No. _____

In the Supreme Court of the United States

CANADIAN PACIFIC RAILWAY LIMITED, CANADIAN PACIFIC RAILWAY COMPANY, SOO LINE CORPORATION, AND SOO LINE RAILROAD COMPANY, PETITIONERS

v.

JOE R. WHATLEY, JR., SOLELY IN HIS CAPACITY AS THE WD TRUSTEE OF THE WD TRUST, RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Carmack Amendment ("Carmack") provides the exclusive remedy for shippers to hold rail carriers liable for damage to cargo. Under the federally required uniform bill of lading ("UBL"), a shipper must file a written claim with the carrier within nine months. If the carrier denies that claim, the shipper then has two years and one day to file suit.

This Court long ago directed courts to apply this requirement in a practical way, focusing on whether a notice sufficiently apprises the carrier of the character of the claim. *Ga., Fla. & Ala. Ry. Co.* v. *Blish Milling Co.*, 241 U.S. 190 (1916). Regulations thus require that a claim simply identify the damaged cargo, assert the carrier's liability, and demand "determinable" damages. There is an acknowledged circuit split as to whether this regulation governs contested claims, but *all ten* circuits that have ruled on the issue assess a shipper's notice under either the regulation or *Blish*'s practical inquiry.

Contrary to *Blish*, the regulation, and the decisions of those ten circuits, the Eighth Circuit held below that a factually sufficient notice and denial did not trigger the limitations periods merely because the notice cited Canadian law and stated that the shipper "will submit" a Carmack claim at a later date.

The question presented is whether a shipper's notice asserting a rail carrier's liability for damage to specifically identified cargo and demanding a determinable amount of money is rendered insufficient to trigger binding UBL limitations periods because the notice does not purport to rely on Carmack.

PARTIES TO THE PROCEEDINGS AND RULE 29.6 STATEMENT

Petitioners are Canadian Pacific Railway Limited, Canadian Pacific Railway Company, Soo Line Corporation, and Soo Line Railroad Company. Soo Line Corporation (a Minnesota corporation) owns Soo Line Railroad Company (a Minnesota corporation). Soo Line Corporation is an indirect subsidiary of Canadian Pacific Railway Company, a Canadian corporation. Canadian Pacific Railway Company is a direct subsidiary of Canadian Pacific Railway Limited (a Canadian corporation). These companies are collectively referred to herein as "CP." The shares of Canadian Pacific Railway Limited are publicly traded on the New York and Toronto stock exchanges. No entity owns more than 10% of that stock. Petitioners were the appellees in the court of appeals.

Respondent is Joe R. Whatley, Jr., solely in his capacity as the trustee of a bankruptcy trust entitled the WD Trust. Respondent is the assignee of certain claims originally held by the World Fuel Entities ("WFE"). Respondent was the appellant in the court of appeals.

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OPINIONS BELOW

The opinion of the court of appeals (1a-17a) is reported at 904 F.3d 614. The opinion of the district court (18a-37a) is not reported but is available at 2017 WL 3687853.

JURISDICTION

The court of appeals entered judgment on September 14, 2018. A petition for rehearing was denied on November 15, 2018. (38a-39a.) The jurisdiction of this Court rests on 28 U.S.C. § 1254(1).

PROVISIONS INVOLVED

Pertinent statutory and regulatory provisions are reproduced in an appendix to this petition. (40a-57a.)

INTRODUCTION

The Carmack Amendment and its implementing regulations impose near-strict liability on carriers for damage to cargo they transport across state lines, but place limits on the time periods in which shippers must provide notice to carriers of their claims and bring suit to challenge any disallowance of those claims. Beginning more than a century ago in *Blish*, this Court, the Interstate Commerce Commission ("ICC"), and ten courts of appeals have recognized that the notice requirement underlying these limitations periods should be applied practically, with a focus on whether the shipper's notice provided the carrier with enough factual detail to "apprise[] the

carrier of the character of the claim" and "facilitate prompt investigation." *Blish*, 241 U.S. at 196, 198.

In its decision below, the Eighth Circuit entirely ignored this authority. Although WFE's notice of claim provided CP with more than enough factual information to identify the shipment at issue and investigate the claim, the Eighth Circuit refused to consider it an effective notice for purposes of Carmack and the UBL because the notice did not state that it was seeking relief under Carmack, but instead referenced Canadian law and stated that WFE would submit a Carmack notice at a later date. Based on that conclusion, the court refused to give effect to CP's denial of liability for WFE's claim, believing it would be "unwise policy" and "actually unfair" to start the two-year limitations period for WFE to file suit when WFE supposedly had not *yet* intended to assert its Carmack claim. (11a.)

The Eighth Circuit cited no authority in support of its new rule, nor did it engage with the instruction of *Blish*, followed by numerous courts of appeals, to construe Carmack notices "in a practical way." As a result, the Eighth Circuit's decision directly conflicts with *Blish*, the analysis of which would dictate that WFE's notice was sufficient because it indisputably apprised CP of the character of the claim. Moreover, by refusing to construe WFE's notice under either the practical inquiry of *Blish or* the minimum claim requirements set forth in governing ICC regulations, the Eighth Circuit's decision conflicts with both sides of (and thus exacerbates) an existing, acknowledged circuit split regarding whether the relevant ICC regulations apply to a litigated claim.

Not only is the Eighth Circuit's decision wrong and in direct conflict with a host of authority, but it also

has significant consequences for carriers that serve customers across state lines and in various circuits. Carriers sued in the Eighth Circuit will now be deprived in many cases of the right they have in every other circuit to commence the time period in which they will be subject to a potential lawsuit by unequivocally denying liability for a damaged shipment. *See Combustion Eng'g, Inc.* v. *Consol. Rail Corp.*, 741 F.2d 533, 536-37 (2d Cir. 1984) ("Inasmuch as § 11707 gives the carrier the power to fix the time when the limitations period begins to run against a shipper, courts have generally held that in order effectively to commence that period of limitations, a carrier's notice of disallowance must be clear, final, and unequivocal.").

Even aside from their right to start the limitations clock by denying liability, the receipt of a sufficient notice of claim under Carmack triggers a number of other regulatory obligations for carriers, and carriers are in fact *prohibited* from voluntarily paying claims that do not satisfy the requirements of the UBL provisions or ICC regulations. In light of these serious regulatory consequences, certainty is of the utmost importance in this context, so the uncertainty and geographic inconsistency caused by the decision below substantially harms carriers (and shippers as well).

