FREIGHT CLAIMS

ONE OF A SERIES OF TREATISES IN AN INTERSTATE
COMMERCE AND RAILWAY TRAFFIC COURSE

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SUPPLEMENT TO FREIGHT CLAIMS

In the year 1915, Section 20 of the Act to Regulate Commerce was amended to provide that carriers may not limit their liability in the transportation of interstate traffic. This amendment known as the "Cummins Amendment" will be found reproduced in Appendix C of the treatise on *Freight Claims*. A careful reading of this amendment will show that it represents a radical change from the long-established system of the carriers of adjusting their rates on the basis of agreed or released valuations, as mentioned in the treatise, particularly on pages 11 and 12. Following the enactment of this amendment, the carriers made changes more or less permanent in their nature to meet the requirements of the new legislation. An important change was the revision of tariff publications, etc., to provide that rates would be based upon a valuation furnished by the shipper as the actual value, and not a valuation arrived at by agreement or in some other way.

Ever since the Cummins Amendment was enacted, there has been a great deal of discussion and difference of opinion among carriers, shippers, and the Interstate Commerce Commission as to the meaning of various sections of this amendment. For this reason, there is an entire lack of uniformity as to the legal rights of the various parties involved in the settlement of claims subject to the provision of the Cummins Amendment. In response to an inquiry made to one freight claim official, in April, 1916, the following statement was made: "There has been no material change as yet in the handling of freight claims on account of the Cummins Amendment." For this reason, it has not seemed desirable to undertake a revision of the treatise on *Freight Claims* as it was prepared previous to the enactment of the Cummins Amendment, as no attempt is made in this treatise to go into the legal aspects of freight claims but simply to indicate the procedure to be followed in the handling of claims. It will be found that the information given in the treatise will serve to indicate the papers to be used and other steps to be taken in the handling of the various kinds of claims discussed.

As already suggested, there is an entire lack of uniformity in the policies being followed by the various freight claim officials in this country on traffic moving since the Cummins Amendment became effective. As an instance of this, it will be found that many claim officials have almost entirely abandoned the application of the four months' limitation in the filing of claims because of the wording of the latter part of the Cummins Amendment, which follows the words, "provided, however," at the end of the amendment as reproduced in Appendix C. This policy is based upon the supposition that few claims arise from causes not specified in the limitations mentioned in the amendment.

In view of the fact that claims to a considerable degree depend upon the provision of the publication under which the traffic moves, it is highly essential that traffic men should keep closely in touch with the provisions of tariffs, classifications, and other publications of the carriers which in any way govern the movement of traffic, as many of these provisions were put into effect hurriedly, and also in view of the fact that a trial will doubtless indicate many changes that should be made. No better advice can be given than to suggest that watch must be kept upon all current publications.

Among other changes that have been brought about by the Cummins Amendment, is a change in the reading of Section 3 of the Uniform Bill of Lading. Where this section previously provided for the adjustment of claims on the invoice price at the time and place of shipment, the following provision is now made. "The amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of property at the place and time of shipment under this bill of lading, including the freight charges, if paid." This provision of the bill of lading is now being interpreted by the carriers as being properly represented by the invoice value of the article at destination, in other words, the invoice value of the article *to* the *consignee* (the price at which the shipment is invoiced by the shipper to the consignee). This method of adjustment, like many others, is subject to more or less variations. Information is therefore given merely as indicating a somewhat prevalent practice at the time this supplement was prepared.

It is not out of place at this time to suggest that in addition to the uncertainties as to the interpretation of the Cummins Amendment there are two factors which must be kept in mind. (1) At this time there has been no authoritative interpretation of the meaning of the Cummins Amendment by the courts, which means that the interpretation which is being put on the various sections of the amendment may be held by the courts as being entirely in error or that the law itself is void to some more or less important respects. (2) There is a distinct probability that the Cummins Amendment will be amended by Congress in order to eliminate certain unsatisfactory features, particularly the provisions as to limitation of liability on express and baggage.

In closing let us suggest that while freight claims are at all times a subject upon which a traffic man must keep informed as to current practices and regulation, it is particularly an essential subject at this time when there is an entire lack of uniformity in the understanding of the provisions of the Cummins Amendment and when there is a further lack of uniformity in the handling of claims.

May, 1916.

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FREIGHT CLAIMS

I. FOREWORD AND SCOPE OF THIS TREATISE

1. Foreword

There is probably no point of contact between the common carriers of the country and the shipping public which has given rise to more controversy and has been the cause of more dissatisfaction with the carriers than that arising out of the collection of what are commonly called "freight claims." It is probably just as true that there ought to be no transaction between the shipping public and the carriers easier of adjustment than such claims.

There was a time in the history of American railroads when the claim department was the only one in the efficiency of which the carrier had little or no interest, except in its ability to pay as few claims as possible, and in what is known in the vernacular as "stalling off" the remainder until the claimant, despairing of ever securing redress, abandoned the attempt in despair. Needless to say, this attitude upon the part of the carriers was not productive of sympathetic and cordial relations between them and their customers, the shipping public.

Fortunately for all concerned, there has been, within

the decade just past, a radical change in the attitude of the carriers upon the subject of claims. The enormous sums of money which carriers have and are paying out every year on claims, the constant annoying friction between shipper and carrier in addition to the serious financial aspects of the situation, have brought about a realization that the manner in which claims are handled has a direct and important bearing on the attitude of the shipping public toward the carrier, and thus very directly on the success or failure of the struggle of the various lines and systems to retain old and acquire new business. Many other causes, a discussion of which is impossible and unnecessary in this treatise, have contributed to the result that at the present time the carriers of the country, on the whole, are making an honest and efficient endeavor to handle claims expeditiously, and with a view toward bringing about a fair determination and adjustment of the rights of the parties.

It has been stated above that of the various questions arising between the shipper and the carrier none should be easier of adjustment than a claim by the shipper against the carrier for loss, damage, or overcharge to freight. The reason is that when the carrier accepts a shipment for transportation, it thereupon undertakes to transport that shipment from the point of origin to the point of destination, within a reasonable time, and to deliver the shipment in good condition (or at least in the same condition as received). This is done under a clear and explicit contract which, taken with the duties and obligations placed upon it by law, governs and controls where there is a breach by either party.

Now, if during the course of transportation the shipment is lost or damaged or there is delay which gives

rise to damage, or if the charge for the service performed is incorrect, or unlawful, it simply devolves upon the shipper or the consignee, as the case may be, to present to the carrier, in the form of a claim, the facts, in proper form and properly verified, together with a statement of the damage incurred, so that the carrier may have before it all the relevant matters necessary to investigate and verify the alleged breach of its contract of carriage and to determine its liability therefor. A claim and the facts with reference thereto being placed before the carrier, it usually is an easy matter for it to investigate and verify the facts set up by the claimant as constituting a breach of the carrier's contract; and then, having the facts before it, to determine whether or not the claim is one which it is under any obligation to pay. Of course, the determination of this question involves legal questions as to whether or not the facts in the claim constitute a breach of the carrier's contract for which it is liable to the shipper, and the further questions, the breach of the contract being established, of the amount of the damage and how it is to be ascertained or computed.

2. Scope of this Treatise

A discussion of the latter questions is entirely without the scope of this treatise. Such a discussion will be found in the treatise on "Law of Carriers of Goods," which constitutes a part of this course. The object of this treatise is to explain the proper manner of making up, presenting, and collecting claims against common carriers, involving loss, damage, or overcharge to shipments. We start with the assumption that the shipper has a valid claim against the carrier for violation of the con-

tract of carriage, and is concerned merely with presenting, in non-technical form, the nature and contents of the various documents which should be filed in substantiation of a claim and the reasons why these documents are necessary, together with suggestions with reference to what might be called the tactics of handling freight claims.[1]

It must, therefore, be clear at the outset that this is not primarily a legal treatise on the relation between the shipper and the carrier, or a discussion of the various duties, rights, and remedies arising therefrom; and, therefore, such statements of law as it may be necessary to make in order to explain the various steps involved in properly presenting a claim will, of necessity, be general in their character and must not be taken to be a full and complete exposition of the subject matter. Neither is it within the scope of this treatise to discuss various other matters more or less intimately related to the preparation and collection of freight claims, as, for example, measures of prevention both upon the part of the carrier and of the shipper, the proper description of freight shipments, the packing and handling of freight, and the checking of shipments, rates, tariffs, and classifications. These subjects, and others similarly related more or less directly to the subject of this treatise, are covered in other treatises in this course.

[1] For the benefit of the reader who may not have seen a freight claim, we show in Appendix A of this treatise, some of the documents and correspondence in connection with the handling of a typical claim. We would suggest that the reader refer to this appendix from time to time in reading the requirements for the handling of claims here set forth, bearing in mind, of course, that every claim is somewhat different from every other claim and that circumstances alter the procedure in the adjustment of even claims which seem to be identical.

II. CLAIMS FOR LOSS

1. Total Loss of Shipment

Claims for total loss of a shipment arise where, after the shipment has been tendered and accepted by the carrier and a bill of lading issued therefor, in the course of the transportation the shipment becomes wholly lost so that the carrier is unable to make delivery; or where, during the course of the transportation, the shipment is either wholly destroyed or is so damaged as to make it totally worthless.

(a) By Whom Claim May Be Presented

A claim for total loss should be presented by (1) *the consignor,* where the consignor is still the owner of the shipment, that is, where the title to the shipment has not been transferred to the consignee at the time of delivery of the shipment to the carrier, or (2) *the consignee,* where the title to the shipment is in the consignee and where the consignee is the owner of the shipment.

The general rule is, that delivery to the carrier, in the absence of notice to the contrary, is presumed to be delivery to the consignee; that is to say, the consignee is presumed to be the owner of the goods and, therefore, is entitled to present a claim. It is important in presenting claims that the claimant's right and title to the goods and, therefore, his right to present the claim, be established. Ordinarily, possession of the bill of lading, properly endorsed where an endorsement would be necessary to explain its possession, is an indication of ownership, although possession of a bill of lading is not conclusive. The statutes of many states require the carrier to deliver

the shipment to whoever presents the original bill of lading in proper form.

(b) Documents Filed in Support of Claim

A claim for total loss should be supported by (1) *the original bill of lading* or, if the claimant is unable for any reason to present the original bill of lading, by (2) *a bond of indemnity.* In the event that the claim is recognized and paid and the original bill of lading is later presented by some other party, as has been explained, the carrier, being required by law to honor the original bill of lading in the hands of the holder, would be put in the position of having to pay the claim twice. The bond is required to protect the carrier against this contingency. A copy of this bond is shown below.

LONG FORM OF INDEMNIFYING BOND*

KNOW ALL MEN BY THESE PRESENTS, that we, ..., of the City of....., State of....., as Principal, and....., of the City of....., State of....., as Surety, are held and firmly bound unto.....Railroad Company in the penal sum of.....Dollars, lawful money of the United States, for the payment of which sum, well and truly to be made, we bind ourselves, our successors and assigns or our heirs, executors and administrators jointly, severally and firmly by these presents.

WITNESS our hands and seals this.....day of....., 19....

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH that whereas on the.....day of....., 19.., there was delivered to the said.....Railroad Company at ....., State of....., by....., a shipment of.....for transportation by said Railroad Company to....., State of.....; and,

WHEREAS said shipment while in possession of said carrier and before delivery was.....; and,
(lost or damaged)

WHEREAS said.....desires to file a claim against the said.....Railroad Company in the sum of.....Dollars covering said....., (loss or damage) but is unable to present with said claim the original Bill of Lading covering said shipment.

