Fake Carrier Fraud Under The CMR

Part I: Fraud Schemes / Liability Aspects

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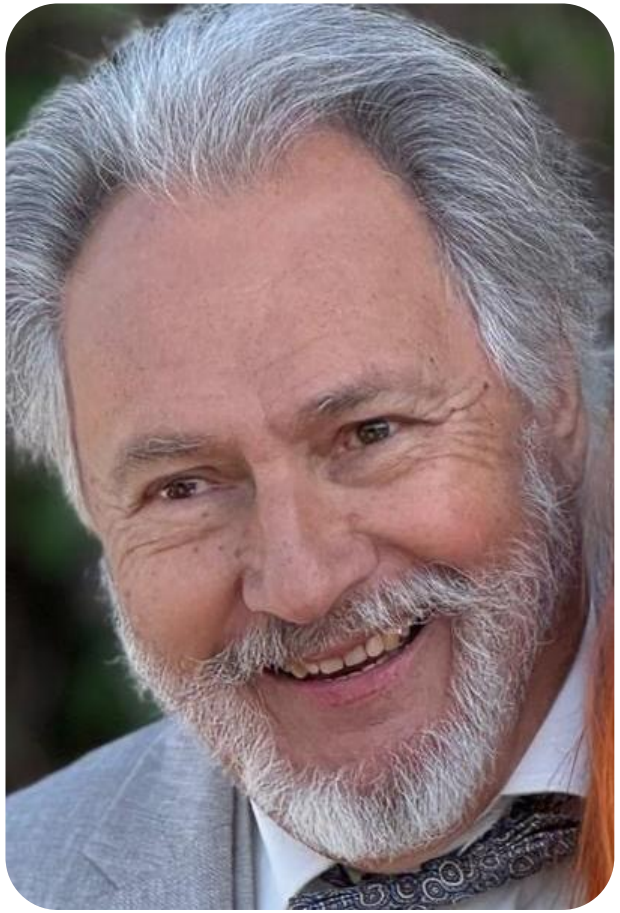
Apology

Please excuse the plain appearance of these slides. Given the bright conditions in this hall, readability has been given priority over visual design.

Thank you!

About The Speaker



Otmar J. Tuma

- Studied politics and journalism at Alma Mater Rudolphina University in Vienna
- More than 50 years in international road transport
- Quondam Court-Sworn and Certified Expert concerning Marine, Carriers' and Forwarders' Liability Insurance and Transport Law
- International speaker; seminars and webinars
- Publications in international transport law and practice-oriented logistics journals

Take-away: The purpose is credibility, not a full curriculum vitae.

Why Should We Care?

Cargo fraud has become one of the greatest challenges in the transport industry.

EUR 8.2 bn	**USD 35 bn**	**≈ 26,000**
reported annual losses in Europe	**estimated annual cargo-fraud losses in the United States**	**affected loads of trucks per year in Germany, reported by industry sources**
EU 1)	Forbes 2)	BGL 3)

- Cargo fraud is increasing, becoming more professional.
- Criminals exploit digital logistics, freight exchanges and fragmented subcontracting chains.
- **Identity theft, broker impersonation** and **company takeovers** increasingly replace traditional physical road cargo theft.

1) European Commission, CORDES, CORE, FP7-Project No. 603993 and DG MOVE "Land Transport Security"
2) Forbes July 1, 2026, Steve Weisman "New Cargo Theft Surge" referring to National Insurance Crime Bureau
3) Bundesverband Güterkraftverkehr Logistik und Entsorgung (BGL), Press Release Febr. 8, 2018 „Diebe stehlen Waren im Wert von 1,3 Milliarden Euro aus Lkw"

Take-away: Fake carrier fraud is no longer an isolated phenomenon; it is a structural risk in modern road transport.