Because of the importance of Carmack and the UBL to the national rail industry, this Court has often granted review of cases involving the interpretation of these federal laws in order to ensure nationwide uniformity. *E.g., Reider* v. *Thompson*, 339 U.S. 113, 114 (1950) (granting certiorari because interpretation of Carmack "presents an issue of importance in the application of a federal statute governing liability of common carriers"); *Illinois Steel Co.* v. *Balt. & Ohio*

R.R. Co., 320 U.S. 508, 510 (1944) (granting certiorari because "interpretation of the [UBL is] a question of public importance"); *Blish*, 241 U.S. 190. This Court should again grant certiorari here to resolve this circuit split and to articulate a uniform national standard for determining the sufficiency of a Carmack claim notice and triggering the two-years-and-a-day limitations period for bringing suit.

STATEMENT

A. The Comprehensive Federal Regulatory Framework Governing Rail Carrier Contracts

1. The Carmack Amendment

Congress enacted the Interstate Commerce Act of 1887 to "prevent preferences and discrimination in respect of rates and service" in the railroad industry. *Chesapeake & Ohio Ry. Co.* v. *Martin*, 283 U.S. 209, 222 (1931). Congress did not preempt the field entirely, however, and at the turn of the twentieth century a rail carrier's liability for interstate shipments could be governed by either federal common law or state law. *Adams Express Co.* v. *Croninger*, 226 U.S. 491, 504 (1913). It thus became "practically impossible . . . to know . . . what would be the carrier's actual responsibility as to goods delivered to it for transportation from one state to another." *Id.* at 505 (quoting *Southern Pac. Co.* v. *Crenshaw Bros.*, 63 S.E. 865, 870 (Ga. 1909)).

To address this confusion, in 1906 Congress enacted the Carmack Amendment to the Interstate Commerce Act. The "prime object" of Carmack was to "bring about a uniform rule of responsibility as to interstate commerce and interstate commerce bills of lading." *Atchison, Topeka & Santa Fe Ry. Co.* v. *Harold*, 241 U.S. 371, 378 (1916). Carmack "super-

seded diverse state laws with a nationally uniform policy governing interstate carriers' liability for property loss." *N.Y., New Haven & Hartford R.R. Co.* v. *Nothnagle*, 346 U.S. 128, 131 (1953).

Under that national policy, Carmack generally subjects interstate rail carriers to strict liability for loss or damage to cargo occurring at any point before that cargo reaches its ultimate destination. 49 U.S.C. § 11706(a). Indeed, in the interest of promoting certainty of recovery for shippers, Carmack may impose liability on an initial receiving rail carrier even for damage caused by a connecting or delivering carrier. *See Kawasaki Kisen Kaisha Ltd.* v. *Regal-Beloit Corp.*, 561 U.S. 89, 98 (2010) ("Carmack's purpose is to relieve cargo owners of the burden of searching out a particular negligent carrier from among the often numerous carriers handling an interstate shipment of goods." (internal quotation omitted)).

2. The Uniform Bill of Lading

Although Carmack mandated that receiving carriers issue bills of lading, the ICC soon thereafter received "numerous complaints alleging varying and unfair practices of carriers in the interpretation and application of the rules and regulations of their bills of lading." *In re Bills of Lading*, 52 I.C.C. 671, 678 (1919).[1] Recognizing the "great importance of the bill of lading," *id.* at 671, and in order to promote "uniformity and to prevent discriminations" on these issues, the ICC promulgated the UBL. *Illinois Steel*,

[1] The ICC has been succeeded by the Surface Transportation Board ("STB"). *See* ICC Termination Act of 1995, Pub. L. No. 104-88, 109 Stat. 803. As a result, the Carmack regulations, including the UBL requirement and the definition of a Carmack claim notice, are now STB regulations. Because the ICC originally promulgated them, this petition will refer to them as ICC regulations.

320 U.S. at 510. Because it is the "duty of interstate rail carriers to adopt and observe the form and substance of bills of lading approved by the Commission," *id.* at 509, and the Carmack regulations expressly require rail carriers to use the UBL, 49 C.F.R. § 1035.1, "the clauses of the [UBL] govern the rights of the parties to an interstate shipment" and "have the force of federal law." *Illinois Steel*, 320 U.S. at 511.

3. Applicable Limitations Periods Under Carmack and the UBL

While subjecting carriers to near-strict liability, Carmack permitted carriers to limit contractually the periods within which a shipper must (i) notify the carrier of a claim and (ii) bring suit—but only to an extent. Carmack set minimum time periods that carriers must allow: "A rail carrier may not provide . . . a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section." 49 U.S.C. § 11706(e). The latter period must run from the date the carrier gives written notice that it "has disallowed any part of the claim specified in the notice." *Id.*

The UBL adopted those statutory minimums as the mandatory limitations periods for all rail shipments governed by Carmack. Under the UBL, as a "condition precedent to recovery," a shipper must submit a notice of claim "in writing" to the carrier within nine months of the loss. 49 C.F.R. § 1035, App. B § 2(b) ("UBL 2(b)").

Within 30 days of receiving a "proper claim," a carrier must acknowledge receipt of the claim and inform the shipper of any additional documentation the carrier requires to process the claim. 49 C.F.R. § 1005.3(a). After conducting a "prompt[] and thor-

ough[]" investigation, *id.* § 1005.4, the carrier must allow, deny, or offer to settle the claim within 120 days or explain why no decision can yet be made, *id.* § 1005.5.

If the carrier "disallow[s] the claim or any part or parts thereof specified in the notice," the shipper may file suit "only within two years and one day from the day" the shipper received notice of the disallowance. UBL 2(b). Once the carrier has disallowed the claim, "subsequent correspondence between the parties does not halt the running of the limitations period." *See Combustion Eng'g,* 741 F.2d at 536.

"Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid." UBL 2(b). This provision, which was intended to prevent carriers from discriminating among various claimants when paying claims, bars carriers even from *voluntarily* extending or waiving the UBL's limitations periods. *See, e.g., Blish,* 241 U.S. at 197; *A.J. Phillips Co.* v. *Grand Trunk W. Ry. Co.,* 236 U.S. 662, 667 (1915); L. S. Tellier, *Waiver of rights by carrier under interstate shipments as constituting unlawful discrimination among shippers*, 135 A.L.R. 611 (1941).