Now if the said.....shall
(Names of Principal and Surety)
and do from time to time and at all times hereafter, defend, save, keep harmless and indemnify said..... Railroad Company aforesaid, its successors, assigns, agents and attorneys, and all and each of them of and from all actions, suits, costs, charges, damages, loss and expenses whatsoever, which shall or may at any time hereafter, happen or come to them or either of them, for or by reason of the payment of the said claim by the said.....Railroad Company without having surrendered to it the said original Bill of Lading, then this obligation to be void, otherwise to remain in full force and effect.

.....(SEAL)
.....(SEAL)
.....(SEAL)

*An informal bond much shorter than this form is in use by many of the best roads in the country. The shorter form omits much of the legal language contained in the longer form and simply provides that the claimant is "to indemnify the ..... Railroad Company from all actions, suits, costs, charges, damages or loss or expense whatsoever which may occur by reason of the payment," on account of non-surrender of Bill of Lading.

The reasons why the carrier requires that the original bill of lading be attached to a claim are that the bill of lading is prima facie evidence of the ownership of the shipment and to that extent established the right to file a claim; that it is the contract under which the shipment moves and to that extent determines the rights of the parties thereunder; and that it is also a receipt for

the shipment which it covers and is prima facie proof that the goods were delivered to the carrier. The document also contains other necessary information with regard to claims, such as the points of origin and destination, the routing, the rate on which the charge for the service is based, the nature and contents of the shipment, the weight and the amount, and the amount of the freight charge if freight charges have been prepaid. Fuller explanation of the bill of lading will be found in the treatise on that subject.

Another document which should be filed in support of a claim is (3) *the paid freight bill,* because the amount of the freight charges on a shipment upon which claim is made for total loss is an element of the damages; that is, the claimant is entitled to a return of the freight charges paid. (4) *A certified copy of the invoice* is also required, because under the third section of the uniform bill of lading, in general use, it is provided that the amount of any loss or damage for which any carrier is liable shall be computed on the basis of the value of the property at the place and time of shipment under this bill of lading, unless a lower value has been presented in writing by the shipper or has been agreed upon or is determined by the classification or tariff upon which the rate is based. In any of these events such lower rate shall be the maximum amounts to govern such computation. The reason for requiring a certified copy of the invoice is apparent. The claimant is calling upon the carrier to pay the value of the lost shipment under the terms of the contract of shipment above set forth, and the carrier is entitled to know what the invoice value at the time and place of shipment is; the best evidence of the value is the invoice itself, or a certified copy thereof.

The invoice, or a copy, should be certified by the party rendering the same.

(5) *An affidavit of non-delivery of the shipment* is not absolutely necessary, for the reason that the records of the agent at destination should indicate whether or not a particular shipment has been received there. Inasmuch, however, as the object of presenting a claim is to have it allowed, it is always good policy to present claims in the strongest possible manner. In view of the fact that the records of the railroad agent are not always complete and accurate, as a matter of policy and of precaution it is suggested that an affidavit of non-receipt be attached to the claim. An affidavit of non-delivery should, of course, be made by the consignee or party in charge of shipping irrespective of whether the claim is being presented by the consignee or the consignor.

(c) Amount of Claim

The amount which can be recovered for the total loss of a shipment depends partly upon how the loss occurred and partly on the conditions of the contract under which the shipment was made, as will appear below.

Invoice Value—Where claim is filed to recover for the total loss of a shipment which was made under the uniform bill of lading, the amount of the claim should be limited to the bona fide invoice price to consignee plus the freight charges, if prepaid, at the place and time of shipment, unless the other conditions set forth in section 3 of the bill enter in. Therefore, the amount of the invoice and the amount of the freight charges, if prepaid, should constitute the bill of the claimant on the carrier, and such amount is all that the claimant is entitled to receive. A claim should not be filed for more than this

amount, because it will be declined and cannot be enforced.

In cases where shipments have suffered a total loss and where no invoice has been rendered by the consignor to the consignee, the proper way of arriving at the value of the shipment is by reckoning it upon its value when shipped; that is, by taking its value on the market at point of origin at the time of shipment. A carrier is presumed to be responsible for the value of a shipment at the time it was lost. This is done by paying the invoice value where an invoice is rendered; but in cases where no invoice is rendered, the only way of arriving at such a valuation is by figuring its value at the market price of the commodity at point of origin at the time the shipment was delivered to the carrier for transportation.

Where a shipment consists of numerous articles of different character, the amount of the claim should be itemized, as would be the case had an invoice been rendered. Carriers are entitled to know the items comprising the total amount claimed, for the reason that it would be manifestly impossible to ascertain whether or not the amount claimed is proper in the absence of an invoice, where only a lump sum is set forth.

In cases where the amount of the claim is based upon the invoice value section of the uniform bill of lading (section 3), a question of construction sometimes arises as the following case will illustrate. A is a merchant to whom B, located at some other point, gives an order. A, not being able to fill the order himself, orders from C, a manufacturer located at a third point, the goods to be shipped to B. C ships to B and bills to A at manufacturer's price. A bills B at that price, with his profit.

The goods are lost in transit. The question is: What is B's measure of damages under section 3 of the uniform bill of lading?

Although not decided by the courts it is believed that in accordance with terms of the uniform bill and the general tenor of the law on the subject of damages to a consignee on a lost shipment, the consignee can recover from the railroad company the value of the goods to him as invoiced by A. The value of these goods to the consignee at the place and time of shipment is measured by what he must ultimately pay for them to A. The value to A, the seller of the goods, is the price at which he can buy them from C, namely, the invoice price from C at the time and place of shipment. The price is regulated not by the bill of lading but by the invoice from B to A. The loss to B in this case is not the invoice price from C to A, that is, from manufacturer to seller, but the price he is bound under his contract to pay A. The shipment from C to B direct is a mere matter of convenience which has nothing to do with the measure of damages for the lost goods.

Released Valuation.—The third section of the uniform bill of lading[1] provides that the amount of any loss or damage for which a carrier is liable shall be computed on the basis of the value of the property, being the bona fide invoice price to the consignee, *unless* a lower value has been represented in writing by the shipper, or has been agreed upon, or is determined by the classification or tariffs upon which the rate is based; in any of these events such lower value shall be the maximum amount to govern such computation, whether or not such loss or damage occurs from negligence. In other words, in all cases where, irrespective of the actual value of the

[1]This section has been changed since the Cummins Amendment became effective. See Supplement.

shipment, the shipper has agreed with the carrier that, for the purpose of obtaining a lower rate of transportation, the value of a shipment shall be considered as less than the invoice value, such amount is called a released valuation, and, in the event of loss, the claimant cannot properly ask for anything more than the amount so agreed upon. For a long time the legality of such arrangements was seriously questioned and the American courts were about evenly divided. It has been recently determined, however, by the Supreme Court of the United States that a released valuation clause superimposed upon the bill of lading or included in shipping contracts is valid where such released valuation is given in consideration of reduced rates for the transportation and in cases where the goods have been in interstate transportation. The cases in which this principle was determined are of great interest and it is suggested that the reader shall, if possible, study them, for the questions involved are of great importance and have a direct bearing on the amounts which can be recovered on this class of claims on interstate shipments. The cases are Adams Express Company vs. Croninger, 226 U. S. 491; C. B. & Q. Ry. Co. vs. Miller, 226 U. S. 513; C. M. & St. P. Ry. Co. vs. Ladda, 226 U. S. 519; Wells Fargo Express Company vs. Newman Co., 227 U. S. 469; K. C. & S. Ry. Co. vs. Carl, 227 U. S. 639.

It is important to bear in mind, however, that these cases and the principles announced therein apply only to claims made on shipments in interstate transportation.

With reference to claims made on shipments in intrastate transportation, it should be ascertained what the courts of the particular state in which the shipment

moved have held on this question, and the amount of the claim should be fixed in accordance with the holdings, that is, whether the courts have either sustained or repudiated released valuation contracts. In a large number of the states carriers are forbidden by statute to limit by contract their common law liability, with respect to the amount which can be recovered for loss or damage to goods delivered to them for transportation; and the Supreme Courts of most of the states wherein such statutes prevail have held that a released valuation clause in the bill of lading or shipping contract is a limitation of the carriers' common law liability, and, therefore, is unlawful and non-enforcible. Briefly stated, the common law liability of a common carrier for loss or damage to shipments is that it is absolutely liable for all loss or damage suffered by a shipment after delivery to it for transportation, except loss caused by the shipper, the act of God, the public enemy, or that which is a result of the inherent vice of the thing shipped.

Conversion.—In cases where a shipment is converted by the carrier, that is, (1) where a carrier has unlawfully appropriated the property to its own use, or (2) where the the carrier disposes of the shipment in a manner that amounts to conversion, the amount of the claim should be based on the value of shipment at destination, irrespective of the invoice price or of any released valuation.

An example of (1) is where coal is confiscated for the use of the carrier while in transit. An example of (2) is where the carrier delivers the shipment to some one not entitled to receive it, or, in other words, to anyone who is not the consignee or his agent or the holder of the bill of lading properly endorsed.

It is quite possible, however, that in some jurisdictions, especially where the shipment moved under a released valuation clause, the value of the shipment at destination, irrespective of the invoice value or of the released valuation, might not be allowed. The question of the proper basis for a claim arising out of conversion is, at the present time, one of considerable difficulty and uncertainty, and a discussion of the legal questions involved would be so lengthy and technical as to make such a discussion out of place here. In view of the uncertainty of the law governing this question and in view of the fact that there is considerable ground for believing that where shipments are converted by the carrier, the proper measure of damages is the actual value of the property at point of destination at the time it should have arrived, the suggestion that in claims of this character such amount be set up, is reasonably warranted.

2. Partial Loss

Claims for partial loss of a shipment arise where only a part of a shipment is delivered and the carrier cannot account for the remainder.

(a) By Whom Claim May Be Presented

A claim for partial loss may be presented by (1) *the consignor* or (2) *the consignee.* The question as to who is entitled to present a claim for partial loss is fully covered under the same subheading under the general subject of "Claims for Total Loss," and need not be repeated here.

(b) Documents Filed in Support of Claim

A claim for partial loss should be supported by (1) *the bill of lading,* for the reasons heretofore given; (2) *the paid freight bill;* (3) *the certified copy of the invoice;* (4) *an affidavit of loss and itemized bills for the particular part of the shipment lost* (the latter should be specific and should be made by the consignee); and (5) *the notation of loss on the freight bill.* When, upon delivery, it is ascertained that part of a shipment is missing, the party receiving the goods should insist on the presence of the carrier's agent and should demand that the notation on the freight bill state the exact amount or portions of the shipment which are missing. While the absence of such a notation is not conclusive proof that the entire shipment was delivered, its presence is exceedingly good evidence of the loss and will tend to facilitate greatly the payment of the claim by the carrier. If no such notation was secured, its absence should be explained when the claim is filed. In no case where a shipment is received, part of which is missing, should a clear receipt be given for the entire shipment. While it is also true that a clear receipt is not conclusive proof that the entire shipment was received, it is presumptive evidence of perfect delivery which must be rebutted by the claimant before the railroad claim department will allow the claim.