From Simple Cargo Theft To AI-Driven Fake Carrier Fraud

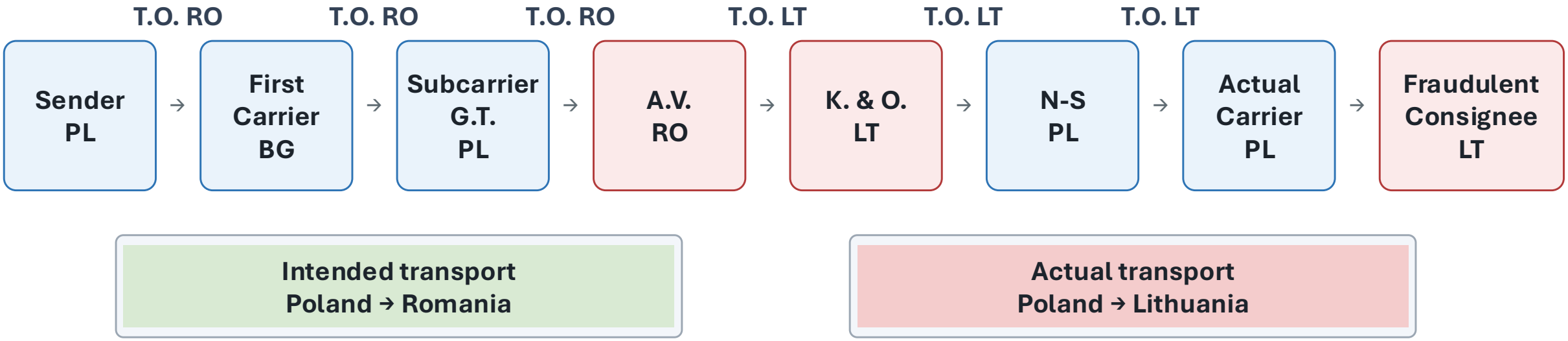
What has fundamentally changed during the last decades?

The shift is not merely quantitative. The attack has moved from the vehicle to identities, communications and contractual chains.

Take-away: Digitalisation has fundamentally changed both the methods and the scale of cargo fraud.

Real Case: A Multi-Layer Fraud Chain

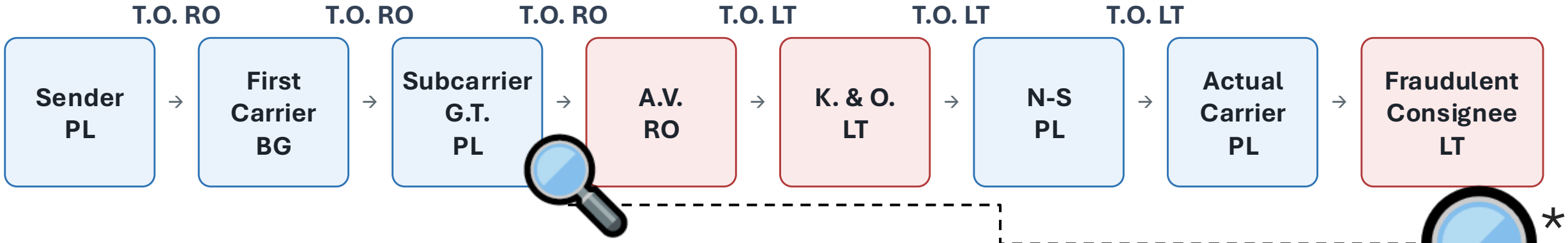
Where would your company have detected the fraud?



Based on a real case reconstructed after several months by a professional detective agency.
Anonymised party names only.

Take-away: Every additional subcontracting layer increases complexity, reduces transparency and creates new opportunities for cargo fraud.

Where Would Your Company Have Detected The Fraud?



Carrier identity and contact person verification	Company registration and VAT number	CMR insurance policy verification
Vehicle verification	Contact details: phone number and e-mail	Website and e-mail domain verification
Bank account	Freight exchange profile	References and previous transport history
Management and ownership verification	Carrier license and transport permit verification	Driver identity and pick-up authorization

* If conducting these checks in-house is too complex, consider using a specialized thirdparty carrier screening provider.

More details in Part II – Dr. Papis Seck

Take-away: The earlier the identity break is detected, the greater the chance of preventing the loss.

Criminals Acquired A Real Existing Company

Neutralized excerpt from a dedective's report concerning a load that disappeared while in custody of criminals:

"**The group** responsible for the incident **specifically acquired the registered and operational** Serbian **transportation company** ITT ..... D.O.O. (registered office: M..... 4,..... Serbia) in order **to use the acquired transportation firm to fraudulently obtain** marketable **shipments. The perpetrators used the company's history, access to freight exchanges, valid corporate documents,** and—according to unconfirmed reports—a vehicle to establish a business relationship with the policyholder and process the transport order, in order to gain custody of the shipment."

Take-away: Real existing companies can be legally acquired and misused by criminals.

The Limits Of Due Diligence

Can fraud always be prevented?

No.

- **Criminals** constantly **improve methods**.
- Due diligence **cannot eliminate every risk**.
- A genuine company may be **infiltrated/hijacked**, **acquired** or **impersonated**.
- **Comprehensive CMR insurance coverage** with high policy limits **is essential**.

