STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND	)	CIVIL ACTION NO. 2022-CP-40-05587
SAAD MORCOS,	)	
Plaintiff,	)	
v.	)	**ORDER**
UNITED PARCEL SERVICE, INC., and JACOB JENKINS, III.	)	
Defendants.	)	

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SC Court of Appeals

This case came before the Court on December 10, 2025 for a non-jury trial on Plaintiff Saad Morcos' ("Plaintiff" or "Morcos") claims against United Parcel Service, Inc. ("UPS") concerning a package containing gold coins that a third-party, American Precious Metals Exchange ("APMEX"), shipped to Morcos via UPS. Morcos asserts a single claim for conversion against UPS,[1] seeking to recover the value of the coins.[2] Morcos was represented by Robert B. Ransom, Esquire and UPS was represented by Robert C. Osborne III, Esquire. Morcos and Tim Cudmore, a UPS Security Supervisor, testified at trial. During the presentation of their respective cases, both parties introduced trial exhibits, all of which have been filed with the Court.[3]

[1] Plaintiff's Amended Complaint naming UPS as a defendant contained a number of causes of action, to include claim and delivery, misdelivery, negligent hiring, retention, supervision and breach of contract, in addition to conversion. The only claim Plaintiff pursued at trial was conversion.

[2] Plaintiff's suit named Jacob Jenkins, III (Jenkins), as a party defendant. Mr. Jenkins was the UPS driver who was assigned to deliver the APMEX package to the Plaintiff. Despite service of the pleadings, Mr. Jenkins failed to answer Plaintiff's complaint, and, after a default damages hearing, a judgment was issued against this defendant.

[3] The Court requested proposed orders from each party and allowed each party the opportunity to respond to the proposed order submitted by the other. The last response was received on or about June 5, 2026.

After careful consideration of the testimony and exhibits as well as the arguments and submissions of counsel, this Court makes the following findings of fact by a preponderance of the evidence and reaches the following conclusions of law:

FINDINGS OF FACT

I. The Subject Package.

On March 8, 2022, Mr. Morcos purchased ten (10) one-ounce gold coins from APMEX.com for the sum of $21,428.90. The funds for the gold purchase were electronically debited by APMEX from an account which Morcos maintained at Bank of America. APMEX engaged UPS to ship the package (the "Subject Package") from APMEX's facility in Oklahoma City, Oklahoma to Morcos's residence in Columbia, South Carolina. Morcos, himself, did not select UPS as the carrier of the Subject Package, and he had no dealings with UPS prior to its shipment. Morcos had no personal knowledge of the terms of any agreements between APMEX and UPS. The Subject Package was shipped on March 20, 2022 via UPS Ground service with UPS tracking 1ZX06914A833906484. APMEX coordinated the shipment. The terms of carriage required UPS to verify Mr. Morcos's identity and obtain his signature on a receipt when the gold coins were tendered for delivery.

While away from his home at work, Morcos received a notification that the Subject Package had been delivered to his residence. The notification also indicated that Morcos had signed for the delivery of the Subject Package, which he had not actually done. When Morcos arrived at his residence, he found an empty box rather than the gold coins. Morcos immediately informed APMEX, UPS and the Richland County Sheriff's Department of the missing coins.

On March 28, 2022, Morcos received an email from APMEX in response to the claim for property loss he submitted to the company. The email advised Morcos that, "[a]ll APMEX shipments are insured while in transit and we will be initiating a full investigation for you." At trial, the parties stipulated that APMEX did not insure the Subject Package through UPS. Rather, APMEX procured separate insurance from a third party. APMEX subsequently conducted an investigation into the Subject Package, which included sending an investigator to Morcos's residence. On April 22, 2022, Morcos received an email from APMEX denying his claim. The denial stated that APMEX's investigation determined that the Subject Package had been delivered to Morcos's residence. Although the April 22, 2022 email indicated that Morcos's claim to APMEX was denied, the APMEX Order Summary Report introduced by Morcos referenced a $22,379.80 payment from APMEX to Morcos on November 4, 2022. Morcos acknowledged receiving the $22,379.80 payment from APMEX. When asked at trial what the payment was for, Morcos testified, "[f]or the gold." [4]

II. The Investigation Into Jacob Jenkins, III.

In June 2022, several months after the Subject Package went missing, UPS conducted an investigation into multiple lost package claims associated with delivery routes serviced by Jacob Jenkins, III (Jenkins) That investigation resulted in Jenkins being separated from UPS. On April 19, 2023, Jenkins was indicted for forgery relating to the Subject Package. According to the indictment, while employed by UPS as a driver, Jenkins forged Morcos's signature on the delivery receipt for the Subject Package. On January 17, 2024, Jenkins pleaded guilty to the forgery charge.