4. The Requirements of a Carmack Claim Notice

The requirements for a sufficient Carmack claim notice were first articulated in this Court's seminal decision in *Blish*. There, this Court explained that the "object" of the Carmack notice requirement is "to secure reasonable notice" of the claimed losses, not to enable the carrier to "escape liability, but to facilitate prompt investigation" of the shipper's claim. 241 U.S. at 196, 198. Because it is "addressed to a practical exigency," the notice requirement "is to be construed in

a practical way," and "does not require documents in a particular form." *Id.* at 198.

In 1972, responding to complaints of inconsistent settlement practices among carriers and shippers, the ICC issued a regulation defining when a writing "sufficient[ly] compli[es] with the provisions for filing claims embraced in the bill of lading." 49 C.F.R. § 1005.2(b). As the Second Circuit explained, "the regulations impose numerous obligations upon carriers, which are triggered by the receipt of a 'claim,'" and thus "it is neither inappropriate nor beyond the authority of the ICC at the same time to provide a carrier with some guidance as to what constitutes a claim, so that a carrier may know one when it sees one." *Pathway Bellows, Inc.* v. *Blanchette*, 630 F.2d 900, 904 (2d Cir. 1980). The regulation distills the "practical" inquiry required by *Blish* into three basic requirements: a claim notice need only (i) "[c]ontain[] facts sufficient to identify the . . . shipment," (ii) "assert[] liability for alleged loss, damage, injury, or delay," and (iii) "mak[e] claim for the payment of a specified or determinable amount of money." 49 C.F.R. § 1005.2(b). The regulations thus do not require claimants to articulate any particular legal theory in their notice. Again, the ICC prohibited carriers from paying a claim, even voluntarily, unless the claim complies with these requirements. 49 C.F.R. § 1005.2(a).

Courts have recognized that the ICC did not "intend[] a radical departure from the claim investigation policy underlying the written claim requirement" when enacting this regulation, *Pathway Bellows*, 630 F.2d at 903 n.5, and thus generally "interpret the[se] minimum claim requirements with a presumption in favor of the *Blish Milling* . . . principles," *Siemens*

Power Transmission & Distrib., Inc. v. *Norfolk S. Ry. Co.*, 420 F.3d 1243, 1252 (11th Cir. 2005).

B. Factual History

1. The Derailment

On June 29, 2013, WFE executed a through bill of lading providing for the transportation by CP of dozens of tank cars of crude oil. The oil was picked up by CP in North Dakota, then transported on a route passing through Minnesota, Wisconsin, Illinois, and Michigan before proceeding into Canada to interchange with the Montreal, Maine & Atlantic Railway ("MMA").[2] As WFE has acknowledged (4a, 80a), the bill of lading incorporated the terms of the UBL.[3]

The tank cars were to be delivered to Irving Oil Ltd. ("Irving") in New Brunswick, Canada. On July 5, 2013, however, MMA left the train unattended overnight on an incline outside the town of Lac-Mégantic, Quebec with insufficient brakes. Sometime during the morning of July 6, 2013, the train rolled downhill and derailed, causing 47 deaths, other serious injuries, and substantial property damage.

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[2] *See* Transportation Safety Board of Canada, *Railway Investigation Report R13D0054: Runaway and Main-Track Derailment* (Aug. 19, 2014) at 6-7, *available at* http://www.tsb.gc.ca/eng/rapports-reports/rail/2013/r13d0054/r13d0054.pdf.

[3] The court of appeals nonetheless believed it was "unclear" whether the parties had agreed to the terms of the UBL, but "assume[d] that those time limits did, indeed, apply to WFE." (8a.) That assumption was, of course, true: "the clauses of the uniform bill of lading . . . have the force of federal law" and are incorporated in the contract by reference. *Illinois Steel*, 320 U.S. at 511; *see Norfolk & W. Ry. Co.* v. *Am. Train Dispatchers Ass'n*, 499 U.S. 117, 130 (1991) ("Laws which subsist at the time and place of the making of a contract, and where it is to be performed, enter into and form a part of it, as fully as if they had been expressly referred to or incorporated in its terms.").

MMA later filed for bankruptcy protection and entered into a settlement with WFE under which WFE (i) paid $110 million to the chapter 11 trustee, (ii) was released from all liability with respect to the derailment, and (iii) assigned to MMA any Carmack claims WFE might have against CP. Those claims were then assigned to respondent as trustee of a victims' trust created under the bankruptcy plan.

2. WFE's Notice of Claim

On November 5, 2013, WFE sent CP a "Notice of Loss, Damage or Delay" (the "Notice") asserting CP's liability for "all losses sustained as a consequence of the derailment of Unit Train 606-282 on July 6, 2013 near Lac-Mégantic." (58a-70a.) Consistent with the ICC's Carmack regulations, the Notice identified the shipment—stating that "Train 282" consisted of "one buffer car and 72 tank cars containing petroleum crude oil" (63a)—and asserted that CP "is liable to [WFE] for . . . the loss, damage or delay of [WFE's] goods on Train 282." (59a.) The Notice also claimed a determinable amount of damages, seeking the "full value" of the oil contained in 63 derailed tank cars plus losses resulting from the delayed delivery of the oil in nine other tank cars that were not destroyed. (64a-67a.) The Notice stated that the full amount of oil in the railcars was worth $4,968,334.82. (64a.) The Notice also claimed (without precisely calculating) (i) damages resulting from the destruction of the tank cars themselves, and (ii) damages sufficient to compensate WFE for any of its own liability. (65a-67a.)

In a "Proviso and Reservation of Rights," WFE stated that it was submitting the Notice "without prejudice to any of [its] rights to plead and rely upon the laws of the United States of America or of Canada." (62a.) It then stated that "this Notice . . . shall

be, if and as may be required, considered as a sufficient and comprehensive Notice to at all times satisfy any requirement of notice under" Canada's Railway Traffic Regulations. (62a.) Those Canadian regulations, the Notice indicated, require notice of claim be submitted to an originating carrier within four months of delivery of damaged goods. (*Id.*)

WFE's Notice further confirmed that WFE would also seek to impose liability under Carmack. It stated that the "Notice shall be without any waiver or limitation whatsoever of the rights of [WFE] under the laws of the United States of America, including the *Carmack Amendment*." (62a-63a.) Noting that it was required to submit notice under Carmack within a period of "not less than 9 months" after the damage occurred, WFE stated that it "will submit a separate notice of claim in accordance with the aforementioned provisions of U.S. law at the appropriate time." (*Id.*)

On November 27, 2013, CP responded to WFE's Notice in a letter entitled "Disallowance of Loss, Damage and Delay Claims." (71a-77a.) CP's response explained that Carmack exclusively "governs the relationship" between CP and WFE, as a WFE representative had recently acknowledged. (73a-74a.) WFE had also acknowledged that Carmack governed in a submission made by WFE to the Quebec government months earlier, in which WFE stated that "[u]nder Canadian choice of law principles, the Carmack Amendment governs the parties' respective rights and obligations with respect to the crude oil after the derailment." (80a.) CP disallowed WFE's claim in its entirety, under both U.S. and Canadian law. (71a-77a; *see* 33a.)