Take-away: Due diligence reduces risk; it does not replace legal analysis.

Transition To The Legal Analysis

The facts are now established.

The next question is no longer practical.

It is legal.

Who is liable under the CMR and to what extent?

Art. 17(2) CMR? Art. 3 CMR? Art. 23(3) CMR? Art. 29 CMR?

Legal Qualification Under The CMR

How should fake carrier fraud be analysed under the CMR?

- The decisive question is **legal attribution**.
- **Attribution and liability are separate** analytical steps.
- **Liability** depends on the **CMR framework**, not merely on the factual sequence of events.

Art. 17(2) CMR
Exoneration?

Art. 3 CMR
Attribution?

Art. 23(3) CMR
Limitation of Liability?

Art. 29 CMR
Loss of the right to limit liability?

Take-away: The legal analysis begins where the factual reconstruction ends.

Article 17(2) CMR – Does It Apply?

Organised international cargo crime: first instance and appeal accepted the defence — the Supreme Court did not.

YES

Commercial Court Vienna

43 Cg 4/12d-33

30 Sept 2015

- Loss was not a mere theft by a (sub-)carrier.
- It was treated as organised crime affecting other large forwarding companies.

Result: Art. 17(2) CMR liability exemption accepted.

YES

Higher Regional Court Vienna

34 R 161/15v-38

16 Mar 2016

- Insurance cover verified; telephone contact made.
- Company found in Commercial Register; trade licence existed.
- Truck/trailer licence plates had been advised.

Result: unavoidable circumstances under Art. 17(2) CMR.

NO

Supreme Court (OGH)

7 Ob 91/16g

29 Mar 2017

- Lower-court Art. 17(2) CMR exemption overturned.
- Deliberate, **organised criminal conduct by** the entrusted **sub-carrier is no Art. 17(2) CMR escape.**

Result: no successful Art. 17(2) CMR defence at Supreme Court level.

Take-away: The "organised international crime" narrative supported Art. 17(2) CMR before the lower courts, but did not survive final review.

Article 3 CMR – The Gateway To Attribution

Art. 3 CMR: "For the purposes of this Convention the **carrier** shall be **responsible for** the acts and omissions of his agents and servants and of **any other persons of whose services he makes use for the performance of the carriage**, when such agents, servants or other persons are acting within the scope of their employment, as if such acts or omissions were his own.

Who is a person "of whose services the carrier makes use for the performance of the carriage"?

- The carrier is **responsible for** the **acts** and **omissions** of …, other persons whose services he uses. (**Subcontractors**)
- The relevant conduct must occur in the **exercise** of **their functions**.
- **The key issue is the connection with the performance of the carriage.**
- A purely formal view of the contractual chain may be insufficient.

Carrier
→
persons used
→
performance of carriage
→
attribution

Take-away: Article 3 is the gateway to attribution under the CMR.

Article 29 (2) CMR – Another Gateway To Attribution In Case Of Wilful Misconduct Or Equivalent Default

Art. 29 (2) CMR: "The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by **any other persons of whose services he makes use for the performance of the carriage,** when such agents, servants or other persons are acting within the scope of their employment…"

Who is a person "of whose services the carrier makes use for the performance of the carriage"?

- The carrier is **responsible for** the **acts** and **omissions** of …, other persons

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Carrier
→
persons used
→
performance of carriage
→
attribution

Take-away: Article 29 (2) CMR is another gateway to attribution under the CMR.

Fake Carriers: Acting Within The Scope Of Their Employment?

Art. 3 CMR: „For the purposes of this Convention the **carrier** shall be **responsible for** the acts and omissions of his agents and servants and of any other persons of whose services he makes use for the performance of the carriage, **when** such agents, servants **or other persons are acting within the scope of their employment**, as if such acts or omissions were his own."

Art. 29 (2) CMR: "The same provision shall apply if the wilful misconduct or default is committed by the agents or servants of the carrier or by any other persons of whose services he makes use for the performance of the carriage, when such agents, servants **or other persons are acting within the scope of their employment**…"

When does a person act „within the scope of their employment"?

- "Scope of employment" **requires an autonomous, functional interpretation**.
- The fraudulent **subcontractor** was **entrusted with** collecting and **transporting** the goods.
- **Theft** or intentional non-delivery **does not**, by itself, **remove the conduct from that scope**.
- The decisive factor is the **functional connection** between the assigned **transport and** the **loss**.