[4] The parties disputed whether the collateral source rule barred consideration of the payment Morcos received from APMEX. "The collateral source rule provides that compensation which an injured party receives from a source wholly independent of a wrongdoer will not reduce the damages for which the wrongdoer is liable." *Bardsley v Government Employees Ins. Co.*, 405 S.C. 68, 78, 747 S.E.2d 436, 441 (2013). UPS argues that Morcos failed to object during trial to evidence of the APMEX payment and had therefore, waived any argument that the APMEX payment was from a collateral source. The Court finds the APMEX payment to have been independent of UPS and thus, constitutes a collateral source that should not affect any damages found to be owed to Morcos by UPS. The Court further finds that Morcos did not waive this argument.

Here, the Plaintiff named Jenkins as a defendant, but Jenkins failed to answer the complaint and was held to be in default on the claims asserted by Morcos. The Order of Judgment Against Defendant Jacob Jenkins, III (the "Jenkins Order"), entered on January 15, 2025, found that "Jenkins absconded with the gold coins, leaving an empty shipping package on the ground in front of [Morcos's] apartment door" and held Jenkins liable on Morcos's claims for conversion and claim and delivery of the gold coins in amount of $27,691.50 in actual damages and $276,915.00 in punitive damages. [5]

III. APMEX's Carrier Agreement with UPS.[6]

UPS and APMEX entered into a Carrier Agreement that was in effect in March 2022 when the Subject Package was shipped. The Carrier Agreement, under the major heading "Service", provides that "[a]ll Services provided by UPS shall be pursuant to the UPS Rate and Service Guide and the UPS Tariff/Terms and Conditions of Service in effect at the time of shipping, each of which are incorporated herein by reference . . . ." The Carrier Agreement was signed by APMEX's Director of Operations.

[5] The Jenkins Order added $6,771.14 in prejudgment interest to the actual damages amount for total actual damages of $34,462.64.

[6] Morcos objected to the admission of the Carrier Agreement on the grounds that UPS failed to meet the requirements of the business records exception to the hearsay rule and because the Carrier Agreement was redacted so as to not disclose confidential and proprietary pricing information and incentives. This Court overruled the objection and continues to standby that ruling. The Carrier Agreement was introduced to establish the existence of a contract and the terms of that contract. "Written contracts offered in court not for the truth of any facts stated in them but to prove the existence of a contractual right or duty should not be excluded as hearsay." *Deep Keel, LLC v. Atl. Priv. Equity Grp., LLC*, 413 S.C. 58, 70, 773 S.E.2d 607, 613 (Ct. App. 2015) (citing authority). Further, even if the Carrier Agreement was hearsay, the Affidavit of Records Custodian for APMEX specifically addresses the Carrier Agreement and certifies its authenticity. Finally, as to the redactions, this Court finds UPS sufficiently articulated why the redactions were necessary to protect confidential and proprietary pricing information and incentives. There is nothing to suggest the redacted information is relevant to any issue in this case. If Morcos believed the redacted information was relevant to the case, he could have sought an unredacted copy when it was originally produced by UPS well before trial.

IV. The UPS Tariff/Terms and UPS Rate and Service Guide.[7]

A. The UPS Tariff/Terms and Conditions of Service

The UPS Tariff/Terms and Conditions of Service ("UPS Tariff/Terms") contain the terms and conditions of contract under which UPS is engaged in the transportation of packages. The UPS Tariff/Terms limit UPS's liability to $100 per package and provide shippers with the opportunity to declare a higher value to obtain additional protection up to $50,000 per package, for an additional charge. Specifically, Section 55 of the UPS Tariff/Terms, entitled "Responsibility for Loss or Damage," provides that "UPS's liability for loss or damage . . . is limited to a value of $100" without a declaration of value:

> [u]nless a greater value is recorded in the declared value field of the UPS Source Document or the UPS Automated Shipping System used, the Shipper agrees that the released value . . . is no greater than $100, which is a reasonable value under the circumstances surrounding the transportation, and that UPS shall not be liable for more than $100 . . . .

Section 55 of the UPS Tariff/Terms further provides that:

> To increase UPS's limit of liability for loss or damage above $100, the Shipper must declare a value in excess of $100 for each Package or pallet in the declared value field of the UPS Source Document or the UPS Automated Shipping System used and pay an additional charge.

As explained by UPS's representative, Tim Cudmore, "[i]f there is no declared value, then the value of the package defaults to $100."

The UPS Tariff/Terms further explain that UPS is not liable for "any special, incidental or consequential damages" arising from the loss of or damage to any package, regardless of "whether

[7] Morcos similarly objected to the admission of the UPS Tariff/Terms and the UPS Rate and Service Guide, arguing UPS once again failed to meet the requirements of the business records exception to the hearsay rule and that there is no evidence that the documents relate to the shipment of the Subject Package. This Court overruled and continues to overrule Morcos's objections. Morcos's objection under the business records exception fails for the same reasons set forth above. As to Morcos's second objection, the effective dates and terms of the UPS Tariff/Terms and the UPS Rate and Service Guide demonstrate that they apply to the Subject Package. There was no evidence to suggest that these documents do not apply.

or not UPS had knowledge such damages might be incurred."