Nearly nine months after the derailment—on April 4, 2014—WFE sent CP a second letter that was sub-

stantively identical to the prior Notice, save for WFE's quantification of certain previously claimed damages. (82a-88a.) This letter, however, purported to be a notice "pursuant to" Carmack. (82a.) On April 24, 2014, CP reiterated its denial of the claim. (89a-93a.)

C. Procedural History

1. The District Court's Decision

Respondent filed this action on April 12, 2016—nearly two years and five months after CP's November 2013 disallowance of the claim. Petitioners moved for judgment on the pleadings or summary judgment, arguing (among other things) that respondent's suit was untimely. The district court granted that motion and dismissed WFE's Carmack claim as time-barred. (18a-37a.)

The district court rejected respondent's contention that WFE's Notice "did not meet the notice requirements under . . . Carmack." (30a.) Under *Blish*, the district court explained, a shipper's notice of claim must be construed in a "practical way," focusing on "whether it apprises the carrier of the basis for the claim and that reimbursement will be sought." (30a (internal quotations omitted).) Because it is "undisputed that the November Claim was in writing, was delivered within nine months, identified the shipment, and notified the carrier that the shipper was asserting a claim," the district court concluded that the Notice "satisfies the Carmack Amendment's notice requirement." (32a.) As a result, because CP's disallowance letter "made it clear that [CP] denied all liability—including liability under the Carmack Amendment," WFE's "two-year-and-a-day limitation period started

to run on November 27, 2013," and expired well before respondent filed suit. (33a.)

2. The Eighth Circuit's Decision

The court of appeals reversed. (1a-17a.)

The court framed the issue as whether "the November 2013 exchange of correspondence between WFE and CP can be construed as a claim and a denial under . . . Carmack." (8a.) In construing that correspondence, the court of appeals did not cite *Blish* or the minimum claim requirements set forth in the ICC regulations. Instead, relying on the Carmack statutory provision setting the minimum limitations periods that carriers must allow in bills of lading, the court of appeals concluded that the carrier's "denial must be from a claim brought 'under this section'" in order to "start[] the clock" on the two-years-and-a-day limitations period. (11a (quoting 49 U.S.C. § 11706(e)).)

In the court's view, the Notice was not a claim "under this section" because it was made "pursuant to Canadian law" and "expressly denied that WFE was making its Carmack Amendment claim," indicating instead that WFE "would do so at a later time." (11a.) The court thus concluded that CP's November 2013 disallowance did not trigger the two-years-and-a-day limitations period for WFE to file suit. The court explained that, in its view, it would be "unwise policy" and "actually unfair" to "allow [CP] to start the two-year clock when [WFE] had not yet broken the huddle." (11a.)

Because WFE submitted its second notice in April 2014—which expressly stated that it was submitted to Carmack—"less than nine months" after the derailment, and respondent then filed suit "within two years" of CP's disallowance of the April 2014 notice,

the court of appeals concluded that respondent's suit was timely. (9a.)[4]

The Eighth Circuit denied rehearing *en banc*. (38a-39a.)

REASONS FOR GRANTING THE PETITION

Beginning with this Court's decision in *Blish* more than a century ago, courts and the ICC have uniformly interpreted the Carmack Amendment's notice requirement in light of its overriding purpose: to ensure that rail carriers have an opportunity to investigate claims of damage to cargo for which a shipper seeks to hold the carrier liable. If the carrier investigates and determines that it is not liable for all or some of the shipper's claimed losses, the carrier then has the right to know that it faces potential liability under Carmack for only two years and a day after disallowing the shipper's claim.

Ignoring this purpose, the Eighth Circuit in this case held that CP's denial of all liability to WFE for the Lac-Mégantic derailment (including under Carmack) did not start the two-years-and-a-day limitations period because WFE's Notice was insufficient under Carmack. Even though the Notice indisputably gave CP all the information it needed to investigate WFE's claimed losses, the court viewed that Notice (and CP's denial) as ineffective because the Notice did not state that it was presently asserting a claim under Carmack, but instead referenced Canadian law.

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[4] The court of appeals also reversed the district court's dismissal of Carmack claims respondent separately asserted on behalf of Irving Oil Ltd., the intended recipient of the crude oil on the train (12a-13a), and Judge Gruender dissented from that portion of the majority's decision. (13a-17a.) Irving's asserted claims are not at issue in this petition.

The Eighth Circuit's decision conflicts with *Blish* and the ten courts of appeals that apply a practical inquiry when assessing the sufficiency of Carmack notices, and it exacerbates an acknowledged circuit split regarding the applicability of ICC regulations implementing Carmack setting forth the minimum requirements for a sufficient Carmack notice (which the Eighth Circuit simply ignored). And by failing to give the Notice and CP's disallowance their appropriate effect, the Eighth Circuit has seriously undermined the nationwide uniformity Carmack was enacted to promote. This Court's intervention is warranted.

I. THE DECISION BELOW CONFLICTS WITH DECISIONS OF THIS COURT AND TEN OTHER CIRCUITS

A. The Eighth Circuit's Decision Conflicts With This Court's Decision in *Blish*

The court of appeals held that CP's November 2013 disallowance of WFE's claim did not start the two-years-and-a-day limitations period because WFE's Notice did not specifically assert relief under Carmack. That reasoning directly conflicts with this Court's decision in *Blish*, which held that a notice need not be "in a particular form," but need only "sufficiently apprise[] the carrier of the character of the claim" in order to satisfy the notice requirement under Carmack. 241 U.S. at 198.

In *Blish*—which the Eighth Circuit did not even mention—the shipper and carrier exchanged a series of short telegrams describing damage to a carload of flour. *Id.* at 193. The shipper's final telegram stated: "We *will make* claim against railroad for entire contents of car at invoice price." *Id.* (emphasis added). The shipper never sent a more formal notice, nor did

it characterize its claim as one based on Carmack. Even when the shipper subsequently filed suit, it did not seek relief under Carmack, instead asserting the carrier was liable under state law. *Id.* at 197.