Carrier
→
persons used
→
performance of carriage
→
within scope of employment

Representative court decisions:
Austrian Supreme Court 29. March 2017, 7 Ob 91/16g; Supreme Court Czech Republik 10. Oct. 2012, 31 Cdo 488/2010; Higher Regional Court Düsseldorf 14. July 2010, I-18 U 221/09; District Court Szczezin 4. Oct.2013, VIII Ga 276/13; Rechtsbank Rotterdam 24. Sept. 2014, ECLI:NL:RBROT:2014:8768

Why Might A Fraudulent Fake Carrier Fall Outside The Ordinary Contractual Chain?

*Dr. Michael Zapp's Legal Arguments**

- The fraudulent party may **never have intended to perform** the carriage.
- The apparent **agreement** may be **based on fraudulent inducement**.
- The **fake carrier's purpose is to obtain control of the goods**, not to undertake genuine carriage.
- Under German law, hidden dissensus and fraud at contract formation may affect **whether a valid contract arose**.

The CMR question remains: Should the attribution of the transport function under Art. 3 CMR, and thus liability, be determined by formal contract links or by actual custody of the goods and transport function?

* TransportR 2025, 367 ff. Dr. Zapp's reasoning – very simplified – is based on German law (**hidden dissensus**, § 155 German Civil Code; **fraud committed at the contract formation stage**, § 263 German Criminal Code).

Take-away: The contractual defect does not answer the CMR question by itself; it sharpens the need for a functional attribution analysis.

Prevailing View Versus Dr. Michael Zapp's Approach

Which interpretation better reflects the wording and purpose of Article 3 CMR?

Prevailing View	Dr. Michael Zapp's Approach
Functional interpretation	No valid contract with the fake carrier
Functional integration decisive	Fake carrier never intended to contract
Fake carrier is an "other person"	Fake carrier is no "other person"
Attribution under Art. 3 CMR	Therefore Article 3 not applicable
Fake carrier's intent is attributed → Art. 29 CMR	Liability depends on the principal carrier's own fault

Conclusion: Both approaches seek legal certainty but start from fundamentally different concepts of attribution under Article 3 CMR. The **uniformity objective** („standardizing") expressed in the CMR **Preamble supports attribution** under Art. 3 and Art. 29 (2) CMR **based on the role entrusted to the fake carrier** (taking over, custody, transport, delivery) **without** making attribution dependent on **national rules governing subcontract validity.**

Case Law

Does published case law support a functional interpretation of Article 3 CMR?

Court	Date / Reference	Factual Core	Relevance: Attibution	
			general: Art. 3 CMR	Art. 29 (2) CMR
Regional Court Szczecin	4 Oct 2013 VIII Ga 276/13	Phantom subcarrier acting fraudulently	✓	
Czech Supreme Court	17 Dec 2018 23 Cdo 2599/18	Fraudulent subcontractor using a false identity.	✓	✓
District Court Rotterdam	24 Sep 2014 ECLI:NL:RBROT:2014:8768	Fraudulent transport chain, cargo theft.	✓	
Austrian Supreme Court	29 Mar 2017 7 Ob 91/16g	Subcontractor fraudulently and criminally misusing its custody of the goods.	✓	✓
Higher Regional Court Düsseldorf	14 Jul 2010 I-18 U 221/09	Intentional misappropriation by a subcontractor engaged via a freight exchange.	✓	

Take-away: The published decisions identified so far support a broad functional application of Art. 3 and Art. 29 (2) CMR.

Case Law

Does published case law support a functional interpretation of Article 3 CMR?

Court	Date / Reference	Factual Core	Relevance: Attibution	
			general: Art. 3 CMR	Art. 29 (2) CMR
Higher Regional Court Schleswig-Holstein	18 Dec 2014 16 U 24/14	Sub-fake carrier acting fraudulently	✓	
Sofia City Court	19 Nov 2012 (SGS)No.2013 (1420/2011)	Fake subcarrier acting fraudulently	✓	
Lithuania Supreme Court	7 Apr 2015 3K-3-175-706/2015	Large scale fraud by subcarrier reported to police	✓	✓
Areios Pagos	7 Mar 2023 532/2023	Misappropriation of cargo by a subcarrier's driver	✓	

Take-away: The published decisions identified so far support a broad functional application of Art. 3 and Art. 29 (2) CMR.

Case Law

Does published case law support a functional interpretation of Article 3 CMR?