B. The UPS Rate and Service Guide.

The UPS Rate and Service Guide also explains UPS's limitation of liability and the process for obtaining additional protection. The UPS Rate and Service Guide states that UPS's liability for each domestic package is "limited to $100 . . . without a declaration of value," and that "UPS's liability for loss or damage can be increased by up to $50,000.00 per package . . . by making a declaration of value for an additional charge[.]"

When the Subject Package was shipped in March 2022, the UPS Rate and Service Guide provided that the declared value charge was $1.15 "for each $100.00 (or portion of $100.00) of the total value declared," subject to a minimum charge of $3.45. Thus, APMEX had the option to obtain additional protection from UPS of up to $50,000 by declaring a value and paying the corresponding additional charge.

V. APMEX Did Not Declare Value for the Subject Package.

APMEX did not declare a value in excess of $100 for the Subject Package or pay the additional charge to UPS for declared value. The UPS IVP Manifest Detail shows there was no declared value. Cudmore's testimony was equally clear and undisputed on this issue.

CONCLUSIONS OF LAW

I. Carmack Amendment Preemption.

UPS maintains that Morcos's claim for conversion is preempted by the Carmack Amendment to the Interstate Commerce Act, 49 U.S.C. § 14706 (the "Carmack Amendment"). The Court agrees. The Carmack Amendment exclusively governs a motor carrier's liability and a shipper's remedies arising from contracts for the interstate shipment of property by ground and provides Morcos's sole avenue of recovery (if any).

"For over one hundred years, the Supreme Court has consistently held that the Carmack Amendment has completely occupied the field of interstate shipping." *Certain Underwriters at Int. at Lloyds of London v. United Parcel Serv. of Am., Inc.*, 762 F.3d 332, 335 (3d Cir. 2014). The Supreme Court has determined that the purpose of the Carmack Amendment was to "supersede[] diverse state laws with a nationally uniform policy governing interstate carriers' liability." *New York, New Haven & Hartford R.R. v. Nothnagle*, 346 U.S. 128, 131 (1953). It has therefore held that "the words of the statute are comprehensive enough to embrace responsibility for all losses resulting from any failure to discharge a carrier's duty as to any part of the agreed transportation." *Georgia, F. & A. R. Co. v. Blish Milling Co.*, 241 U.S. 190, 196 (1916).

The Carmack Amendment occupies the entire field of carrier liability:

> Almost every detail of the subject is covered so completely that there can be no rational doubt but that Congress intended to take possession of the subject and supersede all state regulation with reference to it . . . . [W]hen Congress acted in such a way as to manifest a purpose to exercise its conceded authority, the regulating power of the State ceased to exist.

Miracle of Life, LLC v. N. Am. Van Lines, Inc., 368 F. Supp. 2d 494, 497 (D.S.C. 2005) (quoting *Adams Express Co. v. Croninger*, 226 U.S. 491, 505-06 (1913)); *see Atchison, Topeka & Santa Fe Ry. v. Harold*, 241 U.S. 371, 378 (1916) (holding that the Carmack Amendment "excluded state action").

In line with federal authority, the Supreme Court of South Carolina also has recognized the expansive reach of the Carmack Amendment. *See Huddy v. Ry. Exp. Agency*, 181 S.C. 508, 188 S.E. 247, 249 (1936) ("Since the passage of the Carmack Amendment, it has been pointed out repeatedly by the Courts that by this enactment Congress intended to take possession of the field of interstate commerce, and thereby supersede all state laws and regulations with reference to it.) In *Huddy*, our Supreme Court expressly recognized that the Carmack Amendment is "comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination." *Huddy,* 181 S.C. at 514, 188 S.E. at 249 (quoting *New York P. & N. R.R. v. Peninsula Produce Exch.*, 240 U.S. 34, 36 S.Ct. 230, 60 L. Ed. 511 (1916)). Thus, the Supreme Court of South Carolina has expressly recognized the preemptive reach of the Carmack Amendment.

Directly relevant to this case, the South Carolina Court of Appeals has specifically held that claims against UPS relating to the shipment of packages are governed by the Carmack Amendment and that state law claims are preempted. *See United Parcel Service v. S.C. Tees, Inc.*, 333 S.C. 178, 508 S.E.2d 34 (Ct. App. 1998). In *S.C. Tees, Inc.*, the Court of Appeals, relying on *Huddy* and several U.S. Supreme Court decisions, wrote:

> There is no doubt that the Carmack Amendment superseded all state laws and state decisions declaratory of common-law liability, in so far as interstate shipments were affected, and substituted in place thereof the liability of the carrier under the common-law as defined and administered in the Federal courts.

