching business practices, and outright criminality in the moving industry have come up? As far as I can determine, no other industry enjoys such complete protection from the consequences of gross negligence or willful fraud. It is not an exaggeration to say that any individual who contracts with an interstate moving company is potentially the victim of the perfect crime.

Now, the moving industry lobby claims that if Carmack goes away, there will be an exponential increase in the number of lawsuits brought by dissatisfied customers. But virtually all other industries that deal with the individual consumer are subject to state laws on fraud and deceptive trade practices, and hyperbolic scenarios of massive shut-downs of mom-and-pop businesses in those industries caused by a flood of frivolous lawsuits have not come to pass. There is no reason to grant this one industry, the moving industry, exemption from these laws. Honest businesses have nothing to fear. These laws drive out the unethical from the market, and keep everyone else honest. Why is it that your local retailer, dry cleaner, restaurateur, and so on, can't be expected to get away with lying to customers about a so-called guaranteed price, but your moving company can? It just defies all reason and common sense to protect this industry this way. Furthermore, rolling back Carmack, in addition to finally giving justice to consumers, would not require any federal expenditures -- in fact, it would free up DOT investigators to focus on what they consider their more important task, highway safety.¹

The major van lines and AMSA lobbyists, for their own reasons, fear changes to Carmack more than the damage that has been done to the industry's reputation. The major van lines and AMSA lobbyists who contribute to campaign funds have, so far, been successful in preventing meaningful consumer protection legislation from being passed, as to both the robustness and enforcement components. For example, they lobbied against Congressman Petri's HR 1070 from 2004, supported by consumer protection agencies and advocates everywhere, which would have rolled back Carmack. That proposed provision was eventually taken out and the remaining consumer protection provisions were watered down by the time they became enacted as part of the recently-passed highway plan legislation, SAFETEA-LU. But then the powerful AMSA member Unigroup, parent of two major van lines, prevailed upon a senator in its home state to make last-minute changes on another bill that had the effect of exempting the major van lines from SAFETEA-LU's already-weakened consumer protections. This is just the most recent example of the industry's fight to keep its all-encompassing Carmack protection, at the expense of consumers.

As I said earlier, there are thousands of people like me, people who have been scammed by the moving companies we trusted. As we approach yet another summer moving season with still no consumer protections in place, there inevitably will be more

¹ I am also including with this statement an article from the Winter 2005 issue of the Lewis & Clark Law Review, titled 'Needed, Private Attorneys General; Empowering Consumers to Reform the Household Goods Moving Industry,' by Joseph L. Franco. This article proposes that, instead of subjecting the moving industry to the various penalty schemes under fifty states' laws (even though those schemes are similar), a penalty scheme to deter and punish unethical moving companies could be written into Carmack itself, whereby the consumer is permitted to seek attorneys fees and treble damages under Carmack itself.

people who will fall victim in the coming months. The moving companies, large or small, carry out these scams because they know they can get away with it. They suffer no consequences for what they do. Members as well as non-members of the AMSA engage in these fraudulent practices, and the affiliates of major van lines do it too, because the laws don't provide scammed consumers any recourse. The scams committed by the affiliates of major van lines may be of a lesser magnitude -- the scams are less frequent and generally the ransom demands not as exorbitantly high as the smaller or fly-by-night companies' -- but the effect on the individual victim is always devastating.

Since the DOT has not set up the complaint database that they were mandated to set up in 1998 (which, by the way, the AMSA has lobbied against), consumers have had to rely on consumer advocacy websites such as the one I volunteer with, movingscam.com. We maintain a list of scam companies on that website that consumers can check. But we can't do this alone. We need your help. Without it, and without Congress finally freeing up the states to enforce the laws that protect consumers, without Congress finally giving individual consumers a remedy other than the chance to get the moving company to return what it stole in the first place -- there will be no end to this situation. This has been the third Congressional hearing on the need for consumer protections in the moving industry since 1998. Almost nothing has changed since then. How much longer must we wait to get justice?