(c) Amount of Claim

The considerations governing the amount which the claimant is entitled to recover for a partial loss of a shipment are the same as set forth under this heading in the similar section relating to claims covering total loss; but it should be noted that it is of great importance

where settlement is requested on the basis of the invoice value that the items covering the particular portions of the shipment which are missing should be specifically set forth in the affidavit of loss and itemized bill rendered. The item for return of freight charges should be based on the proportion of the freight charges covering the portion of the shipment which is missing and for which claim is filed; that is to say, if the claim is filed for partial loss of a shipment of grain, the freight charges will have been based on the weight of the shipment. Therefore, the proportion of the freight charges which the claimant is entitled to recover will be on that portion of the total freight charge which is equivalent to the charge for the weight of the grain lost.

(d) Leakage

Where claims for partial loss arise out of leakage in transit, it is necessary to present certain additional documents than those already mentioned. Owing to the difficulty of ascertaining the exact amount of loss occasioned by leakage, many of the states have enacted statutes which define strictly the duties and obligations of the carrier with respect to the class of shipments where such loss usually arises, and also the method by which claims of this character should be supported and the documents that it is necessary to present in substantiation thereof. It is impossible in this treatise to include a digest of these various statutes, as they usually differ in various details in the several states. It is therefore suggested that in preparing claims of this character the particular law governing be consulted for guidance.

Grain.—In cases of loss of grain occasioned by leakage or any other cause, where no invoice has been rendered,

in order to arrive at the amount to be claimed, the general principles hereinbefore stated under that heading should be followed, and to substantiate the amount the market reports at the point of destination at the time of arrival, or, if the claim is one for both loss and delay, the time the shipment should have arrived should be submitted. If market reports are not available, then the sales reports covering the particular shipment should be submitted, properly verified. If sales reports covering the shipment cannot be had, receipts or affidavits setting forth the amount received for that portion of the shipment which was delivered when sold, should be included with the other documents filed with the claim. Claims for partial loss of grain should also be supported by an affidavit of loading weight and such affidavit should be made by the party who loaded the grain. Also a certificate of the weighmaster, if such officer exists at the point of destination, and if such a certificate cannot be procured, the affidavit of the person unloading the shipment as to the weight unloaded should be substituted. In the state of Illinois, under the statutes, it is the duty of the agent at the loading station to verify the loading weights, and in all cases this verification should be procured and noted on the bill of lading, and, under the Illinois statutes, the affidavit of the party loading the grain and the certificate of the weighmaster at destination are conclusive as to the amount of grain loaded at point of origin and as to the amount received at point of destination.

Liquids.—In addition to the documents listed and necessary to be supplied in support of claims for leakage of grain, in the case of leakage of liquids, a gauger's certificate covering the quantity loaded at the point of origin

and the quantity received at the point of destination should be added. Where the shipment was not gauged by an official gauger at either point or at one or the other points, the affidavits of the parties loading and unloading should be supplied.

(e) Concealed Loss

In connection with the use of the terms "concealed loss" and "concealed damage," it would be well to state that these terms indicate that the loss or damage is of such nature that it would not be evident upon delivery by the carrier to the consignee. In the case of a consignment of shoes packed in cases, all the packages might be in apparently good order when consignee took delivery from the railroad company, but when the cases were unpacked in the consignee's plant, it would be found that a pair of shoes had been removed from each case. In another case a shipment of china might be received in apparently good order so far as the external appearance of the package was concerned, but upon opening the packages it might be found that the entire contents were broken. With this explanation, the following statements will be easily understood, as the carrier is more or less obliged to be governed by the statements of the consignee.

In view of the opportunities for fraud on the carrier in claims for concealed loss and of their natural reluctance to allow such claims unless substantiated beyond a reasonable doubt, it is of the utmost importance that claims for such loss be supported by the most complete and convincing evidence. In the very nature of the case, it is exceedingly difficult for a carrier to verify such alleged losses. Therefore, such must be supported by clear and detailed affidavits of the shipper as to the condition of

the goods and packages shipped and of the contents of the various packages if the shipment consists of a number of separate articles, also by affidavits of any parties who handled the shipments after it left the shipper and before delivery to the carrier. If, from the nature of the shipment, there could have been an opportunity for pilfering or tampering while in the custody of the drayman at either end, affidavits should be secured from him and included in the claim to the effect that the packages were not tampered with while in his possession. The affidavit of the party receiving the goods should be clear and explicit as to the contents of the packages when opened and also as to the fact that there was no opportunity for tampering or pilfering during the period between the delivery by the carrier and the time when the packages were opened and when the loss was discovered.

III. CLAIMS FOR DAMAGE

Claims for loss have been considered both with respect to claims for total loss and claims for loss of any part of a shipment. Under the present heading will be considered exclusively claims for damage to a shipment, it being assumed that the entire shipment arrived at destination.

(a) By Whom Claim May Be Presented

A claim for damage may be presented by (1) *the consignor* or (2) *the consignee.* The statements governing the presentation of claims for loss by either the consignor or the consignee are also applicable to all claims that may be made for damage to a shipment; in other

words, the ownership of the shipment determines by whom the claim is presented.

(b) Documents Filed in Support of Claim

A claim for damage should be supported by (1) *the original bill of lading or indemnity bond,* (2) *the paid freight bill,* and (3) *a certified copy of the invoice and an itemized bill for the damage.* The reasons for requiring the submission of these documents have been set out under the heading of "Claims for Loss." The reason for the submission of these documents in claims for damages are precisely the same. There should also be submitted (4) *an affidavit from the shipper* certifying to the good condition of the goods when delivered to the carrier and (5) *an affidavit from the consignee* or party who unpacks the goods, setting forth the damaged condition of the shipment when delivered to him. A notation should be made on the freight bill by the agent specifying the nature of the damage. The amount which may be billed should also be submitted in confirmation of the claim. Where the damage to the shipment is apparent at the time it is received, a careful inspection should be made of the goods by the consignee, and he should insist on the presence of the carrier's agent at the time this inspection is made. A shipment received in a damaged condition should never be receipted for as being in perfect condition; while it is not absolutely necessary that the agent make a notation on the freight bill as to the amount of damage done, still this sort of evidence, when presented by the claimant, is almost conclusive as to the damage. A receipt given by the claimant showing that the shipment was received in good condi-

tion is, of course, prima facie evidence of that fact, and where this sort of receipt has been given, it is incumbent upon the claimant to show by other proof that the shipment was not, as a matter of fact, in good condition, but was damaged to the amount claimed. It sometimes happens that the records of the carrier's agent at destination will show the amount and character of the damage where a shipment arrives in that condition; but these records are not dependable, and the consignee should, in all cases, insist that a "bad order" notation be made on the freight bill.

(c) Amount of Claim

The amount for which a claim for damage should be presented is governed by exactly the same general rules that were laid down previously under the similar heading relating to claims for total loss, the amount being dependent on whether the shipment travelled under a released valuation or under the uniform bill of lading, whether or not it was an interstate shipment, and all other points brought out in that paragraph. It should be noted, however, that the freight charges on a shipment which has been damaged do not always constitute an item of damage to which the claimant is entitled when presenting a claim. In cases where the shipment has been so damaged as to be a total loss, the freight charges which have been paid are a proper item. In claims for damage it is apparent that, if the contract of transportation has been fulfilled by the carrier, it is entitled to the freight charges which it has earned, the claimant being allowed only an amount which will compensate him for the damage done to the shipment.

(d) Claims for Damage to Livestock[2]

A separate section is given to damage claims of this character, for the reason that a carrier's liability for such damage is somewhat different from its liability for damage to inaminate freight, and for the further reason that different documents are required in confirmation of any claim for such damage, a different degree of care being required on the part of the carrier. No bill of lading is usually issued to cover shipments of livestock. The stock travels under what is known as a livestock contract, to which the shipper and the carrier are parties, and which contains rules and regulations governing the rate to be charged, the value of the stock which is declared by the shipper, and in some instances, the care to be given the stock while in transit.

A Claim for Damage to Livestock May Be Presented by (1) *the consignor* or (2) *the consignee.* In practically every instance, claims for damage to livestock are presented by the consignor, for the reason that this sort of shipment is usually made for the purpose of sale, the sale being conducted by commission men for account of the consignor, return being made by them to him.

A Claim for Damage to Livestock Should Be Supported by (1) *the original livestock contract* or (2) *the paid freight bill.* These documents are necessary for the reasons heretofore stated, the livestock contract fulfilling the same requirements in a claim for damage to stock as are fulfilled by the bill of lading in claims on inanimate freight. There should also be submitted (3) *an affidavit by the consignor* which should cover the condition of the stock when loaded, their weight if it has

[2]The Cummins Amendment has caused a number of important changes in the handling of livestock and in the adjustment of claims; therefore, the information here given may be subject to modification in many cases.

been ascertained, the purpose for which the stock was intended, and the kind of stock of which the shipment consisted; (4) *an affidavit by the consignee* setting forth the condition of the stock when unloaded, showing the weight if the weight has been ascertained, and also the amount and character of the damage; (5) *a certified copy of the account of sale* covering the particular shipment on which the claim for damage is made, and also receipts or bills covering such items of damage as extra feed, etc.; and (6) *market reports* showing the prices the stock would have brought had it arrived in good condition.

In all shipments of livestock there is a certain amount of shrinkage which must be regarded as inevitable and for which no damage can properly be claimed, for the reason that it is not caused by the carrier, but results from the natural tendency of the animals to shrink during transportation. The amount of such shrinkage cannot, of course, be positively stated; but it has been variously estimated at from 2 to 3 per cent of the total weight of the shipment. It will, of course, vary under different conditions.

Amount of Claim.—The amount which a claimant is entitled to recover for damage to a shipment of livestock is also arrived at in a different manner from the amount recoverable on a claim for damage to inanimate freight. There is usually no invoice rendered, and the amount of damage is, in most cases, computed by subtracting the amount received for the stock in the condition in which it arrived and was sold from the amount which could have been realized for it at the time it should have arrived and in good condition.

(e) Claims for Damage Caused by Delay

The scope of this section is intended to cover the damage suffered by delay as distinguished from physical damage to the shipment itself, that is, the entire amount of the damage the shipment suffers as a result of the delay, the shipment itself travelling without exception so far as physical condition is concerned. There are frequent occasions where a shipment suffers both physical damage and damage resulting from delay; for instance, grain is frequently damaged in transit by becoming wet, overheated, or mixed with other substances. Livestock frequently suffers from excessive shrinkage and physical deterioration resulting from delay, as well as from a drop in the market. In such cases claim should be made for damage covering both the physical depreciation suffered by the shipment and the damage resulting from a drop in the market where the shipment was intended for sale. The measure of damages in such cases is the difference between the amount which the shipment was worth in good condition on the date on which it should have arrived, and what was actually received for it or what could have been received for it on the date and in the condition in which it did arrive.

A Claim for Damage Due to Delay Should Be Supported by (1) *the original bill of lading* or substitute contract and (2) *the paid freight bill.* These documents are necessary for the reason heretofore given. There should also be submitted (3) *the market reports* showing the value of the commodity on the date it should have arrived, this document being necessary only in cases where the shipment was made for the purpose of sale; (4) *a report of the sale* as made showing the price actually received for

the shipment; and (5) *an itemized bill* representing the difference as shown in the market reports covering the dates when the shipment should have arrived and when it did arrive. If the market reports and a report of the sale are not available, affidavits should be furnished covering the price which could have been realized had the shipment arrived on time and the price actually received therefor at the time it did arrive. The latter affidavit should be made by the person to whom the goods were sold.