Id. at 182, 508 S.E.2d at 36 (emphasis added) (quoting *Kristianson v. American Ry. Express Co.*, 122 S.C. 528, 531, 115 S.E. 899, 900 (1921)). Because the Carmack Amendment and case law interpreting it "clearly" held that state law claims against UPS were preempted, the Court of Appeals affirmed the grant of summary judgment in favor of UPS and dismissed S.C. Tees' claims for breach of contract and negligence against UPS. *Id.*

Here, it is undisputed that Morcos's claims all arise from the transportation services that UPS provided and its alleged failure to deliver the Subject Package. Morcos's Amended Complaint alleges that UPS "failed to deliver the gold coins to [Morcos] and [has] refused to refund to him any portion of the $21,428.90 purchase price." At trial, Morcos confirmed that his claim is based on UPS's failure "to deliver the package containing gold coins from APMEX sent to [him]." This is precisely the type of claim that has been held by South Carolina courts (and courts from outside jurisdictions) to be preempted by the Carmack Amendment. *See S.C. Tees, Inc.*, 333 S.C. at 18; *Miracle of Life, LLC v. N. Am. Van Lines, Inc.*, 368 F. Supp. 2d 494, 497 (D.S.C. 2005); *see also Sanchez v. United Parcel Serv. Inc.*, No. 19-23704-CIV, 2019 WL 13255945, at *6 (S.D. Fla. Nov. 7, 2019) (holding all of plaintiff's claims against UPS were preempted by Carmack Amendment); *Sharps Compliance, Inc. v. United Parcel Serv., Inc.*, No. CIV.A.H-10-0300, 2010 WL 838859, at *1 (S.D. Tex. Mar. 5, 2010) (dismissing state law claims against UPS as preempted); *Soomekh v. United Parcel Serv., Inc.*, 7 Misc. 3d 1002(A), 801 N.Y.S.2d 242 (Dist. Ct. 2005) ("Plaintiff's action is dismissed with prejudice. Plaintiff's claims are preempted by the Carmack Amendment."); *Smith v. United Parcel Serv.*, 296 F.3d 1244, 1249 (11th Cir. 2002) (holding all of plaintiff's claims against UPS were preempted by Carmack Amendment). Accordingly, Morcos's conversion claim against UPS is preempted by the Carmack Amendment.[8]

II. Survival of Plaintiff's Claim Under the Carmack Amendment.

Plaintiff's Amended Complaint alleged common law conversion against UPS and did not specify a claim under the Carmack Amendment. [9] Nevertheless, citing *Metro. Life Ins. Company v. Taylor*, 481 U.S. 58, 667-67 (1987), the Plaintiff argues that where complete federal preemption in an area exists, preempted state law claims may be construed as raising federal law claims. Plaintiff urges this Court to interpret his state law claim for conversion – because of its preemption by the Carmack Amendment – as actually bringing a claim under the Carmack

[8] In addition to preempting Morcos's conversion claim, the Carmack Amendment precludes any claim for punitive damages, damages for emotional distress or attorney's fees. *See Huddy*, 181 S.C. 508, 188 S.E. at 251 (reversing an award of punitive damages finding punitive damages were not recoverable in cases involving interstate shipments under the Carmack Amendment); *Fine Foliage of Fla., Inc. v. Bowman Transp., Inc.*, 698 F. Supp. 1566, 1576 (M.D. Fla. 1988), *aff'd*, 901 F.2d 1034 (11th Cir. 1990) (There is no provision for attorneys' fees under the Carmack Amendment).

[9] The Court notes that Plaintiff could have alleged a violation of the Carmack Amendment in his state court action. See, 49 U.S.C. § 14706(d)(1)("A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court.")

Amendment. UPS counters by pointing out that the cases cited by Plaintiff for this proposition involved other federal laws and the not the Carmack Amendment.

The Court notes that even without specifically referencing the law, Plaintiff's Amended Complaint appears to have stated a claim under the Carmack Amendment. Furthermore, Plaintiff has put forward an evidentiary basis for a claim under the Carmack Amendment inasmuch as the gold coins were delivered by APMEX to UPS for shipping to the Plaintiff, the coins were intercepted before the intended recipient could take possession and there is a value to the lost coins. See, *Oak Hall Cap & Gown Co., Inc. v. Old Dominion Freight Line, Ins.*, 899 F.2d 291 (4th Cir. 1990) ("In order to state a claim under the Carmack Amendment, a shipper or other owner of goods must allege and prove: (a) the goods were received by the carrier in good condition; (b) the goods were not delivered in good condition; and (c) the amount of loss.") It is apparent to the Court that even without Plaintiff's denomination of his conversion action as a violation of the Carmack Amendment, the Plaintiff and Defendant litigated Carmack issues.

Rule 15(b), SCRCP provides, in pertinent part, that:

> When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings. <u>Such amendment of the pleadings as may be necessary to cause them to conform to the evidence and to raise these issues may be made upon motion of any party at any time, even after judgment, but failure to amend does not affect the result of the trial of these issues.</u> (emphasis added)

The effect of the Carmack Amendment on Plaintiff's conversion claim has been the source of much dispute in this case and was certainly litigated before this Court. The trial of these issues in court was not a surprise to either party. *See Armstrong v. Collins*, 366 S.C. 204, 228, 621 S.E.2d 368, 380 ("However, implied consent will not be found if all the parties did not recognize it as an issue at trial, even if evidence in the record exists to support the amendment.")