Reversing the lower court's ruling that the shipper's notice was insufficient, this Court held that "notice of the claim was in fact given" for Carmack purposes because the telegrams between the shipper and the carrier "established beyond question the particular shipment to which the claim referred" and "sufficiently apprised the carrier of the character of the claim." *Id.* at 197-98. Because the sole purpose of notice under Carmack is "to facilitate prompt investigation" by the carrier of the shipper's claimed losses, the Court explained that the notice requirement "does not require documents in a particular form" and instead should "be construed in a practical way" in light of its purpose. *Id.* at 196, 198.

Nowhere in *Blish* did this Court suggest that the notice must specifically invoke Carmack as the legal basis for the claim or that reference to some other law somehow negates the practical effect of the notice for Carmack purposes. To the contrary, the *Blish* Court found the notice there sufficient despite its omission of any legal basis at all for recovery, and despite its assertion merely of an intent to file a claim in the future. *Id.* at 193 ("We *will make* claim against railroad" (emphasis added)).

Other courts of appeals have correctly applied the "practical" inquiry this Court adopted in *Blish*, and thus have attributed no significance to whether a claimant's notice of claim specified that it sought relief under Carmack. Consistent with *Blish*'s practical, purpose-based inquiry, these courts have been "extremely reluctant" to find notice improper "in any sit-

uation where a carrier has seen a written document noting damage to a particular shipment and implying the carrier's responsibility therefor." *Pathway Bellows*, 630 F.2d at 903 n.5.

For example, in *Wisconsin Packing Co.* v. *Indiana Refrigerator Lines, Inc.*, 618 F.2d 441 (7th Cir. 1980) (en banc), the Seventh Circuit found notice sufficient under *Blish* even though the notice not only failed to mention Carmack, but did not even expressly assert the carrier's liability at all. The notice stated:

> Wisconsin Packing Company refused to accept meat on trailer no. 4013 because of Army (Navy) rejection of temperatures averaging 1.2 degrees over acceptable allowance temperatures. Return temperatures checked out and ranged from nine to twenty-five degrees.

Id. at 443. The Seventh Circuit held that, although this letter "lack[ed] in formality," it was "incontrovertible that the notice identified the goods by reference and set forth a formal statement of the damage." *Id.* at 444. Accordingly, the letter "gave defendant 'reasonable notice'" and "sufficed to advise the carrier that the shipper was seeking reimbursement for the loss." *Id.*

Similarly, in *Loveless* v. *Universal Carloading & Distribution Co.*, 225 F.2d 637 (10th Cir. 1955), the Tenth Circuit found the notice requirement satisfied where the claimant orally notified the carrier that its goods were damaged, and the carrier provided written acknowledgment of the notice and its understanding that a formal claim would be filed later. *Id.* at 639-41. Neither the shipper nor the carrier expressly referenced Carmack.

Likewise, in *American Synthetic Rubber Corp.* v. *Louisville & Nashville Railroad Co.*, 422 F.2d 462 (6th Cir. 1970), the Sixth Circuit rejected the shipper's characterization of its claim as one under state law in an attempt to avoid the notice requirement, explaining that "[a] plaintiff's designation of an action" does not control where "it is apparent that the action is brought against a common carrier for breach of an interstate contract of carriage." *Id.* at 468. The Sixth Circuit went on to find that the shipper had given sufficient notice of its claimed losses by providing documents that "clearly reveal[ed] the particular shipment to which the claim referred, the railroad's error in routing that shipment, and the source of damages." *Id.* at 468-69. Consistent with *Blish*, the court explained that "[g]enerally speaking, any written document, however informal, which indicates an intention to claim damages and identifies the shipment will be sufficient." *Id.* at 468.

The Eighth Circuit's reasoning cannot be reconciled with *Blish* or these cases that have correctly applied its guidance. There is no dispute that WFE's Notice advised CP of the precise shipment at issue and of the fact that WFE intended to hold CP liable for losses suffered as a result of the derailment, thus fully satisfying the purpose underlying the notice requirement. The Eighth Circuit thought it important that WFE's Notice indicated "that WFE was not yet making its Carmack Amendment claim" (11a), but that statement is irrelevant to whether WFE had adequately notified CP that it intended to hold CP liable for specifically identified losses, which is all *Blish* requires. And even if the label WFE attached to its Notice were relevant to whether it satisfied *Blish*'s practical inquiry, the Notice unambiguously stated that

WFE "*will* submit a separate notice of claim in accordance with" Carmack "at the appropriate time" (63a (emphasis added)), which is no different than the shipper's statement in *Blish* that it "*will* make claim." *Blish*, 241 U.S. at 193 (emphasis added); *see United States* v. *Kales*, 314 U.S. 186, 196 (1941) (citing *Blish* for proposition that "use of the future tense in stating a claim may, with due regard to the circumstances of making it, rightly be taken as an assertion of a present right").

Put simply, the Eighth Circuit created a new rule, at odds with *Blish*, that an otherwise-compliant notice is nonetheless ineffective if it states that it "will" make a separate Carmack claim at a later date. Without this new rule, the court would have had to conclude that the Notice satisfied the nine-month limitations period. CP's disallowance would then have started the two-years-and-a-day clock for WFE to file suit to challenge that disallowance. The Eighth Circuit's departure from *Blish* warrants review.

B. The Eighth Circuit's Decision Compounds an Acknowledged Circuit Split Regarding the Appropriate Analysis for the Sufficiency of Carmack Notices

In addition to conflicting with *Blish*, the Eighth Circuit's decision finding WFE's Notice (and CP's disallowance) ineffective under Carmack conflicts with both sides of an existing circuit split concerning whether ICC regulations promulgated after *Blish* control the Carmack notice sufficiency issue. As noted, the ICC's Carmack regulations set forth minimum requirements a notice must meet in order to be considered sufficient under Carmack. Under those regulations, a notice of claim must (i) "[c]ontain[] facts sufficient to identify the . . . shipment," (ii) "assert[] lia-

bility for alleged loss, damage, injury, or delay," and (iii) "mak[e] claim for the payment of a specified or determinable amount of money." 49 C.F.R. § 1005.2(b).