Amount of Claim.—The amount the claimant is entitled to recover in almost all cases where delay is the basis of the claim is the difference in the market price or value of the shipment at the time it should have arrived and the price or value it actually brought or had at the time it arrived. The only exception to this rule is a case where the goods, instead of being intended for sale, are intended for use, in which event the measure of damages is the reasonable value of the use of the article during the time of the delay.

The time which a movement should consume in order that it may not be subject to liability for delay is the reasonable time consumed in covering the distance between the points of origin and destination. Unless a carrier specifically contracts or makes time an element as a basis for particular rates and classifications contained in its published tariffs, it does not undertake to move a shipment in any particular time or the quickest possible time and is therefore liable only for failure to transport a shipment in reasonable time, which is equivalent to saying that the carrier is liable only for unreasonable and excessive delay. This subject is treated in more detail in the treatise on "Laws of Carriers of Goods."

A form to be used in filing loss or damage claims is here shown. This form may be modified to meet individual needs.

FORM FOR LOSS OR DAMAGE CLAIM

Claim No.....
Filed ..... .
(Date)

.....R. R. Co.
Dr. to

.....
(Name of Claimant)

Total Amount, $.....

Loss, account damage.

(Here set forth itemized statement of loss or damage.)

Papers attached:

1. Original bill of lading or shipping receipt.
2. Paid freight bill.
3. Itemized bill of claimant.
4. Original invoice or attested copy.
5. Receipted bill of the party who made repairs (if claim represents repairs).
6. Livestock claims: Original account of sales.
7. (Or whatever other document may be attached.)

.....
(Signature of Claimant)

IV. OVERCHARGE CLAIMS

An overcharge claim may arise as the result of one of several things: an error in rate, that is to say, an erroneous application by the agent or shipper of the rate attributable to the particular shipment; an erroneous classification, that is, a misconception on the part of the shipper or of the agent as to which classification applies to a particular shipment; a straight overcharge on

weight, which results where a greater weight than the actual weight is taken as the basis for the charge or where freight is collected on more than the amount billed.

In connection with overcharges by the carriers, we would here suggest that it is often possible to have such overcharges adjusted without the necessity of filing a claim. Many errors in billing charges are clearly mistakes, and a little co-operation between shippers and carriers in adjusting these differences will do much to lighten the work of both. Errors in extension are quite frequent on expense bills and it is only necessary to take the matter up with the local agent to have the matter adjusted, if not before the payment of the bill, at least within a reasonable time after, by the carrier making a refund. In other cases the carrier may have billed a shipment as collect, when as a matter of fact it was prepaid at the originating point, and the submitting by the consignee of prepaid bill of lading or paid expense bill will enable the carrier to adjust the matter within a very short time. Errors sometimes arise entirely from the application of an erroneous rate which is immediately evident and will be adjusted simply by calling the carrier's attention to the matter. Adjustment of overcharges in the manner above suggested generally means a considerable saving of time and expense, as the natural routine of a claim is such that some additional time is consumed in handling even the simplest matter.

The subjects of tariffs, classifications, routing, etc., are not within the scope of this treatise, and reference should be had to the other treatises in this course covering these subjects. The legal basis of an overcharge claim rests in the fact that there can be only one lawful charge for any particular shipment as billed, classified, and routed.

Therefore, the problem is to ascertain what tariff and classifications govern the shipment in question. These being ascertained, it is a simple matter to compute the correct charge. If the amount paid differs one way or the other, it is the duty of the carriers either to refund if the result is an overcharge or to collect the difference if the result is an undercharge. To establish his claim for an overcharge the claimant has only to show by the means hereinbefore set forth that the amount paid was more than the amount lawfully due under the carriers' tariffs. Inasmuch as the rates charged by the carriers for particular services are under the constant scrutiny of the Interstate Commerce Commission for the purpose of enabling that body to ascertain whether or not the carriers are making unlawful discriminations, there will be no difficulty in the collection of overcharge claims when properly presented and substantiated. The published tariffs of the carriers constitute the sole basis upon which it is permitted to charge for services rendered. Therefore, it is of particular importance in the presentation of overcharge claims that the tariff authority relied upon in substantiation of claims be clearly and accurately stated.

On the question of overcharge in weight, however, complications sometimes arise. On carload shipments of lumber and coal, for example, the marked tare weight of the car is almost entirely used in arriving at the net weight of the shipment, upon which the charges are assessed, and this tare weight of the car is very frequently erroneous. Also, charges on weights are very often assessed in accordance with the marked minimum weight of a shipment which a car will hold, this method of arriving at a rate being provided for in most cases

by tariff, but very often, as a matter of fact, the car will not hold as much as the stated weight, which will result in an overcharge. A shipment should always be weighed at point of origin and the actual weight inserted on the bill of lading, together with a notation signed by the agent of the carrier that the car is loaded to full visible capacity, as these are the only circumstances under which such claims will ever be allowed. In shipments of lumber, especially, estimated weights are largely used in arriving at the total weight of a shipment, as the weight of lumber, when shipped, depends a great deal on the way in which it is cut, on its condition (whether dry or wet), and other things. It is very desirable in shipments of this kind that the shipments be weighed as many times as possible in transit so that a correct average weight can be arrived at. In presenting claims a record of the various weighings should be included if possible.

(a) By Whom Claim May Be Presented

A claim for an overcharge may be presented by (1) *the consignor* or (2) *the consignee,* depending on which pays the freight charges. Claims for overcharge should be presented by whoever paid the freight, whether it be the consignor or the consignee.

(b) Documents Filed in Support of Claim

A claim for an overcharge should be supported by (1) *the original bill of lading* or, if the original bill of lading is not available, the shipping receipt or an indemnity bond in the event of the claimant's inability to furnish either one or the other documents; (2) *the paid freight bill,* which is an absolutely necessary document,

as it is evidence of the amount of freight paid; (3) *a citation to the tariff authority* in support of the claim if the overcharge claim is based on an error in rate or classification; and (4) *the original invoice,* showing weights, or an affidavit of the shipper if the claim is for an overcharge in weight. A bill of lading is not an absolutely necessary document on an overcharge claim, as practically the only purpose which it serves is to show the date of shipment, and by that, the rate in effect at the time the shipment moved.

A form to be used in filing overcharge claims is here shown. This form may be modified to meet individual needs.

FORM FOR CLAIM FOR OVERCHARGE

..... Claim No.....
(Name of Claimant)

Pro. No.....

Against.....R. R. Co.

Date of Claim.....

No. of Car..... Shipped by.....
Initials of Car..... From .....
No. of Waybill..... Shipped to .....
Date of Waybill..... At. .....
Weight charged.....Rate charged.....Amount charged....
Weight should be...Rate should be....Amount should be.....

Amount of Claim.....

Papers attached:

1. Original bill of lading.
2. Paid freight bill.
3. Itemized bill of claimant.
4. Original invoice, or attested copy, minus prices. (If overcharge in weight.)
5. Reference to tariff number authorizing claimed rate. (If overcharge in rate.)

.....
(Signature of Claimant)

V. GENERAL SUGGESTIONS

1. Claim Department Methods of Handling Claims

Upon receipt of a claim in a railroad claim department office, it is first handled by a clerk who attaches a fileback to the papers, classifies it, gives it a file number, acknowledges receipt, and examines the papers submitted for the purpose of ascertaining whether or not the various documents which the carrier requires in substantiation of the claim are present. If any of the documents which have been enumerated in the foregoing sections of this treatise are absent, it frequently happens that the claim will be declined on that ground. Such a declination, however, should not be accepted, but the missing documents should be supplied and the claim again urged upon the attention of the department. The fact that the claim department sometimes takes advantage of the failure of the claimant to present all documents required in substantiation of the claim illustrates the very great importance of using care in the preparation of claims and of seeing to it that the various documents which have hereinbefore been set forth are included in the first instance. A delay of at least two weeks will thus be avoided and extra work on the part of all saved.

If an acknowledgment of the receipt of the claim is not received within a comparatively short time, a letter should be dispatched requesting information as to whether or not the claim was received and insisting upon acknowledgment.

After the above preliminaries have been attended to, the claim will, in due course, come before some one higher in the department whose duty it is to start the

[1] This subject is treated in "The Investigation of Freight Claims" in considerable detail.

investigation of the claim. Many claimants are under the impression that the carriers should pay a claim submitted in proper form and properly substantiated immediately upon receipt. The claimant knows that he has a valid claim and finds it difficult to understand why the carrier will not immediately acknowledge and pay it when completely and properly presented. Whatever the reasons may have been in the past, the reason now is that carriers are compelled by law to investigate thoroughly claims before paying the same. It is apparent that if the rule were otherwise, there would be innumerable opportunities for discrimination in favor of certain shippers under the device of payment of claims. Only recently a number of prominent eastern roads were very heavily fined for precisely this practice. Inasmuch as carriers are compelled to keep all of their accounts in accordance with the methods prescribed by the Interstate Commerce Commission, and inasmuch as the records and accounts of the carriers are always open to the inspection of the investigators of the Commission, and inasmuch as the Commission, as a matter of fact, exercises a very close and careful scrutiny on the revenues and disbursements of the carriers, it is easy to understand why the carrier refuses to pay claims, however just they may appear, without a thorough and complete investigation.

The investigation conducted by the carrier depends upon the nature of the claim and, briefly stated, consists of an attempt at verifying or ascertaining the truth of the facts set up by the claimant as constituting the basis of his claim. Where the shipment upon which a claim has been filed has passed over the lines of several carriers, it is necessary to submit the files to the claim de-

partments of all the carriers involved for investigation of the facts over their own lines. This, from the very nature of the case, requires time and involves delay. The investigation of the claim will frequently make it necessary to go over the car seal records, the movement of the car containing the shipment, an examination of the reports of the various conductors who had charge of it during the journey (if the damage claimed was caused by rough handling), as well as innumerable other points relevant to the claim. It is, therefore, impossible to expect that a claim can be thoroughly investigated and a definite answer obtained from the carrier as to what it proposes to do about it within a few days or even within a few weeks.

The form shown on pages 34 and 35 indicates the many points which carriers have to investigate in ascertaining the merits of different kinds of claims. The form used to ascertain this information varies considerably with the individual road, but the information to be gained is the same by whatever method it is obtained in individual cases.

When the investigation has been completed, the results are compiled and correspondence collected and the file turned over to the freight claim agent or one of his assistants who will determine whether or not the claim is to be paid. If the carrier declines to pay the claim, the claimant should insist upon a clear statement of the reasons for declination.

It frequently happens that questions of considerable difficulty arise with reference to the legal liability of the carrier on the facts developed from the investigation. In such cases the probabilities are that the entire matter will be referred to the legal department of the carrier

Methods of Railroads in Investigating Claims

A. B. Railroad Co.
FREIGHT TRAFFIC DEPARTMENT

_____ 19__

*Claim*_____

*File*_____

PLEASE FURNISH INFORMATION OR COMPLY WITH REQUEST CHECK V.