Court	Date / Reference	Factual Core	Relevance: Attibution	
			general: Art. 3 CMR	Art. 29 (2) CMR
Court of Appeal of E&W	27 Mar 2002 EWCA Civ 350	Staged hijacking by subcontractor's personnel	✓	
Riga Regional Court	28 Apr 2014 C27189812 (remark: only secondary source!)	Fraud and misappropriation by subcontractor	✓?	✓?
Tribunale di Parma	25 Mar 2025 No.350/25 (R.G. 3294/2023	Misappropriation by a fake subcontractor (exchange platform.case)		✓
Cour de cassation France, Commercial Chamber	22 March 2016 No. 13-28.107	Subcontractor's driver organised cargo theft and staged an armed robbery.	✓ „in effect"	

Take-away: The published decisions identified so far support a broad functional application of Art. 3 and Art. 29 (2) CMR.

For Attribution Under Art. 3 CMR: No Valid Contract Necessary

Fake-carrier / freight-platform constellation: functional use is decisive — not contractual validity.

Case example

District Court Roermond

30 Nov 2011 • ECLI:NL:RBROE:2011:3588

- **DHL / Ingram**

Facts

- **Freight platform** used to engage a carrier
- **Fake-carrier** / malicious subcontractor scenario
- **Cargo disappeared** during execution of the carriage

Core holding

Validity of the subcontract is not the test.

The contract need not be immune from challenge for coercion, mistake or fraud. **What matters** is whether the **third party was engaged for the performance of the carriage.**

> ***"niet is vereist dat … een geldige overeenkomst bestaat"***

(Dutch shorthand: a valid contract is not required.)

Take-away: Art. 3 and Art. 29(2) CMR may apply even without a valid subcontract — attribution follows from functional involvement in the carriage.

Supportive Customs Case Law By Analogy

Does published customs case law support a functional interpretation regarding attribution?

Court	Date / Reference	Factual Core / Findings	Relevance: Attibution
CJEU	21 Dez 2016 C-547/15	Physical possession and actual control are decisive: the subcontractual relationship is irrelevant (customs transit liability; not a cmr-case)	✓
French Cour de Cassation	3 Feb 2015 ECLI:FR:CCASS:2015:CO00121	Another person does not displace the statutory attribution (customs liability; not a cmr-case)	✓
Austrian Supreme Administrative Court (VwGH)	26 Feb 2004 2002/16/0005	The existence of an internal mandate relationship between the forwarding agent and its customer did not displace that statutory attribution of liability (customs liability; not a cmr case)	✓
German Federal Fiscal Court (BFH)	14 Oct 2025 VII R 21/23	Decisive is immediate physical control; contractual dependency relationships are to be disregarded (coffee excise tax liability; not a cmr case)	✓

Take-away: The CJEU as well as national supreme courts applying the EU customs rules have repeatedly treated the **statutory attribution** of liability as **autonomous from the parties' private-law** arrangements.

Contractual Carrier's Own Fault In Selecting A Subcontractor

If the mainstream view is followed

- This issue **plays no role as an independent liability basis** in fake carrier cases but could constitute an additional ground for liability.
- **Attribution** under **Art. 3 CMR** applies anyway.
- The **fake carrier** always acts **intentionally**.
- **Consequence**: contractual carrier's liability under **Art. 29 (2) CMR**.

If Dr. Michael Zapp's approach is followed

- **Liability depends on** the degree of **fault** committed by the **contractual carrier** when **selecting** the **subcontractor** before entrusting the transport.
- **Consequence**:

  – Contractual carrier is free from fault → Art. 17(2) CMR (burden of proof: Art. 18(1) CMR)

  – Contractual carrier is negligent → Art. 23(3) CMR

  – Contractual carrier commits wilful misconduct or an equivalent default → Art. 29(1) CMR

Take-away: Carrier selection may become decisive only if attribution of the fake carrier's intentional conduct is denied.

Final Conclusions

- Fake carrier fraud is primarily a problem of identity manipulation.
- The legal analysis begins with Art. 3 CMR.
- Art. 17(2) CMR will not exonerate the carrier.
- Art. 29 CMR becomes decisive.
- The greater the sophistication of cargo fraud, the greater the need for legal precision.
- Prevention and legal analysis must go hand in hand.

Closing Message	**The future of transport law lies in combining legal certainty with technological innovation and practical risk management.**

Thank You!

Otmar J. Tuma

Transport Law • CMR • Carrier Liability • Logistics

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