Canadian Trucking Alliance National Freight Claims Manual

INTRODUCTION

The intention of this manual is to provide a uniform guide for consistent investigation and settlement of cargo claims on motor carrier shipments anywhere within canada.

Cargo claims constitute a difficult and expensive problem for everyone involved. Claims generally represent lost sales, customer dissatisfaction, additional administrative cost, loss of profit, and more often than not, much inconvenience and frustration for both shippers and carriers. It is in everyone's interest to control the frequency and cost of claims. It is essential that carriers who have not done so develop an effective claims prevention program.

However, when a freight claim does develop, it must be dealt with by the carrier and the claimant together as quickly, justly, and as reasonably as possible in a spirit of mutual understanding and cooperation.

While the information contained in this manual may be used as a basis for decision on the part of cargo claims personnel, there are two other factors which also play a vital role in the efficient resolution of cargo claims. These very important factors are discretion and common sense.

WHAT IS A CLAIM?

A claim is a demand for compensation by a claimant to a carrier for the loss, damage or delay to goods which is alleged to have been caused by that carrier. The carrier, however, shall not be liable for loss, damage or delay unless notice to this effect is given, in writing, either at the point of origin of the shipment or at the point of delivery.

There are two other requirements lawfully prescribed in Canada which must be observed by claimants in order to validate a notice in writing. First, the written notice must contain the particulars of the origin, destination, date of shipment, and the estimated amount of the claim with respect to the loss, damage or delay. Second, the notice must be given to the origin or destination carrier within 60 days after delivery, or, in the case of failure to make delivery, within nine months of the date of shipment.

An exception notation on a delivery receipt does not constitute notice of claim. Notice of loss, damage, or delay, shall be given in writing on-other than the carrier's own documents.

It is important to appreciate that notice conditions, with their time limitations and other requirements, are not designed to frustrate the efforts of the parties to reach an amicable solution. On the contrary, time and effort are saved by adhering to regulatory procedures developed from long experience in the construction of the law. Nobody profits from a claim! This makes it increasingly essential that efforts at voluntary settlements between carriers and claimants proceed from the practical rules contained in this manual. By adopting these procedures and principles, it can be anticipated that the cost, delay and annoyance of litigation will be reduced.

PRINCIPLES AND PRACTICES

The purpose of these principles and practices are, insofar as may lawfully be accomplished:

— To obtain uniformity on the part of all carriers and uniform treatment of all claimants in the disposition of claims;

— To secure and preserve harmonious relationships in claims matters between carriers, and between carriers and their customers;

— To maintain a prompt and efficient service to the public in the investigation and disposition of freight claims.

It is recommended that the principles and practices contained in this manual be observed by all carriers in the investigation and disposition of freight claims.

No claim should be paid contrary to these principles and practices except on the written advice of the carrier's solicitor to the effect that, for the reasons stated therein, the claim cannot be successfully defended, or as the result of a judgement by a court of competent jurisdiction.

When a claim which involves payment is in conflict with any of the following principles and practices and is referred to a solicitor for ruling on a carrier's legal liability, the letter of transmittal should quote, for the benefit of counsel, the principle or practice involveded, and indicate that the payment of the claim would be in conflict with such principle or practice. In the adjustment of claims with claimants, where any of the principles and practices are a factor in the adjustment, any settlement made must be a full and final settlement, and in complete satisfaction of the claim, or claims, in question.

GENERAL CLAIMS PROCEDURE

1. Receipt and acknowledgement of claims:

Receipt of claims should be acknowledged by the carrier immediately. Claim acknowledgements should include:

1. The date of receipt of the claim.
2. The name and address of the claimant.
3. The amount of the claim (or an estimate).
4. The carrier's claim number.
5. The claimant's claim or file number (if available).
6. A request for any supporting documentation which may have been omitted by the claimant in the claim presentation.

eg.
- — A paid pro bill
- — A copy of the original bill of lading
- — A copy of the original proof of delivery
- — A certified copy of the originalinvoice or photocopy
- — Etc.

7. A specific request that any supporting information required by the carrier on the acknowledgement be forwarded immediately.
8. Some indication that the claim is undergoing investigation.

At the same time the claim is acknowledged, it should be recorded in a "claim register". The "claim register" should include:

1. The name of the claimant.
2. The amount of the claim.
3. The claimant's claim number.
4. The carrier's pro number.
5. The carrier's claim number.

It is also recommended that a separate file be opened on each new claim and assigned a "claim number." The claim number on the particular file should then be recorded on the carrier's delivery report, or proof of delivery, in order to avoid duplication.