Yours truly,

1	Attach statement or copy of billing .....your station and advise your record in full.
2	Attach copy of transfer..... Connecting Line and say if you hold proper receipt without exceptions.
3	Attach original bill of lading, or shipping receipt, and original expense bill.
4	Please note and return for my file.
5	For investigation and advise as to settlement.
6	Our investigation shows claim should be withdrawn. Please so arrange, returning our portion of the papers.
7	Are you now O. K.
8	Herewith check in settlement of claim. Hurry return of papers with proper receipts.
9	Please note letter to Mr..... .....and advise.
10	We are unable to locate. Give better reference.
11	Note additional correspondence since last with you and advise further.
12	Take up with claimants and have bill reduced to correct amount.
13	The freight bill attached is a duplicate; attach the original.
14	Attach original invoice or certified copy.
15	Do you hold clear receipt? If not, state exceptions.
16	Give complete seal records. If car had end doors, state how fastened. Show marks, numbers and impressions on seals.
17	Investigate and advise if car received any rough handling that would cause damage to lading.
18	Can you account for damage by wet? Was it from defective roof, door or leakage of liquids in car?
19	When was damage or loss discovered? While being taken from car or not until after delivery?
20	Advise if receipted for as "Shippers Count." State condition when received and if properly stowed. Were exceptions of any character noted?
21	Please furnish running of car with seal record and conductors' names.
22	Any delay advise cause.
23	Was car inspected before loading and by whom? Were any defects noticed?
24	Length of time consumed in unloading car? How was car protected during unloads?
25	What was position of freight in car? Was it braced or blocked? In your opinion was damage occasioned by improper loading? If so, state reason.
26	State condition this shipment was in when car was opened. Why was car opened, how long was it opened, and was shipment referred to moved in car in order to load or unload freight for your station or for any other purpose?
27	Is the damage of such nature as to render the shipment worthless? Is not the salvage of some value? What disposition was made of damaged goods?
28	Was there any loss or damage apparent from external inspection or was same of a concealed nature?
29	Attach statement showing tariff basis of rates and divisions and authority for rate used.
30	Attach statement showing how you figure your proportion.
31	Advise as to difference in weights. Give scale record.
32	Certify as to correctness of transfer and say if we furnish grain doors.
33	Please have claimants say how they arrive at basis for claim,

giving authority for rate and attach copy of quotation, if any.

34 How was billed weight obtained?

35 If weighed by you give gross, tare and net weight, say if tare was taken as stencilled or car weighed light, and if car was weighed in train or cut loose; giving in detail all allowances made in arriving at net weight.

36 Attach copy of weight certificate, or if weighed in transit show at what point and with what result.

37 Please advise light weight of car.

38 Attach original switching bills.

39 If weight is shippers', ascertain how arrived at and ask for certificate; how was billed weight obtained?

40 Advise the amount you are over and we will cover with Form 3009.

41 Advise kind of lumber and whether dry, medium or green, also confirm invoice in feet.

42 There is no overcharge with us and claim is respectfully declined.

43 State how shipment checked on delivery to this Company.

44 Was shipment transferred or handled at your station?

45 Give reference to your Over, Short and Damaged report.

46 Have you any account of checking over? Examine your warehouse and records. Advise if ever missing freight and from what car?

47 Are you still short? If so, on what billing? Get shippers name and address from consignee. Does consignee claim shortage?

48 In what car loaded? To what point carded? Is it error in billing?

49 Advise all shippers marks, brands, weight, contents and if new or second hand.

50 Have consignee or shipper accept the goods and present bill for actual loss at invoice price, or cost of repairs.

51 Forward to ..... free astray, due on.....

way-bill number.....date

..... Note on way-bill "Astray Freight" my file .....as your authority.

52 If any similar shipments were loaded in same car on same date, state to what points destined.

53 We are over at.....

in car.....

from your station marked.....

..... Please attach copy of revenue billing cover.

54 Will shippers make repairs or furnish necessary parts free, if free transportation is furnished?

55 Advise exact time of arrival and delivery to consignee.

56 Advise exact time of arrival at your station and exact time of delivery to Connecting Line, explaining any delay.

57 Why cannot you get consignee to take property?

58 Obtain from shippers immediate orders for disposition of property advising them that unless promptly removed, it will be sold for freight and other charges according to law.

59 Was consignee notified of arrival and on what date?

60 To you.....Way-bill..... shipment for..... destination..... ..... diverted to..... at tariff rates all charges following. Advise way-bill reference, loading and carding. Advise transfer reference to this system. Wire delivery to consignee.

61 Your..... Way-bill .....shipment for..... is refused unclaimed.

62 From your line at..... Pro..... shipment for..... is refused unclaimed.

63 Forward freight as requested at regular rates, all charges following as expenses.

64 Forward as marked. Note on way-bill "Astray Freight. Deliver only upon surrender of original bill of lading."

65 What, if any, disposition has been made?

66 What can you sell the property for?

67 Sell to best advantage and advise amount realized under Authority to sell No.....

68 Authorize for your proportion naming your mileage and revenue and amount you will pay. Or distance..... miles. Our revenue $.....

69 Claim is correct and carries proper approval. Please voucher promptly.

70 Note authority of Connecting line and charge direct.

71 Note authority for rate and divisions. We close our records.

72 The proportion due by us being less than the minimum we should not be asked to join.

for an opinion, in which event the final disposition of the claim will depend upon the advice of the company's attorneys. If the decision of the legal department is adverse to the claim, while the chances are that the reasons assigned for the declination are well taken if the claim involves a large amount or is of importance to the claimant, it is suggested that the matter be referred to an attorney for advice.

It is difficult to make a general statement which will cover accurately the methods used by the claim departments of the various carriers. Of course, their methods differ somewhat, and the departments of some roads are very much more efficient than others. If a claim does not receive reasonably prompt attention, the claimant should not hesitate to follow it up frequently and promptly, but courteously, insisting upon advice from the carrier as to what action it has taken or proposes to take.

In cases where a sufficient time has elapsed from the time of the filing of the claim to enable the carrier to have investigated the same thoroughly, and the claimant has been unable to get from the carrier a statement as to whether or not it will pay or decline the claim, a very effective way of getting action is to file a suit against the carrier for the damage set up in the claim. Claimants frequently make the mistake of wasting too much time on the claim department. When a suit is filed the whole matter is immediately referred to the legal department. If, after an examination of the files by the legal department, it is apparent that the claim is one which is well founded and should have been paid, the probabilities are that rather than to go to the trouble and expense of defending suit the probable outcome of which will be

a judgment against the carrier for the amount of the claim and the costs of suit, arrangements will be made for a prompt settlement.

2. Details

Since, during the course of an investigation claim papers go through many hands and are frequently sent to the claim departments of other roads, there is danger of their becoming lost or misplaced. All documents filed with the claim should, therefore, always be prepared in duplicate and a complete set retained by the claimant for his own convenience for purposes of reference and to enable him to supply the carrier with a duplicate set in case the originals become lost.

When a claim is declined the claimant is entitled to a return of all the original papers submitted.

In all correspondence with claim departments it is important to quote accurately the railroad claim number. Much delay will be saved if this is done, as reference to the claim by number under the system universally used in railroad claim offices is much more easy and expeditious than by any other method.

3. Promptness in Filing Claims

Bills of lading and shipping contracts usually specifically provide the time within which claims may be filed. The courts have held these provisions to be valid and enforcible with reference to interstate shipments. Claimants should not, therefore, fail to file claims within the period prescribed by the contract of shipment. Claims

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should, however, be presented long before the expiration of the contract period, if possible. In fact, they should be presented as soon as the breach or dereliction upon the part of the carrier has occurred and the facts can be properly gotten together and substantiated. It is much easier for the carrier to investigate a fresh claim than a stale one. Records in railroad offices pile up and accumulate very rapidly, and the older a claim the more difficult of access are the records pertaining to it. Much delay in procuring a settlement of a claim can be avoided by no delay in filing it.

Owing to the peculiar nature of such shipments, live-stock contracts usually provide that notice of claims covering such shipments must be filed in writing within five days after the date of the delivery of the shipment. The reasons for this requirement are apparent. After that length of time it is practically an impossibility for the carrier to verify the damage claimed.

With reference to the time for filing claims, a distinction must be noted between claims arising out of interstate and intrastate shipments. With respect to the latter, the courts of most states have held that clauses in bills of lading and shipping contracts requiring claims to be filed within a definite period, or disclaiming liability if not so filed, are limitations of the common law liability of the carrier and, therefore, unlawful and non-enforcible. Such limitations, however, in bills of lading and shipping contracts covering interstate shipments have been upheld by the federal courts, and failure to comply with them constitutes a valid legal ground on which the carrier may decline the claim, in which event the claimant has no recourse.

4. Special Damages

Much confusion exists in the minds of many claimants as to just what damages can be recovered where shipments have been lost or damaged. Most of what is important in this connection has already been covered under the subhead "Amount of Claim" under the various classes of claims treated in this treatise; but for the general information of the student it is deemed advisable to explain, in a general way, the distinction between the elements of damage which can be recovered from a carrier and those which are called "special damages" and which are not recoverable. Special damages are defined as damages not within the contemplation of the parties when the contract covering the shipment was made. In order to hold a carrier liable for special damages, it is necessary that an agent of the carrier be informed at the time the contract is made of any special circumstances in connection with the shipment which will result in special loss to the shipper in the event of loss or damage to the shipment, either through physical damage or delay. In the absence of such notice, the carrier cannot be held liable for special damages. It is important to note that such notice must be given the carrier at the time the contract of shipment is entered into, as subsequent notice will not render the carrier liable for the reason that such notice given after the contract of transportation has been consummated between the carrier and the shipper is held to be an additional obligation imposed upon the carrier which is not in the contemplation of the parties at the time the original contract is made. This is true even though the notice be given subsequent to the entering into of the contract but before the occurrence which causes the special damage.

To explain clearly what is meant by special damages the following examples are recited. A shipper of grain has an opportunity to sell grain in another town at an advance of ten cents over the published market price if it is delivered on a certain date. He makes the shipment without informing the carrier of the special circumstances. The car is delayed and the shipper loses his ten cent profit by reason thereof, although there has been no decline in the published market price. A claim filed by him for the ten-cent loss will not be allowed. Or, again, a manufacturer of machinery in Chicago ships to St. Louis, Mo., a consignment of machinery. Let us suppose the schedule time for shipments of this character between the two points is 24 hours. The machinery is such that it requires the services of an expert from the manufacturing plant to install it, and the shipper, figuring on the arrival of the shipment on schedule time, sends a man to St. Louis for the purpose of installing the machinery. The shipment is delayed for three days, and, as a result, the shipper is put to the expense of maintaining his expert for the extra time. Is an item for the man's wages and expenses for the three days covering the delay a proper item of damage? Assuming that no notice was given to the carrier that such damage would accrue if the shipment did not arrive on schedule time, the answer is that such damages are special, the carrier not having had notice that such damage would accrue in the event of its failure to deliver on time. It could not have had the contingency in mind when the contract was made, and, therefore, is not liable for the loss.

In this, and similar cases, the possibility of collecting special damages would often be enhanced by written notice at the time the contract of shipment is made.

5. Refused Shipments

It should be noted in presenting claims for delay on the part of the carrier or carriers over whose lines a shipment travels, that no matter how excessive such delay may be, the consignee is not justified in refusing a shipment when it finally does arrive at its destination where the basis for such a refusal to accept is delay solely. There are times when a shipment arrives at destination in such condition as to be absolutely worthless, in which case the consignee is justified in refusing to accept it and in filing a claim, basing the amount on the invoice value plus all freight charges which have been paid. Mere delay, however, where no damage is done to a shipment is not sufficient ground for a refusal of the shipment, and, in all such cases, it is the duty of the consignee to accept the shipment or to give disposition orders and then to place claim with the carriers for whatever amount he suffers damage as a result of such delay.