In the Seventh Circuit, whether these ICC requirements govern the sufficiency of a Carmack notice depends on whether the carrier contests the shipper's claim or pays it voluntarily. In *Wisconsin Packing*, the carrier argued that the shipper's notice, even if it satisfied the "practical" inquiry standard of *Blish*, was nonetheless insufficient under Carmack because it was not the "more formal notice" required by regulation. 618 F.2d at 445. Sitting *en banc*, the Seventh Circuit rejected that argument on the ground that the ICC regulations do not apply when a carrier contests the shipper's claim. In its view, "the purpose of the regulation was to make claim settlement more expeditious by providing procedures for the voluntary disposition of claims by carriers"; thus, the court concluded, Section 1005.2(b) "does not even apply to a contested case such as this." *Id.* As a result, when courts in the Seventh Circuit assess the sufficiency of Carmark notices in litigated cases (which necessarily involve contested claims), they apply the "practical" inquiry set forth in *Blish* rather than the ICC regulations and, as a consequence, may recognize as sufficient claims that do not meet the regulatory standard applied in the other circuits.[5]

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[5] The Tenth Circuit has not expressly considered the Seventh Circuit's distinction between voluntary and contested claims. In relevant decisions issued prior to *Wisconsin Packing*, however, that court considered the sufficiency of Carmack notices solely under the principles of *Blish*, without citing or addressing the ICC regulations. *See Atchison, Topeka & Santa Fe Ry. Co.* v. *Littleton Leasing & Inv. Co.*, 582 F.2d 1237, 1240 (10th Cir. 1978); *Loveless*, 225 F.2d at 639-41.

Other courts of appeals have expressly rejected this distinction. For example, the Second Circuit declined to adopt the Seventh Circuit's "dual standards for assessing the sufficiency of claims, depending upon whether the carrier voluntarily decides to settle a claim or to contest its liability." *Pathway Bellows*, 630 F.2d at 903-04. Instead, the court concluded that the ICC "regulations provide the appropriate standard for assessing the sufficiency of all claims irrespective of the way they may subsequently be resolved or adjudicated." *Id.*

Like the Second Circuit, the First, Fifth, Ninth, and Eleventh Circuits have also expressly rejected the Seventh Circuit's distinction and evaluated Carmack notices under the minimum requirements in Section 1005.2(b). *See Nedlloyd Lines, B.V. Corp.* v. *Harris Transp. Co.*, 922 F.2d 905, 907-08 (1st Cir. 1991) (declining to adopt the Seventh Circuit's rule "that the ICC regulations at issue were only intended to apply to those claims that were disposed of voluntarily," and concluding that "the ICC regulations apply to contested as well as voluntarily paid claims"); *Salzstein* v. *Bekins Van Lines Inc.*, 993 F.2d 1187, 1190 n.2 (5th Cir. 1993) ("[W]e are persuaded by the abundant authority to the contrary that the Seventh Circuit's voluntary/involuntary distinction is inconsistent with the policy underlying the ICC regulations."); *Ins. Co. of N. Am.* v. *G.I. Trucking Co.*, 1 F.3d 903, 906 (9th Cir. 1993) (considering Seventh Circuit's rule but "hold[ing] that the ICC regulations apply to contested claims"); *Siemens*, 420 F.3d at 1250 ("agree[ing] with the First, Second, Fifth, Sixth, and Ninth Circuits that at least the minimum claim requirements contained in section 1005.2(b) apply to contested as well as voluntarily resolved claims").

The Third, Fourth, and Sixth Circuits likewise have applied the ICC's regulations to litigated claims, though without expressly engaging with the Seventh Circuit's analysis. *See S & H Hardware & Supply Co.* v. *Yellow Transp., Inc.*, 432 F.3d 550, 554, 556 (3d Cir. 2005) ("As a matter of public policy, the notice requirement is intended to provide carriers with an opportunity to investigate claims, so it reaches its full usefulness precisely when a carrier wishes to contest a claim."); *Alstom Power, Inc.* v. *Norfolk S. Ry. Co.*, 154 F. App'x 365, 372 (4th Cir. 2005) (applying Section 1005.2(b) to a contested claim without explicitly addressing whether it was required); *Trepel* v. *Roadway Express, Inc.*, 194 F.3d 708, 712 (6th Cir. 1999) (same).

The Eighth Circuit's decision below compounds this acknowledged circuit split by adopting a *third* rule for evaluating Carmack notice sufficiency: that a court should consider neither *Blish*'s practical inquiry *nor* the ICC regulations in Section 1005.2(b) if the shipper's notice does not purport to assert a Carmack claim. And the Eighth Circuit's decision conflicts with both sides of the split: had the Eighth Circuit evaluated WFE's Notice under *either* the practical inquiry in *Blish* (like the Seventh Circuit and perhaps the Tenth Circuit) *or* the ICC regulations' minimum requirements (like the First, Second, Third, Fourth, Fifth, Sixth, Ninth, and Eleventh Circuits), it would have found that WFE's Notice satisfied the UBL's nine-month notice limitations period, and that CP's disallowance therefore triggered the UBL's two-years-and-a-day limitations period for WFE to file suit. There is no doubt that WFE's Notice provided all of the information required under *Blish* or the ICC regulations: WFE precisely identified the shipment

at issue, asserted CP's liability for the loss, and claimed a determinable amount of money to compensate for that loss.

Had this suit been filed virtually anywhere else in the country, it would have been dismissed as untimely. This Court's intervention is necessary to resolve this conflict.

II. THE DECISION BELOW IS WRONG AND CONTRARY TO THE OBJECTIVES OF CARMACK AND THE UBL

A. The Eighth Circuit's Standard Does Nothing to Advance the Purpose of the Notice and Suit Limitations of the UBL

The Eighth Circuit erred by creating a new, overly formalistic standard that ignores the purpose of the notice requirement, which is simply "to facilitate prompt investigation" of a claim by the carrier. *Blish*, 241 U.S. at 196; *see* 49 C.F.R. § 1005.4. The Eighth Circuit's new rule does nothing to facilitate a carrier's investigation of a claim. That purpose is accomplished when the shipper advises the carrier of the nature of the shipment, the damages, and the intention to hold the carrier liable, just as the regulations contemplate. *See, e.g.*, *G.I. Trucking*, 1 F.3d at 907 ("No more is needed to permit the carrier to make a prompt and thorough investigation, which is the purpose of the notice requirement.").