Further, although UPS' main argument is that the Carmack amendment preempts the Plaintiff's conversion cause of action, it has offered the alternative argument that to the extent conversion survives, it can only do so in the context of limitations imposed by the Carmack Amendment. Under these circumstances, the Court finds that at minimum, liability of UPS to the Plaintiff has been tried by the implied consent of the parties within the meaning of Rule 15(b), SCRCP.

Finally, the fact that there was no formal amendment to Morcos's complaint to allege a violation of the Carmack Amendment is not fatal to amendment by implied consent. The concluding clause of Rule 15(b), SCRCP, "but failure to amend does not affect the result of the trial of these issues" – which modifies the earlier clause allowing for, but not requiring, a motion to amend ("Such amendment of the pleadings as may be necessary to cause them to conform to the evidence ...may be made upon motion of any party...") -- would seem to allow for amendment of pleadings by implied consent in the absence of an actual motion for amendment. *See generally Marietta Garage, Inc. v. South Carolina Department of Public Safety*, 337 S.C. 133, 140, 522 S.E.2d 605, 608, fn 1 (claim omitted from amended complaint nevertheless allowed because issues were litigated without objection). [10]

III. UPS' Liability to Plaintiff Is Limited Under the UPS Shipping Contract.

A. UPS's Liability is Limited to $100 Pursuant to the UPS Tariff/Terms and Governing Law.

UPS argues that if the Court were to allow Plaintiff's claims under the Carmack Amendment, it must also find UPS' liability to Morcos limited to $100. The Court agrees.

[10] See, also, *Armstong v. Collins*, 366 S.C. 204, 231, 621 S.E.2d 368, 381-382 (Ct. App. 2005) (In addition to Rule 15(b), SCRCP, court allowed amendment under Rule 15(a), SCRCP where, even though causes of action omitted from pleading, complaint's factual allegations sufficiently alleged causes of action and issues were presented at trial.")

Because APMEX did not declare value for the Subject Package, UPS's maximum liability for the same was limited to $100. The law is clear that common carriers have the right to limit their liability for loss or damage in exchange for a lower transportation rate. The Supreme Court has recognized that "[t]he underlying principle is that the carrier is entitled to base rates upon value and that its compensation should bear a reasonable relation to the risk and responsibility assumed." *See Express Co. v. Pastime Amusement Co.*, 299 U.S. 28, 29 (1936). If the shipper chooses not to purchase additional protection from the carrier, it is bound by the default limit of liability. As the Supreme Court held in *Hart v. Pa. R.R.*, 112 U.S. 331 (1884), "[t]here is no justice in allowing the shipper to be paid a large value for an article which he has induced [sic] the carrier to take at a low rate of freight on the assertion and agreement that its value is a less sum tha[n] that claimed after a loss." *Id.* at 340. Instead, "[i]t is just to hold the shipper to his agreement, fairly made, as to value, even where the loss or injury has occurred through the negligence of the carrier" because "[t]he effect of the agreement is to cheapen the freight and secure the carriage." *Id.*

Courts, including the Supreme Court of South Carolina in *Huddy*, have consistently upheld the right of carriers to enforce contractual limitations of liability and have refused to award actual damages that were greater than the applicable limitation of liability. *See Huddy*, 181 S.C. at 508, 188 S.E. at 252 (holding that the shipper's contract with the carrier "was plainly one for a limited liability within the provisions of the law, and recovery must be limited accordingly."); s*ee also, e.g.*, *Am. Ry. Express Co. v. Lindenburg*, 260 U.S. 584, 592 (1923) ("Having accepted the benefit of the lower rate dependent upon the specified valuation, [the shipper] is estopped from asserting a higher value. To allow him to do so would be to violate the plainest principles of fair dealing.").

Enforcement of UPS's limitation of liability is even more straightforward where, like here, the shipper purchases separate insurance from a third party. In *Kemper Ins. Companies v. Fed.*

Exp. Corp., the shipper purchased third-party insurance from the plaintiff insurer, which then sought to invalidate the $100 limitation of liability provided for in the shipping contract. *Kemper Ins. Companies v. Fed. Exp. Corp.*, 252 F.3d 509, 513-14 (1st Cir. 2001). The court held,

> [T]he fact that third-party insurance was available, and was purchased by the shipper, counsels against invalidating the limitation on liability. A shipper cannot contend that it was not given a fair opportunity to opt for higher coverage when that shipper *did* opt for higher coverage when it insured its package through an independent entity.