6. To Which Carrier Claims Should Be Presented

As a general rule, claims should be presented to the bill of lading carrier, that is to say, the carrier with whom the original contract of transportation is made. In cases, however, where a shipment has been handled by more than one carrier, the claim may be presented to the initial carrier, the delivering carrier, or any intermediate carrier. For the purpose of avoiding delay, however, it is always advisable, where it is convenient, to file claims with either the initial or the delivering carrier, for between the carriers where the responsibility for loss or damage cannot be located, settlement is effected on the basis of the proportionate share of the earnings on the

shipment. Claims based on shipments which have travelled over more than one line are quite likely to suffer great delay on accounts of disputes between the carriers as to which is responsible for the damage or in an attempt by the carriers involved to place the responsibility definitely upon one or the other. When it becomes apparent to the claimant that the claim is being delayed on this account, where otherwise proper for payment, the claimant should insist upon immediate settlement by the carrier to whom the claim was presented. Practically all of the carriers have subscribed to rules and agreements covering the distribution of the amounts paid on claims where the responsibility cannot be located. The carrier with which the claim has been filed has its remedy as against the other carriers if it is entitled to reimbursement, and failure upon its part to effect a settlement with the other carriers does not justify or excuse a refusal to pay the claim.

7. Affidavits

Affidavits should always be made by a person who is conversant with the facts set forth in the affidavit. An affidavit based on information and belief is practically worthless and will probably be treated as such by the carrier. Affidavits should not contain conclusions, but should consist solely of statements of fact. Great care should be used in seeing to it that statements made in affidavits are true.

It is provided in Section 10 of the Federal Interstate Commerce Act that "* * * any person, corporation or company, or any agent or officer thereof, * * * who shall knowingly and wilfully, directly or indirectly, himself or by employee, agent, officer, or other-

wise, by false statement or representation as to cost, value, nature or extent of injury, or by the use of any false bill, bill of lading, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition knowing the same to be false, fictitious, or fraudulent, or to contain any false, fictitious, or fraudulent statement of entry, obtain or attempt to obtain any allowance, refund, or payment for damage or otherwise in connection with or growing out of the transportation of or agreement to transport such property, whether with or without the consent or connivance of the carrier, whereby the compensation of such carrier for such transportation, either before or after payment, shall in effect be made less than the regular rates then established and in force on the line of transportation, shall be deemed guilty of fraud which is hereby declared to be a misdemeanor and shall, upon conviction thereof, in any court of the United States of competent jurisdiction, within the district in which such offense was wholly or in part committed, be subject for each offense to a fine of not exceeding Five Thousand Dollars, or imprisonment in the penitentiary for a term of not exceeding two years, or both, in the discretion of the court: *Provided,* that the penalty of imprisonment shall not apply to artificial persons."

For the benefit of the industrial man, we would suggest that it is often possible to secure prompt handling of claims through the co-operation of the traffic department of the railroad. The solicitor or commercial agent of the carrier will generally be very glad to take up with his claim department any particular claim in which the shipper may be interested. In this way, it is often possible to have claims taken care of more promptly than would be the case if the claims were left to follow the

regular course of events. It should not be understood in connection with this, however, that the traffic department can or will do anything more than to secure prompt handling of claims, for, as previously stated in this treatise, the carriers are required by law to make a thorough investigation before paying a claim and should not under any circumstances pay claims until they have made such thorough investigation.

8. The Freight Claim Association

It has been stated in the "Foreword" of this treatise that at the present time carriers on the whole are making an honest and efficient endeavor to handle claims expeditiously and with a view toward bringing about a fair adjustment of the rights of the parties. It may be of interest to the reader to know something about an organization known as the Freight Claim Association, the object of which is as stated in its constitution, " * * * the prompt settlement of freight claims with claimants and between carriers." This organization is composed for the most part of the freight claim agents of practically all of the carriers of the country. It has adopted a constitution and rules which prescribe in detail the method of dealing as between the carriers with reference to loss, damage, and overcharge claims. These rules cover practically every conceivable question which may arise in the course of the dealings of the carriers with each other on claims involving shipments which have passed over the lines of more than one carrier.

As stated in the constitution of the association, the object of the organization is to expedite the settlement of claims by means of the observance of the rules to which

the members have subscribed. To this end they have adopted a common terminology and have defined the meaning of the more common terms used in handling claims. Therefore, all claims are handled in practically the same manner, and this results in obviating delay occasioned by a situation wherein each carrier has its own particular methods and terminology. The rules are exceedingly detailed and cover such matters as what documents shall be required in support of claims, claim wrappers, the order in which papers relating to claims shall be kept, rules with reference to concealed and unlocated loss and damage, method of handling damage claims on open cars, loss between depots, etc., etc.

The perfection and maintenance of this organization is indicative of the length to which the carriers have gone in their endeavor to make more efficient their claim departments and to avoid delay in handling claims.

The rules of the association cover in detail the prorating of loss on a shipment moving over more than one line, and provide in each case just how such loss shall be determined and prorated. For instance, where two or more carriers are involved and loss is not between depots, loss of any package from car under seal of station where freight is last checked in full, shall be charged to loading carrier 30 per cent, unloading carrier 20 per cent, and 50 per cent prorated on revenue from point where last checked in full to point where loss is discovered; and again, claims for unlocated damage are prorated on mileage from point where freight last checked in good order to point where damage is discovered, and the minimum mileage chargeable to any carrier is ten miles; and again, when delivering carrier loads freight at junction point and checks it in good order and receiving carrier

checks it and finds freight damaged or finds loss arising from damage or pilfering under delivering carrier's seals, claim is divided between delivering and receiving carriers on the basis of 50 per cent each. Similarly rules covering the determination of the proportion of loss which each carrier shall pay have been devised for almost every conceivable circumstance under which loss or damage occurs to practically every kind of shipment.

It is at once apparent that in view of the existence of this elaborate and efficient organization which has for its object the prompt settlement of claims, that the innumerable controversies which would invariably arise under a situation where the carriers operated without any understanding or agreement, are to a large extent obviated. While probably the reason for the existence of the Freight Claim Association is primarily to do away with controversies between the carriers themselves, from the point of view of the shipper, a very important result is the elimination of friction and controversy, the result of which was not only to delay the settlement of the claim as between the interested carriers, but also to delay the settlement with the shipper.

Many of the rules of the Freight Claim Association with reference to the claims included within the scope of this treatise have been stated in a general way in the body of the treatise. Specific reference is made here to the Freight Claim Association not so much with the object of attempting to set forth the gist of its rules as to acquaint the student with the fact that such an organization exists and that its object is to promote prompt settlement of claims and facilitate all the various processes which must be followed before a claim can be properly investigated and passed upon. Freight claim

agents in their correspondence with claimants frequently, in explanation of their course with reference to a decision upon some point having to do with a claim, refer to the rules of the Freight Claim Association, and in order that the student may understand what is meant by such reference, and for the further purpose of enabling the student to get a more adequate conception of the methods used by carriers in handling claims, this subject is inserted in the treatise.

9. Conclusion

Too great emphasis cannot be laid upon the paramount importance of presenting a claim in the strongest possible shape. While it may not be absolutely necessary to include all of the documents which have been set forth and explained under the various classes of claims hereinbefore enumerated, it is eminently desirable that they all be submitted. As has been explained, payment of claims cannot be expected within a very short period of time. It should be the object of the claimant to assist the carrier as much as possible and thus to facilitate the passage of his claim to payment by giving all possible information with regard to it and by leaving nothing undone on his part to convince the carrier that he is entitled to redress. It must be borne in mind that from one point of view amounts paid out by the carriers on claims are a dead loss and it is too much to expect that the carrier will take an active interest in promoting a claim. The claimant in his statement of the basis for his claim should, therefore, leave no loophole through which the carrier might properly escape liability.

TEST QUESTIONS

These questions are for the student to use in testing his knowledge of the assignment. The answers are not to be sent to the University.

1. State briefly what the treatise is about.
2. Distinguish a claim for loss from a claim for damage, and a claim for overcharge.
3. How does a claim for total loss arise? Give two examples.
4. By whom may a claim for loss be presented, and what determines? State the general rule.
5. Enumerate the documents necessary to be filed with a claim for (a) total loss, (b) partial loss. State with reference to each why it is required.
6. Is an affidavit of non-delivery necessary with claims for loss? State reason for your answer.
7. Are freight charges a proper item in a claim for (a) total loss, (b) partial loss? State the reason in each case.
8. How is the amount of a claim for total loss determined where an invoice has been rendered?
9. How is the amount of a claim for total loss determined where an invoice has been rendered and the shipment moved under the uniform bill of lading?
10. What is meant by the term "released valuation," and how does a "released valuation" affect the amount for which a claim for loss should be filed?
11. Is there any difference in the effect of a "released valuation" as to interstate and intrastate shipments? If so, what and why?
12. What is meant by the term "conversion"?
13. What considerations govern the amount of the claim on a "converted" shipment? State the basis of the measure of damages on such claims suggested in the treatise.

14. Is a "clear receipt" conclusive that a shipment was received without having suffered partial loss?

15. What additional burden rests upon a claimant who files a claim for partial loss, where the carrier holds a "clear receipt" for the shipment?

16. What documents in addition to those already enumerated in your answer to question 5 should be submitted with claims for partial loss of (a) grain, (b) liquids? Why?

17. Why are carriers reluctant to recognize claims for concealed loss and damage? What affidavits should be filed with such claims?

18. Are freight charges ever a proper item in a claim for damage? If so, when and why?

19. By whom are claims for loss and damage to livestock usually presented and why?

20. Outline the proper method of presenting a livestock claim, and state the differences, if any, between such claims and claims on inanimate freight with reference to (a) carrier's liability, (b) the measure of damage?

21. What constitutes extra shrinkage? Is a carrier liable for it?

22. How is the amount of a livestock claim computed where the claim is based on (a) loss and damage, (b) delay?

23. Is it proper to file a claim based on both damage and delay to the same shipment? If so, state the method of arriving at the amount of the claim and give an illustration.

24. What constitutes delay to a shipment?

25. What is an overcharge? How may an overcharge arise? Give two illustrations.

26. Is there any particular reason for filing an original bill of lading with an overcharge claim? If so, what is it?

27. Outline briefly the methods a railroad claim department uses in handling claims.

28. Why is it important to file claims promptly? When should a livestock claim be filed and why?

29. Explain what is meant by the term "special damages." Are such damages recoverable? Can you think of illustrations other than those contained in the treatise?

30. Can consignee recover on a claim based on the value of a shipment which has been delayed in transit, assuming that the shipment itself suffered no damage? State the proper procedure in such cases.

31. Where a shipment was routed over the lines of several different carriers, to which of the carriers should a claim for loss, damage, or overcharge be presented?

32. By whom should affidavits be made and what should they contain?

APPENDIX A

For the benefit of readers who may not have had experience in the actual handling of claims, we give on the following pages copies of some of the documents and correspondence appearing in a claim relative to fruit which was received at destination in a damaged condition.

The various reports shown in this claim would vary with the nature and condition of the individual claim. Besides the correspondence shown in this appendix, there would be numerous other letters and memorandums which have not been shown, as they would not be of any particular value to show just how carriers handle their claims. In connection with the reports shown, it might be well to state that some of the words, figures, and marks are of significance only to the particular carrier using the particular form, and it is not necessary for the reader to try to understand them. The significant facts bearing on this claim are all plainly shown.