A requirement that the shipper expressly invoke Carmack in its notice of claim would serve no purpose. There is no benefit to informing carriers that a shipper intends to assert liability under Carmack for shipments governed by Carmack, because the statute provides that Carmack is "the exclusive cause of action for interstate-shipping contract claims alleging

loss or damage to property." *Hall* v. *N. Am. Van Lines, Inc.*, 476 F.3d 683, 688 (9th Cir. 2007); *see also Adams Express*, 226 U.S. at 505–06 ("[T]here can be no rational doubt but that Congress intended to take possession of the subject, and supersede all state regulation with reference to it."); 49 U.S.C. § 10501(b) ("[T]he remedies provided under this part with respect to regulation of rail transportation are exclusive and preempt the remedies provided under Federal or State law."). In other words, Carmack governs regardless of whether the notice of claim is silent as to any legal theory, expressly invokes Carmack, or attempts to disclaim Carmack as the alleged basis for carrier liability.[6]

Nor was there any confusion here about whether Carmack governed. WFE admitted as much when, approximately three months before the Notice, it informed the Quebec government that Carmack applied to its relationship with CP. (80a.) WFE then expressly informed CP in its Notice that it "will submit a separate notice" for its Carmack claim at a later date. (63a.) In its response to the Notice, CP in turn affirmatively stated that "the Carmack Amendment . . . governs the relationship" and disallowed all claims under both Canadian and U.S. law. (73a-74a.)

In short, the Eighth Circuit's requirement that a shipper's notice of claim expressly invoke Carmack serves no purpose, because such a rule does not affect

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[6] *Accord Hoskins* v. *Bekins Van Lines*, 343 F.3d 769, 778 (5th Cir. 2003) ("Congress intended for the Carmack Amendment to provide the exclusive cause of action for loss or damages to goods arising from the interstate transportation of those goods by a common carrier") (emphasis removed); *N. Am. Van Lines, Inc.* v. *Pinkerton Sec. Systems, Inc.*, 89 F.3d 452, 456 (7th Cir. 1996); *Shao* v. *Link Cargo (Taiwan) Ltd.*, 986 F.2d 700, 705 (4th Cir. 1993) (collecting cases).

whether Carmack governs the claim and does not provide any additional notice to the carrier regarding the alleged losses.

B. WFE's Decision to Send Two Notices Instead of One Did Not Eliminate CP's Right to Start WFE's Time for Bringing Suit by Denying the Claim After the First Notice

The Eighth Circuit's decision is also incorrect in that it allowed WFE, by purporting to delay asserting its Carmack claim, to prevent CP from exercising its UBL right to start the two-years-and-a-day limitations clock upon CP's unequivocal denial that it was liable for the damage caused during the Lac-Mégantic derailment.

First, as a factual matter, the Notice left no doubt that WFE would seek to hold CP liable under Carmack: it unequivocally stated that WFE "*will* submit a separate notice of claim" under Carmack "at the appropriate time." (63a (emphasis added).) As noted above, this is no different than the shipper's statement in *Blish* that it "will make claim," *Blish*, 241 U.S. at 193, and courts have regularly found sufficient notices that provide sufficient factual information but do not make a present claim. *See, e.g.*, *Stiles* v. *Ocean S.S. Co.*, 34 F.2d 627, 629 (2d Cir. 1929) (A. Hand, J.) (letter identifying damages and stating "we shall file claim against you when the extent of damage has been properly ascertained" constituted "sufficient compliance with the clause in the bill of lading"); *E.H. Emery & Co.* v. *Wabash R.R. Co.*, 166 N.W. 600, 602 (Iowa 1918) ("distinction" between asserting a claim at the present time and stating that claim will be made later "is more grammatical than substantial in a legal sense"); *Fisk Rubber Co. of N.Y.* v. *N.Y., New Haven & Hartford R.R.*, 132 N.E. 714, 715 (Mass. 1921) (no-

tice stating that unless the shipment is delivered at once, "it will be necessary for us to enter claim with the railroad company" constitutes sufficient notice of a present claim under *Blish*); *Cudahy Packing Co.* v. *Bixby*, 205 S.W. 865, 867 (Mo. 1918). Tellingly, the second notice WFE filed in April 2014, purporting this time to assert its promised Carmack claim, was substantively identical to the November Notice aside from a further quantification of previously identified losses.[7]

Second, there is no legal or practical reason to refuse to give effect to carrier's denial of liability to the shipper simply because the shipper cites a separate legal theory and states that it "will" file a Carmack claim later. The Eighth Circuit based its conclusion on its view that it would be "unwise policy" and "actually unfair" to start the two-years-and-a-day limitations period from CP's unequivocal denial of liability when WFE had submitted its first claim under Canadian law, apparently believing that a shipper has the right to decide when to commence the limitations period governing its own claim even when it had already presented the relevant facts to the carrier. (11a.) But that is not how statutes of limitations work; "a statute of limitations begins to run when the cause of action accrues—that is, when a plaintiff *can* file suit and obtain relief." *Heimeshoff* v. *Hartford Life & Accident*

[7] Shippers commonly revise their loss claims after having submitted a notice of claim. It is thus well established that uncertainty as to the amount of loss and the resultant inability to state the exact dollar amount that a shipper ultimately would seek does not render the notice insufficient. *See, e.g.*, *Lewis* v. *Atlas Van Lines, Inc.*, 542 F.3d 403, 406, 408-09 (3d Cir. 2008) (letter requesting damages that could not yet be specified provided sufficient notice); *Trepel*, 194 F.3d at 713; *G.I. Trucking*, 1 F.3d at 907–08; *Wisconsin Packing*, 618 F.2d at 444.

Ins., 571 U.S. 99, 105 (2013) (emphasis added, internal quotations omitted). Once a plaintiff *can* seek relief, a statute of limitations "embod[ies] a policy of repose, designed to *protect defendants*" by fostering "the elimination of stale claims, and certainty about a plaintiff's opportunity for recovery and a defendant's potential liabilities." *Lozano* v. *Montoya Alvarez*, 572 U.S. 1, 14 (2014) (emphasis added, internal quotations omitted).