Id. (quoting *Vision Air Flight Serv., Inc. v. M/V Nat'l Pride*, 155 F.3d 1165, 1169 (9th Cir. 1998)) (internal quotations omitted) (emphasis in original); *see also Ferrostaal, Inc. v. M/V SEA PHOENIX*, 2004 WL 3304655, at *6 (D.N.J. Dec. 14, 2004), *aff'd*, 447 F.3d 212 (3d Cir. 2006) ("Plaintiff chose to insure the cargo, which indicates to the Court that Plaintiff was aware that its recovery would be limited and may not fully compensate any potential loss"); *Carman Tools & Abrasives Inc. v. Evergreen Lines,* 871 F.2d 897, 901, n. 10 (9th Cir. 1989) ("Indeed, there is every reason to believe that the shipper [, by acquiring insurance] made a knowing and deliberate choice in foregoing the additional cost that would have been incurred in raising the liability limit[.]").

B. Morcos is Bound by the UPS Tariff/Terms.

(1) **Morcos' claims regarding ambiguity do not invalidate the limitation of liability**.

Morcos asserts that language contained in the UPS Carrier Agreement – in which UPS agreed to accept and transport APMEX's Shipped Package - and the UPS Tarriff Schedule is conflicting, thus creating an ambiguity that serves to prevent UPS from enforcing the limitation of liability. The Court disagrees.

During his cross examination of defense witness Timothy Cudmore, Plaintiff's established that the UPS Tariff Schedule, Commodities Handled and Restrictions on Service, para. 3.1, contains a provision which states, in pertinent part, that "UPS does not accept for transportation and Shippers are prohibited from shipping . . . coins; [and] any article that contains more than 50 percent by weight of gold . . ."

Plaintiff points out that in the Carrier Agreement, UPS agreed to ship Morcos' gold coins for APMEX subject to limitations on liability set forth in the UPS Tariff Schedule. However, the proffered UPS Tariff Schedule, actually prohibits the carriage of coins and gold. According to the Plaintiff, this inconsistency results in an ambiguity that defeats UPS' proof that the $100.00 limitation of liability is a valid contract clause. The Court disagrees.

In an earlier portion of para. 3 of the UPS Tarriff Schedule, the following language appears:

> UPS holds itself out to transport general commodities, as usually defined, subject to the following restrictions.
>
> The Shipper agrees to indemnify, defend and hold harmless UPS and its affiliated companies, their officers, directors, employees, agency for all claims, demands, expenses, liabilities, causes of action, enforcement procedures and suits of any kind or nature brought arising form or relating to a Shipment in violation of applicable law or regulation or of these Terms.

It would appear that the Shipper, here APMEX, had an obligation to not ship gold coins via UPS and that any violation of said obligation would subject it to claims for indemnity by UPS. The shipment itself, then, assuming knowledge of the gold by UPS, must have been facilitated by an agreement between UPS and APMEX to modify this restriction. The Court agrees with UPS's assertion that the UPS Tarriff/Terms allow UPS to waive certain terms and make modifications with customers by agreement, and at its discretion, to serve its customers. [11]

[11] See UPS Tarriff/Terms, section 57, Incorporation of Documents; Waiver; Future Changes, which in pertinent part, specifies: "UPS reserves the right to unilaterally modify or amend any portion of the Service Guide, or the Terms at any time without prior notice." A later provision in this same section provides: "The Terms, the Service Guide, and the UPS Source Document for each Shipment together comprise the complete and exclusive agreement of the parties, ... except as modified by any existing or future written agreement of the parties..."

The Court therefore rejects Plaintiff's argument that any contract ambiguity exists which would make the limitation of liability unenforceable.

(2) **Morcos is bound by the Limitation of Liability.**

The Court finds that Morcos is bound to the limitations of liability contained in the UPS agreements. He cannot avoid the limitations of liability in the UPS Tariff/Terms by claiming he did not separately agree to the terms set forth in the UPS Tariff/Terms. Morcos' claim against UPS arises from the shipping contract between UPS and APMEX. Morcos is estopped from avoiding the limitations of liability in the agreement between APMEX and UPS. *See Pearson v. Hilton Head Hosp.,* 400 S.C. 281, 295, 733 S.E.2d 597, 601, 604 (Ct. App. 2012) (finding equitable estoppel prevents a party from "rely[ing] on [a] contract when it works to its advantage, and repudiate it when it works to its disadvantage.").