It should be borne in mind that the reader in actually handling claims would find that every claim presents its own problem to solve. The forms and methods used by various carriers are different, but they all work with the same result in mind, that is, to ascertain what are the exact facts in the individual case and to adjust the claim on that basis.

DOCUMENT 1

LETTER OF CLAIMANT TRANSMITTING CLAIM

February 10, 1913.

F. G. A., C. & G. N. Ry. Co.,
Chicago, Ill.

Fort Valley Comm. Co. *vs.* C. & G. N. Ry. Co.

DEAR SIR:

Herewith enclosed please find statement of claim in favor of the above shippers for loss and damage to X. Y. Z. car 3031, green fruit,

out of Winters, Calif., June 22, 1912, to Oelwein, Ia., account over-heated in transit. We attach in support of above claim

1. Copy of original expense bill of your company dated August 2, 1913.
2. Inspector's report signed by A. B. Smith.
3. Certified copy of original invoice showing f. o. b. cost at shipping point.
4. Copy of account sales showing gross amount realized.

We will secure original bill of lading in support of the above claim and forward same to you in the near future. Kindly acknowledge receipt of these inclosures, quote claim number of your office and company to cover, and hurry this little claim to early investigation and settlement, thereby obliging

Yours very truly,
FORT VALLEY COMM. CO.

DOCUMENT 2

STATEMENT OF CLAIM

Feb. 1, 1913.

C. & G. N. R. R.

To Fort Valley Commission Co., Dr.

Our Claim No. 147.

To Loss and Damage on car No. 3031, X. Y. Z. Shipped Winters, Calif., 6/22/12. Destination Oelwein, Ia. Please adjust promptly.

Papers Attached:

1. Original Paid Expense Bill.
2. Certified Copy of Original Invoice.
3. Statement of Sales.
4. Inspector's Report.

To John Jones, General Agent,

To loss car green fruit arrived over-heated, ice plug in the bunker and fruit more or less decayed and showing heavy shrinkage.

20 crates apricots dumped account worthless	$ 29.00
80 crates peaches dumped account worthless	$ 96.00
90 crates apricots sold for $67.50 cost $130.50	$ 63.00
Loss 20 cents crate on 70 crates peaches	$ 14.00
Expense selling	$ 13.75
Extra labor	$ 14.25
Total claim	$230.00

DOCUMENT 3

A CERTIFIED COPY OF ORIGINAL INVOICE

DOCUMENT 4

INSPECTOR'S REPORT

This report shows that the inspector, A. B. Smith, found doors of car closed, ice plug in tank closed, temperature inside of car 62°, bunkers about half full, and that peaches and apricots were over-ripe and showed shrinkage.

DOCUMENT 5

FREIGHT BILL

The paid freight bill here attached had a notation on it that freight checked 20 boxes of apricots and 80 boxes of peaches badly moulded.

DOCUMENT 6

COPY OUT REPORT

This report contains an itemized statement showing just how much was realised from the sale of each kind of fruit and showing 20 boxes of apricots and 80 boxes of peaches dumped.

DOCUMENT 7[1]

NOTICE OF DAMAGE TO FREIGHT

The following form illustrates how some claimants protect themselves against carriers' declining their claim on account of claim not being filed in sufficient time. Such a form is of special use in connection with the clause on the Uniform Bill of Lading, specifying the time in which the claim must be filed. The reader will notice that the claim is made for a specified amount, subject to change later on.

Oelwein, Iowa, 8/15/12

M. J. Edwards.....Local Freight Agent.
.....*C. & G. N.*.....Railroad Company
.....*Oelwein, Iowa*.....
(Destination)

DEAR SIR:

You are hereby notified that a consignment of.....*Gr. Fruits*.... consisting of about.....arrived at your station on or about.....*July 2, 1912*,.....over the line of said....*C. & G. N.*..... Railroad in .....*X. Y. Z.*..... car number ....*3031*..... in a badly damaged condition, caused by the negligence of said....*C. & G. N.*..... ..... Railroad Company and connecting carriers.

[1] In this and the following reports shown in this appendix, the information furnished by the person making out the report is shown in italics.

As owners of said merchandise, or as representatives of such owners, we hereby make claim and demand upon said .....*C. & G. N.*..... Railroad Company, and all interested connecting carriers, for the sum of .....*$250.00*.....damages by reason of the premises. If, on final disposition of this consignment, the loss shall prove MORE OR LESS than.....*$250.00*,.....we will so advise you and AMEND CLAIM ACCORDINGLY. Please acknowledge receipt hereof, handing us claim number for future reference.

Yours truly,
Fort Valley Commission Co.
By.....

DOCUMENT 8

Letter of local agent at Oelwein, transmitting the foregoing notice to the Freight Claim Agent at Chicago, together with a copy of his O. S. & D. (over, short, and damage) report.

DOCUMENT 9

A circular letter to the agent of the C. & G. N. R. R. at Council Bluffs and Oelwein, from the Freight Claim Agent, requesting information on the following matters: (1) Date and time of arrival and departure of the car; (2) amount of ice in bunkers; (3) amount of ice added, if any; (4) condition of the drip pipes and ventilators; and (5) result of the inspection of contents of car.

DOCUMENT 10

Report of agent at Council Bluffs. Car received from Union Pacific, June 28, 9:30 A. M.; sealed both sides, S. P. Co. 19 W; forwarded same date in extra at 9:25 P. M.; sealed S. P. Co. 19 W and 89636; bunkers ¾ full when received and forwarded, no ice added; vents closed, drip pipes flowing freely; contents apparently O. K.

DOCUMENT 11

Report of agent at Oelwein. Car arrived June 29, 2 P. M.; delivered July 1, 7 A. M.; bunkers ⅔ full ice.

DOCUMENT 12

Freight Claim Agent's request of Division Superintendent for movement of the car over the line of the C. & G. N.

DOCUMENT 13

MOVEMENT REPORT

The movement report requested on Document 12 showed arriving time and leaving time at Council Bluffs and Clarion, arriving time at Oelwein, and train numbers and conductors' names.

DOCUMENT 14

Letter dated March 3, 1913, by F. C. A. of the C. & G. N. to the Asst. Gen. Mgr. of the Union Pacific at Omaha, requesting the following information: (1) Complete and detailed car movement; (2) schedule; (3) record of maximum and minimum temperature at every station where taken; (4) complete icing record; and (5) position and condition of ventilators and ice plugs.

DOCUMENT 15

INFORMATION ASKED FOR IN DOCUMENT 14

Union Pacific Railroad Company

C. & G. N. Claim No. *A-9022-2*
Amount of Claim *$230.00* *Omaha, Neb., 3-18-1913*
Mr. *J. Gray*, F. C. A., C. & G. N. R. R. Co., File 8.
Chicago, Ill.

As requested by you under date of *3/3/13*, below please find our record of
(Initial) (Number)
Car X. Y. Z 3031 Capacity of Tanks *11000 lbs.* Contents *Gr. Fruit*
From *Winters, Cal.* To *Omaha, Neb.* Final Destination, *Oelwein, Iowa.*

(This document is continued on next page.)

DOCUMENT 15—*Continued*

RECEIVED AT *Ogden* From	ICE In Tanks When Received	ICE Furnished (Pounds)	SALT Furnished (Pounds)	WASTE PIPES Open or Closed Rec'd	WASTE PIPES Open or Closed For'd	HATCH COVERS When Rec'd (Open or closed) Seals	HATCH COVERS Forwarded (Open or closed) Seals
So. Pac.				*Open*	*Open*	*Closed No Seals*	*Closed*
Date *6/25/12*							
Time *11:15 A. M.*							
Temp. Max. *100*							
" Min. *60*							
" When Insp. *82*							
Weather Conditions *Clear*							
Evanston				*1 Open*	*1 Open*	*Closed*	*1 Closed*
Date *6/25*							
Time *8:15 P. M.*		*2750*					
Temp. Max. *78*							
" Min. *43*							
" When Insp. *59*							
Weather Conditions *Rain*							
No. Platte				*1 Open*	*1 Open*	*Closed*	*1 Closed*
Date *6/27*							
Time *3:40 P. M.*		*3440*					
Co. Bluffs				*1 Open*	*1 Open*	*Closed*	*1 Closed*
Date *6/28*							
Time *5:50 A. M.*							
Temp. Max. *100*							
" Min. *71*							
" When Insp. *71*							
Weather Conditions *Clear*							

Waybill Instructions *Reice at all regular icing stations.*
Remarks: *Cannot cut out at Omaha—Handled through to Co. Bluffs.*

DOCUMENT 16

Letter of F. C. A. of the C. & G. N. to the Supt. of Transp. of the So. Pac., dated March 3, 1913, requesting same information as in Document 14.

DOCUMENT 17

Report dated March 24, 1913, of the Supt. of Transp. of the So. Pac., containing similar information to that as shown in Document 15 as follows:

SUMMARY OF INVESTIGATION OF PERISHABLE FREIGHT CLAIM

3/8-1913

Car { Initials *X. Y. Z.* / Number *3031* }

Claim *A-9022-2*
Claimant *Fort Valley Com. Co.*

Contents .....
From *Winters, Cal.*
Date *6-22-12* Waybill *SP 75* *$230.00*
Destined *Via Ogden* Diverted to.....Rediverted to.....
Route .....
Instructions .....
Basis of Claim .....

MOVEMENT	DATE	HOUR	Station Temperature	Government Temperature	Ice Bunkers on Arrival	Ice Added	Positions of Ventilators	SEALS Sides	SEALS Vents	REMARKS
Car ordered	*6/20/12*									
Car placed	*6/21/12*	*3:00 P. M.*								
Loading commenced										
Loading finished	*6/22/12*									
Car released										
Car forwarded	*6/22/12*	*3:00 P. M.*	*90*			*11000*				
Roseville	*6/23/12*	*10:30 P. M.*	*88*							
		11:00 A. M.	*79*			*2000*		*19W*		
Truckee	*6/24/13*	*11:30 P. M.*	*66*							
		12:30 A. M.	*56*			*1000*				
		2:15 A. M.	*32*							
Sparks		*3:00 A. M.*	*80*							
		8:25 P. M.	*39*							
Carlin		*9:45 P. M.*	*72*			*1000*				
		11:15 A. M.	*38*							
Ogden	*6/25/13*	*1:05 P. M.*	*100*							
			60					*19W*	*28R*	
Time in transit			*68:15*							
Schedule			*61:40*							
Delay			*6:35*							

DOCUMENT 18.

Letter of claimant dated April 7, 1913, enclosing the bill of lading, which was omitted when claim was submitted.

DOCUMENTS 19 AND 20

Letter of F. C. A. of the C. & G. N. to the agent of the S. P. at Winters, Cal., requesting detailed information as to the condition of the shipment when loaded and the agent's reply thereto. Fruit in good shipping condition, fully iced, properly braced, and stored in car.

DOCUMENT 21

Additional letters of the F. C. A. of the C. & G. N., requesting explanation of discrepancies in reports previously received as follows:

Chicago, April 17, 1913.
C. & G. N. Claim No.
Fort Valley Com. Co.
$230.00

Mr. F. Smith, Supt.
Clarion, Ia.

I am referring to you the papers in this claim and call your attention to the outline statement showing the handling of the car over all rails.