In the Carmack context, the nine-month period for shippers to provide notice of claims is intended to allow sufficient time for shippers to investigate their losses and apprise the carrier of the nature of the claim the shipper intends to pursue. Limiting that period to nine months enables "a carrier to investigate the factual situation giving rise to a claim while recollections are still possible and records continue to be available." *Ex parte No. 263: Rules, Regulations, and Practices of Regulated Carriers With Respect to the Processing of Loss and Damage Claims*, 340 I.C.C. 515 (1972). These purposes are served once the shipper has notified the carrier of the facts underlying its claim. Once a carrier has investigated that claim and disallowed it, the carrier is entitled to the certainty of knowing that it is subject to suit for only two years and a day thereafter. *See Mo., Kan. & Tex. Ry. Co.* v. *Harriman Bros.*, 227 U.S. 657, 672 (1913) (policy of limitations periods "is to encourage promptness in the bringing of actions"); *Order of R.R. Telegraphers* v. *Ry. Express Agency*, 321 U.S. 342, 348-49 (1944) (limitations periods "promote justice by preventing surprises through the revival of claims that have been allowed to slumber").

By vitiating the effect of a carrier's unequivocal denial of liability merely because the shipper chooses

to submit two separate claim notices, the Eighth Circuit's decision creates uncertainty about the commencement of limitations periods and the carrier's other obligations triggered by receipt of a valid notice, and it deprives carriers of a valuable right given to them by the UBL.

C. The Eighth Circuit Incorrectly Believed Its Decision Was Compelled by the Text of the Carmack Amendment

Based on a clear misreading of the statute, the Eighth Circuit mistakenly believed its holding was compelled by the text of the Carmack Amendment, stating that "[t]he statute itself *defines* a Carmack Amendment claim as one being brought '*under this section*.'" (11a (emphasis added).) But there is no such definition in the statute, and the quoted phrase is simply part of the statutory provision that sets the minimum limitations periods a carrier must contractually allow: "[a] rail carrier may not provide . . . a period of less than 9 months for filing a claim against it under this section." 49 U.S.C. § 11706(e). The use of the phrase "under this section" does not define the requirements of a written claim; it simply makes clear that carriers must provide at least nine months for filing Carmack claims.

In fact, the elements of a pre-suit notice of claim are not set forth in the statute at all. The requirement to file the notice within nine months is *contractual* in nature and mandated by ICC regulations, which separately define the elements of a sufficient notice. Neither the UBL provision imposing WFE's nine-month deadline for submitting a notice nor the ICC regulations providing the minimum requirements for such a notice contains the phrase "under this section." In short, the suggestion of the court below that

Carmack "defines" a Carmack claim notice as one brought under "this section" (i.e., under the Carmack Amendment) is a misreading of the statute and does not provide an appropriate rationale for prohibiting a carrier which has received proper notice under *Blish* and the governing regulation from starting the shipper's time to file suit by disallowing the claim.

Notably, the test imposed by the Eighth Circuit for this pre-suit notice is stricter even than the rules governing pleading a Carmack claim in court, under which even a claim asserted solely under state law will be deemed a Carmack claim. "When [a] federal statute completely pre-empts the state-law cause of action, a claim which comes within the scope of that cause of action, even if pleaded in terms of state law, is in reality based on federal law." *Beneficial Nat'l Bank* v. *Anderson*, 539 U.S. 1, 8 (2003); *see New Process Steel Corp.* v. *Union Pac. R.R. Co.*, 91 F. App'x 895, 897 (5th Cir. 2003) (holding that action was properly removed because the "state-law tort claims . . . for negligence and negligent misrepresentation" fell "within the scope of the Carmack Amendment"); *U.S. Aviation Underwriters, Inc.* v. *Yellow Freight Sys., Inc.*, 296 F. Supp. 2d 1322, 1339 (S.D. Ala. 2003) (state law complaint deemed to assert a Carmack claim because the "state law claims morph[ed] into a federal Carmack Amendment claim, there being 'no such thing' as a state law claim against a common carrier for damage to goods in interstate transportation"). That the Carmack Amendment does not even require invocation of that statute for a suit to be filed *in court* "under this section" confirms that the Eighth Circuit misread the statute to require such specificity in the more informal claim notice.

D. The Eighth Circuit's Ruling Defeats the Goal of Uniformity, Will Result in the Unwarranted Dismissal of Claims by Shippers, and Will Engender Discriminatory Treatment of Similar Shipper Claims

Although the Eighth Circuit's notice requirement in this case assisted the shipper, it is equally likely in future cases to result in dismissal of claims of unwary shippers if they fail to meet the newly imposed requirement of invoking Carmack. In future Eighth Circuit cases in which shippers file only a single notice within the nine-month period, and that notice either does not assert a legal theory or asserts a legal theory other than Carmack, their claims are likely to be dismissed.

The rule will also undercut the goal of permitting claims to be resolved by negotiation. Carriers are not permitted to waive their rights under the UBL or to provide more favorable treatment to some shippers than others, meaning that in the Eighth Circuit a carrier cannot pay or settle a factually sufficient claim notice that did not specifically invoke Carmack.[8] This disparate treatment resulting from the Eighth Circuit's decision is plainly contrary to the purposes of Carmack and the ICC regulations.

The decision below also creates the possibility that two identical claim notices by the same shipper and arising out of the same accident, but sent both to the receiving carrier and the delivering carrier, will have different legal consequences—even though, as *Blish*

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[8] *See Blish*, 241 U.S. at 197; *A.J. Phillips*, 236 U.S. at 667; *Fay* v. *Chicago, Rock Island & Pac. Ry. Co.*, 173 N.W. 69, 70 (Iowa 1919); L. S. Tellier, *Waiver of rights by carrier under interstate shipments as constituting unlawful discrimination among shippers*, 135 A.L.R. 611 (1941) (collecting cases).

notes, "the provision in question is not to be construed in one way with respect to the initial carrier, and in another with respect to the connecting or terminal carrier." 241 U.S. at 196. For example, suppose that a shipper based in Maine submits identical claim notices that either do not invoke any legal theory or incorrectly assert a right to relief under some law other than Carmack. If these notices are filed with an initial carrier that received the shipment in Maine, and a delivering carrier that operates in North Dakota, venue under Carmack will lie in the District of Maine for the claim against the initial carrier and in the District of North Dakota for the claim against the delivering carrier.[9] The Eighth Circuit's decision below would invalidate the notice to the North Dakota carrier as not being "under this section" while the First Circuit's contrary view would deem the same notice sufficient with respect to the delivering carrier in Maine. This inconsistency of outcomes turns Carmack's goal of promoting nationwide uniformity on its head. This Court should grant review to restore the nationwide uniformity Congress intended.

[9] *See* 49 U.S.C. §§ 11706(d)(2)(A)(i) and (ii).

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted.

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