Moreover, courts have repeatedly recognized that a consignee/receiver is bound by the terms of the shipping contract entered into between the shipper and the carrier. For example in *Norfolk Southern Railway Co.*, the Court held that "[w]hen an intermediary contracts with a carrier to transport goods, the cargo owner's recovery against the carrier is limited by the liability limitation to which the intermediary and carrier agreed." 543 U.S. at 33; *see also Son Shipping Co. v. De Fosse & Tanghe*, 199 F.2d 687, 688 (2d Cir. 1952) (where terms are expressly incorporated into the bills of lading they are a part of the contract of carriage and are binding upon those making claim for damages for the breach of that contract just as they would be if the dispute were between the contracting parties); *Anchor Seafood, Inc. v. CMA-CGB (Carribean), Inc.*, No. 05-23097-CIV, 2005 WL 4674292, at *2 (S.D. Fla. Nov. 29, 2005) (where a consignee brings an action not against its vendor but against the vendor's carrier, arguing in effect that the consignee is a third party beneficiary of the contract between the vendor and the carrier, the consignee is bound by all the terms of the contract on which it sues); *Kanematsu Corp. v. M/V Gretchen W*, 897 F. Supp. 1314, 1317 (D. Or. 1995) ("when a party brings suit for damaged goods under the terms of a bill of lading, that party consents to all of the conditions of the bill of lading"); *Rafaella Gallery, Inc. v. United Parcel Serv., Inc.*, 818 F. Supp. 53, 54-55 (S.D.N.Y. 1993) (holding that recovery of plaintiffs, the owner of the goods and the shipper, was limited by tariff and pickup record); *Harrah v. Minn. Min. and Mfg. Co.*, 809 F. Supp. 313, 318 (D.N.J. 1992) ("[C]onsignors, carriers and consignees are all presumed to know the existence, effect and applicability of tariff provisions.") (quoting *Atchison, T. & S.F. Ry. Co. v. Springer*, 172 F.2d 346, 349 (7th Cir. 1949)). As the court held in *Tamrock United States v. M.V. Maren Maersk*, No. 93 Civ. 6239 (RPP), 1995 U.S. Dist. LEXIS 10804, at *6 n.3 (S.D.N.Y. Aug. 2, 1995), "[t]he rights of the [shipper and consignee] are identical for purposes of legal analysis." Because Morcos must stand in the shoes of APEMX, the shipper, he is likewise bound by UPS's $100 limitation of liability and cannot recover any additional damages.

(3) The True Conversion Exception Does Not Invalidate UPS's Limitation of Liability.

Plaintiff argues that the true conversion exception to the Carmack Amendment is applicable to this case so that he is not bound by the $100.00 liability limitation and may recover damages in a greater amount. In *Certain Underwriters at Int. at Lloyds of London v. United Parcel Serv. Of Am., Inc.*, 762 F.3d 332, 337 (3rd Cir. 2014), the court recognized that the judicially created "true conversion" exception in the context of Carmack Amendment preemption restricts the effect of contractual limitations of carrier liability:

> Despite the broad preemptive scope of the Carmack Amendment, the Underwriters [Plaintiffs] argue that their claim for common law conversion should be permitted to proceed on account of the "true conversion" exception. <u>We have held that it would be unfair for a carrier to limit its liability when the carrier's actions involve "intentional destruction or the conduct in nature of theft."</u> (internal citations omitted). In applying this policy-based exception, courts have exhibited some

> confusion as to what it is an exception to: the preemptive scope of the Carmack Amendment, or the Amendment's liability limiting provisions. While some courts have spoken of the exception as simply "vitiat[ing] limits on liability," see Deiro v. Am. Airlines, Inc., 816 F.2d 1360, 1366 (9th Cir.1987), others have noted that an allegation of true conversion may permit a state law conversion action to proceed despite the Carmack Amendment.6 We hold that the true conversion exception does not detract from the Carmack Amendment's preemptive force and is an exception only to its liability limiting provisions. (emphasis added)

According to the Plaintiff, inasmuch as Jenkins pled guilty to forging Morcos' signature and absconding with the gold coins, this case involves "conduct in nature of theft" and the true conversion exception applies to allow him to exceed the limitation of liability contained in the APMEX/UPS shipping contract. Morcos further alleges that the true conversion exception only requires proof of some intentional misconduct that causes loss or damage and that the exception applies here against UPS even though there is no evidence that UPS, as the carrier, committed misconduct.

While the Court agrees that Jenkins' conduct was "in the nature of theft", the Court finds that the true conversion exception is inapplicable under the facts of this case. A true conversion is "where the *carrier* has appropriated the property for *its own* use or gain." *Glickfeld v. Howard Van Lines*, 213 F.2d 723, 727 (9th Cir. 1954) (emphasis added). Morcos' position that the true conversion exception only requires proof of some intentional misconduct that causes loss or damage – whether or not committed by the carrier - is unsupported by the applicable law or the facts presented at trial. The true conversion exception does not apply when, like here, "the conversion is by third parties or even by its [carrier's] own employees." *Id.*

In *Glickfeld*, a leading case on the true conversion exception, the court wrote:

> [I]f the property has been converted by the carrier, it would be against public policy to permit the carrier to limit its liability and thus to profit from its own misconduct. ***However, the cases are uniform in holding that the conversion doctrine is pertinent only when there has been a true conversion, i.e., where the carrier has***

appropriated the property for its own use or gain. The carrier may properly limit its liability where the conversion is by third parties or even by its own employees.