This car seems to have been last iced at North Platte, Neb., on June 27. Was the car iced at Clarion, Ia.? According to agent at Co. Bluffs, the bunkers were 3/4 full when handled at his station. It does not seem that we have a complete icing record from North Platte, Neb., to Oelwein, because the car could not have arrived at Oelwein with bunkers 2/3 full unless iced between North Platte and the destination. Was there any delay on the Western Division? What was the position of the ventilators, ice plugs, and hatches? Were waste pipes open and flowing freely?

Please complete the investigation on the Western Division and return the papers promptly.

Signed .....
Freight Claim Agent.

Chicago, April 17, 1913.
C. & G. N. Claim No.
Fort Valley Com. Co.
$230.00

Agent,
Oelwein, Ia.

X. Y. Z. Car 3031 loaded with green fruit arrived in your yards at 11:35 A. M. on June 29, 1912. Your O. S. & D. Report No. 504 of July 3, 1912, states that delivery was made on that date. Shipment checking out 20 boxes apricots and 80 boxes peaches over-ripe and mouldy, while the original O. S. & D. No. 491, dated July 3, 1912, does not carry any notations as to damage.

Furthermore, in reply to mine of August 23 you advised that car arrived at 2 P. M. on June 29 and was delivered July 1, 7 A. M. I want you to go into this matter carefully, advising as to the exact time of arrival, quantity of ice in the bunkers at that time, and position of ice plugs and hatches. Were the waste pipes open and flowing freely? At what hour and on what date was delivery made to the consignee? On what date did you check the consignment? What was the exact extent of the damage and what in your opinion caused the damage? Shipment is covered by Winters, Cal., W/B SP 75, June 22, 1912.

Signed .....
Freight Claim Agent.

DOCUMENT 22

STATEMENT OF CLAIM SHOWING METHOD OF CARRIER SUMMARIZING THE FACTS COVERING A CLAIM

Chicago and Great Northern Railroad Co.

Claim No. *419*
Amount *$230.00*

Commodity, *Green Fruit.* Claimant, *Fort Valley Commission Co.*
From *Winters, Cal.*, to *Oelwein, Iowa*, via *A. B. C. R. R.*
W/B *S. P. 65* Date *6/22/12* Car No. *X. Y. Z. 3031*
PERMIT INSPECTION PERISHABLE
B/L Instructions *Vents closed at Winters to Destination, car under ice from Winters, keep fully iced to destination.*
Cause and Basis of claim—*Fruit over-ripe, shows heavy shrinkage.*

Road	Station	Date	TIME In	TIME Out	Ice	Temp.	VENTILATION W. Pipes	VENTILATION Plugs	Seals Schedule Time Used	Delay
S. P.	*Winters*	*6/20*	*Car Ordered*							
		6/21	*Car Placed*							
		6/22	*Car Loaded*							
S. P.	*Winters*	*6/22*		*3:00 P. M.*	*11000*	*90*				
	Roseville	*6/22*	*10:30 A. M.*	*11:00 A. M.*	*2000*	*88*				
	Truckee	*6/24*	*11:30 P. M.*	*12:30 A. M.*	*1000*	*79*				
	Carlin	*6/24*	*8:25 A. M.*	*9:45 P. M.*		*66*				*6 hrs. 35 min.*
	Ogden	*6/25*	*11:15 A. M.*			*56*				
U. P.	*Ogden*	*6/25*		*1:05 P. M.*		*32*				
	Evanston	*6/25*	*8:15 P. M.*	*9:25 A. M.*	*2750*	*72*				
	N. Platte	*6/27*	*3:40 P. M.*	*4:45 P. M.*	*3440*	*38*				
	Co. Bluffs	*6/28*	*5:50 A. M.*	*9:30 A. M.*		*100*				
C. & G. N.	*Co. Bluffs*	*6/29*	*9:30 P. M.*			*60*	*Open*	*Closed*		
	Oelwein	*6/29*	*11:35 A. M.*			*78*				
						43	*Open*	*Closed*		
							Open	*Closed*		
						100				
						71	*Open*	*Closed*		
							Open	*Closed*		
							Open	*One plug out in ice tank*		

20 boxes apricots and 80 boxes peaches over-ripe and mouldy.

DOCUMENT 23

BRIEF

Claimant's bill attached calls for payment of $230.00 account alleged over-heated condition of the fruit at time consignment was delivered at Oelwein.

Outline shows movement of car from Winters, Calif., to Oelwein, Iowa, and statement of icing and temperature record. Car made very good time, being handled in seven days.

Car was iced by S. P. and U. P. at Winters, Roseville, Truckee, Evanston, and N. Platte. This company failed to ice while in its possession, although car was last iced at N. Platte about 10 P. M., June 27.

Agent of this company at Council Bluffs claims bunkers were 7/8 full at 9:30 A. M. the next morning.

Agent at Oelwein claims ice tanks were 1/2 full at time car arrived. It does seem that quantity of ice supplied while car was in transit ought to have maintained refrigeration throughout the journey.

The consignment checked out at Oelwein, 20 boxes apricots and 80 boxes peaches over-ripe and mouldy.

APPENDIX B

The primary object of this treatise has been to treat the subject of claims from the standpoint of the man who has already been damaged in some way in the handling of his freight, and who desires to know the proper method to be used in the collection of such damages from the carrier.

In the past, the energies of the carriers and the shippers have been very largely expended in the adjustment of claims after they have occurred. Within the last few years, however, there has been a very decided movement on the part of the carriers, the shippers, and the Interstate Commerce Commission to do what is possible to prevent claims. Some carriers now have special departments entirely devoted to the subject of investigating the causes of freight claims and suggesting measures by which the number and amount of claims may be materially reduced.

In making up Western Classification No. 51, the carriers had this point strongly in mind, and in many cases a change in rating was made so that it would be to the shipper's interest to take measures to ship his goods in such a way that the liability to claims would be materially reduced. The Interstate Commerce Commission strongly sanctions this action on the part of the carriers and, where it was shown that the difference in rating was based only on the desire of the carriers to reduce the amount of claims, the Commission allowed the higher rating on packages more liable to damage.

Much has been said and written on this subject and many valuable suggestions made. Space will not allow us to go into this subject in detail, but we give below some simple rules which if closely adhered to will materially assist in getting freight to destination without loss or damage. It should be borne in mind that, while carriers can be compelled to pay damage for which they are responsible, such payment will not reimburse the shipper for lost customers or other losses for

which the carrier cannot be held. (See treatise on "Reducing Freight Charges to a Minimum.")

The suggestions given below are taken from the publication entitled, "Way to Ship," issued by the Chicago Association of Commerce.

Measures for Prevention of Claims

PACKING OF FREIGHT

(a) All package freight should be carefully and securely packed so as to be clearly able to withstand all ordinary risks of transportation. The use of flimsy packages and careless methods of packing should be avoided.

MARKING OF FREIGHT

(a) In the case of less carload shipments each package of freight should be legibly marked and so marked as not to be obliterated by ordinary risks of transportation. When necessary to use tags for marking, they should be strong and durable, made of rope, manila paper or linen and should be securely sewed to the package or tied to it by a wire tie.

(b) Name of consignee and destination in full. Where there are two points in a state of the same name, then the county should be designated.

(c) All old marks on packages should be removed or obliterated to avoid confusion as to which marks are correct.

(d) Wherever practicable shipper's name and location with the word "from" preceding them should be given.

If this is done, disposition of shipments which may go astray can be more readily accomplished.

BILLS OF LADING AND SHIPPING RECEIPTS

Bill of lading or shipping receipt should be made in a clear and legible manner, containing the following information in full:

(a) Name of shipping point and date of shipment.

(b) Name of consignor.

(c) Name of consignee and destination. Where there are two points in a state of the same name, then the county shall be designated.

(d) When the freight is consigned to a place not located on the line of a railroad, each package, bundle or piece shall be marked with the name of the station at which the consignee will accept delivery, and such other information given as required by the rules of the carriers.

(e) Number of packages and description of commodity.

(f) Less-than-carload freight shall be properly marked and special marks, if any, shown in shipping order or receipt.

NOTATION OF SHORTAGE AND DAMAGE ON FREIGHT BILLS

(a) Shortages discovered at time of delivery should be endorsed on the paid freight bill.

(b) Damages discovered at time of delivery should be endorsed upon the paid freight bill, such notation to state the exact extent and nature of damage.

APPENDIX C

CUMMINS AMENDMENT

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That so much of section seven of an Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' approved February fourth, eighteen hundred and eighty-seven, and all Acts amendatory thereof, and to enlarge the powers of the Interstate Commerce Commission," approved June twenty-ninth, nineteen hundred and six, as reads as follows, to wit:

"That any common carrier, railroad, or transportation company receiving property for transportation from a point in one State to a point in another State shall issue a receipt or a bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered, or over whose line or lines such property may pass, and no contract, receipt, rule, or regulation shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed: *Provided,* That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under existing law," be, and the same is hereby, amended so as to read as follows, to wit:

"That any common carrier, railroad, or transportation company subject to the provisions of this Act receiving property for transportation from a point in one State or Territory or the District of Columbia to a point in another State, Territory, District of Columbia, or from any point in the United States to a point in an adjacent foreign country shall issue a receipt or bill of lading therefor, and shall be liable to the lawful holder thereof for any loss, damage, or injury to such property caused by it or by any common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, and no contract, receipt, rule, regulation, or other limitation of any character whatsoever, shall exempt such common carrier, railroad, or transportation company from the liability hereby imposed; and any such common carrier, railroad, or transportation company so receiving property for transportation from a point in one State, Territory, or the District of Columbia to a point in another State or Territory, or from a point in a State or Territory to a point in the District of Columbia, or from any point in the United States to

a point in an adjacent foreign country, or for transportation wholly within a Territory shall be liable to the lawful holder of said receipt or bill of lading or to any party entitled to recover thereon, whether such receipt or bill of lading has been issued or not, for the full actual loss, damage, or injury to such property caused by it or by any such common carrier, railroad, or transportation company to which such property may be delivered or over whose line or lines such property may pass within the United States or within an adjacent foreign country when transported on a through bill of lading, notwithstanding any limitation of liability or limitation of the amount of recovery or representation or agreement as to value in any such receipt or bill of lading, or in any contract, rule, regulation, or in any tariff filed with the Interstate Commerce Commission; and any such limitation, without respect to the manner or form in which it is sought to be made is hereby declared to be unlawful and void: *Provided, however*, That if the goods are hidden from view by wrapping, boxing, or other means, and the carrier is not notified as to the character of the goods, the carrier may require the shipper to specifically state in writing the value of the goods, and the carrier shall not be liable beyond the amount so specifically stated, in which case the Interstate Commerce Commission may establish and maintain rates for transportation, dependent upon the value of the property shipped as specifically stated in writing by the shipper. Such rates shall be published as are other rate schedules: *Provided further*, That nothing in this section shall deprive any holder of such receipt or bill of lading of any remedy or right of action which he has under the existing law: *Provided further*, That it shall be unlawful for any such common carrier to provide by rule, contract, regulation, or otherwise a shorter period for giving notice of claims than ninety days and for the filing of claims for a shorter period than four months, and for the institution of suits than two years: *Provided, however*, That if the loss, damage, or injury complained of was due to delay or damage while being loaded or unloaded, or damaged in transit by carelessness or negligence, then no notice of claim nor filing of claim shall be required as a condition precedent to recovery."