Id. (emphasis added.) Countless subsequent cases, including those involving allegations of theft by a carrier's employee, have followed the same rule. *See Certain Underwriters at Int. at Lloyds of London v. United Parcel Serv. of Am., Inc.*, 762 F.3d 332, 337 n.5 (3d Cir. 2014) ("In order for a conversion to be a 'true conversion,' the carrier must have "appropriated the property for its own use or gain."); *Ins. Co. of N. Am. v. Fed. Exp. Corp.*, 189 F.3d 914, 928 (9th Cir. 1999) (holding that because there was "no allegation that FedEx misappropriated the plaintiff's property for its own use," the theft of cargo by FedEx employees did not vitiate FedEx's limits on liability.); *Deiro v. Am. Airlines, Inc.,* 816 F.2d 1360, 1366 (9th Cir.1987) ("[O]nly an appropriation of property by the carrier for its own use will vitiate limits on liability."); ; *Mtelehealth, LLC v. United Parcel Serv., Inc.*, 441 F. Supp. 3d 1312, 1318 (S.D. Fla. 2019) (The "[true] conversion exception only applies when a carrier has converted the property 'for its own use or gain.'") (quoting *Glickfeld*, 213 F.2d at 727); *Blanco v. Fed. Express Corp.*, No. CIV-16-561-C, 2017 WL 3496458, at *3 (W.D. Okla. Aug. 15, 2017), *aff'd in part*, 741 F. App'x 587 (10th Cir. 2018) "[T]he conversion doctrine is pertinent only when there has been a true conversion, i.e., where the carrier has appropriated the property for its own use or gain. The carrier may properly limit its liability where the conversion is by third parties or even by its own employees.") (quoting *Glickfeld*, 213 F.2d at 727.) [12]

[12] In support of its position, Plaintiff points to *Mlinar v. United Parcel Service, Inc.*, 186 So.3d 997 (Fla. 2016), as "the sounder approach to true conversion involving employee theft." In *Mlinar*, the Florida Supreme Court refused to enforce the carrier's limitation of liability where an artist gave a package to UPS containing two paintings for shipment, but upon delivery to the intended destination, the seals of the package had been undone, the package was empty and the missing paintings were eventually sold to a third party without the artist's knowledge or consent. 186 So.3d at 998-999. 997. The *Mlinar* court weighed the public policy implications of allowing a carrier to shield itself from liability when it had committed "larcenous misconduct" and found limiting liability in such a situation to be "repugnant to the purpose behind the statute's [Carmack] enactment." *Id.*, at 1004.

Here, Morcos has consistently alleged that Jenkins converted the Subject Package. Moreover, the Jenkins Order determined that "Jenkins absconded with the gold coins, leaving an empty shipping package on the ground in front of [Morcos's] apartment door" and found Jenkins liable on Morcos's claim for conversion. Morcos's trial testimony on this point is unequivocal—he believes that Jenkins stole the gold coins. There is no evidence in the record upon which this Court can find that UPS converted the Subject Package for "its own use or gain." *Glickfeld*, 213 F.2d at 727. Thus, Morcos's true conversion theory fails and does not impact UPS's limitation of liability.

CONCLUSION

Morcos's conversion claim against UPS is preempted by the Carmack Amendment. Nevertheless, Plaintiff's complaint, albeit couched in terms of conversion, can be read to allege a violation of the Carmack Amendment. The evidence adduced at trial went toward a Carmack Amendment violation. Under this theory, however, UPS's liability in this matter is limited to $100 because APMEX agreed to UPS's limitation of liability and did not purchase additional protection from UPS. The Court declines to adopt Plaintiff's arguments that the true conversion exception

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Plaintiff's reliance on *Mlinar* is misplaced. The Florida Supreme Court in *Mlinar* reviewed the lower courts' grant of the defendant carrier's motion to dismiss such that it examined the allegations contained in the plaintiff's complaint as a matter of law. *Id.* Based on the allegations, the *Mlinar* court ruled that the plaintiff's various state law claims, to include conversion, were not preempted by the Carmack Amendment because they "allege[d] conduct or harm that is separate and distinct from the loss of or damage to the goods transported" *Id.*, at 1003. Significantly, in *Mlinar*, the carrier itself was alleged to have engaged in criminal conduct – essentially a conspiracy with other actors to wrongfully appropriate the shipped artwork and then to facilitate its sale. Given the alleged misconduct by the carrier, the court disallowed the carrier's attempt to use the Carmack Amendment as shield. In this regard and for purposes of preemption under Carmack, the *Mlinar* court drew a distinction between misconduct involving a third party and that committed by the carrier when it observed: "As Mlinar [plaintiff] accurately points out, this is not a case where "the paintings were stolen by a rogue UPS employee or even by a trespasser." (citations omitted) allows its damages to exceed the limitation of liability contained in the APMEX/UPS agreements. Accordingly, this Court enters final judgment in favor of the Plaintiff in the amount of $100.00.

AND IT IS SO ORDERED.

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The Honorable Milton G. Kimpson
Presiding Judge
Fifth Judicial Circuit

Columbia, South Carolina

______________, 2026

(ELECTRONIC SIGNATURE PAGE FOLLOWS)

Richland Common Pleas

Case Caption: Saad Morcos vs Jacob Jenkins III , defendant, et al

Case Number: 2022CP4005587

Type: Order/Other

IT IS SO ORDERED.

s/Milton G. Kimpson 2783