2. INVESTIGATION OF CARGO CLAIMS:

A) Overage, Shortage and Damage reports (O.S.&D.)

These are internal documents widely used by carriers of our industry and are most helpful in the investigation of a claim. The purpose of O.S.&D. Reports is to record any O.S.&D., in either count or condition, at a particular stage in the transportation of a shipment from its origin to its ultimate destination. These O.S.&D. Reports should contain such information as:

— The name of the shipper and point of origin.
— The name of the consignee and point of destination.
— The description of the commodity.
— The nature of the exception (i.e. The number of pieces short or damaged and description of the damage).
— The point at which the exception was first noticed.
— Etc.

At least one copy of the O.S.&D. Report should be forwarded to the claims department and filed for easy retrieval in the event of a claim. Obviously, the existence of an O.S.&D. Report on a shipment in which a claim is submitted, will make the decision on liability that much easier. O.S.&D. Reports are beneficial during a tracing operation as well as in any claim prevention program.

B) Inspection reports:

Inspections for concealed damage are very important. Inspections can also be made for pilferage or noted loss and damage. What is needed is reliable, factual evidence, regardless of category. On this basis, it will be understood that while the emphasis is placed upon the determination of responsibility for concealed damage, the methods and procedures recommended have an overall application. Ultimately, the carrier must look to the inspection report for information leading to the assignment of responsibility, in the majority of cases.

(i) the date of shipment, when compared to the date of delivery, can be an indication as to whether or not the shipment might have been exposed to "unusual handling." A shipment which is delivered weeks after it originated may not have been handled in the proper manner; it may have been mistreated as a result of unnecessary handling before delivery was ultimately made.

(ii) the date on which the consignee requested an inspection should always be compared with the date of delivery of the shipment. A delay on the part of the consignee in reporting concealed damages may be a good indication that the shipment was subjected to additional handling after delivery; the damage may have resulted from mishandling by the employees of the consignee.

(iii) much care must be taken in determining whether or not the damage would have been evident at the time of delivery. If it is the inspector's opinion that the damage would have been evident upon delivery, the consignee must provide a reason why the proof of delivery was signed clear. If no satisfactory reason is given, then it is reasonable for the carrier to assume that the damage occurred after delivery, in which case the claim should not be honoured. The carrier's reluctance to participate in the adjustment of a concealed damage claim is understandable when the inspection has shown that the damage was apparent.

(iv) the inspector should indicate whether or not the packing material is available for examination. Without it, there is usually no evidence that the damage occurred while the shipment was in the carrier's possession. Shipping containers should be examined very carefully for such things as proper compliance with box manufacturers' load specifications, crease marks, and cuts in the container which correspond to the area of damage on the goods, etc. Information regarding packing requirements is available in the applicable freight tariff classification.

(v) the inspector should ensure that he indicates the type of item or items which are damaged, in the appropriate space on the inspection report.

(vi) the inspector should be very explicit in reporting both the nature and extent of the damage. Photographs are invaluable for recording such information.

(vii) serial numbers, part numbers, waybill or invoice numbers, or any other information which clearly identifies the particular damaged item(s) as part of the shipment, should definitely be recorded.

(viii) any information relating to the handling of the shipment after delivery by the carrier should be recorded since this type of information is vital to the person who will ultimately make the decision on liability for the carrier.

(ix) the inspector should determine and record whether or not the shipment moved under "released valuation;" he should also record the actual weight of the damaged goods.

(x) it is important to determine whether the goods had prior transportation or warehousing, or were manufactured at a point other than the point of shipment. It should be determined whether or not the damaged item(s) is (are) repairable and, if so, at what estimated cost.

(xi) the potential salvage value of an item(s) should be estimated since this gives the claims department some idea of the cost of the potential claim. Regardless of responsibility, it is desirable that the consignee concern himself with salvage considerations particularly where such action would prevent further deterioration .

(xii) all claims inspections should be made within one week of the initial notification from the consignee. Any employee or representative of a carrier, who performs a claims inspection on behalf of the claims department, should be well cautioned:
a) to answer all of the questions on the "inspection report" as objectively as possible; and
b) to make no commitments on liability since these decisions should be the sole responsibility and prerogative of the claims department.

(xiii) the request for, or completion of, the inspection report does not constitute a notice of claim by the claimant, or acceptance of liability by the carrier. The carrier's inspection form should clearly state this to avoid confusion by the claimant.

(xiv) the inspection may be waived by the carrier in view of the amount involved, the remoteness of the terminal, the type of commodity, or the carrier's familiarity with the customer. It should be noted, however, that the decision to waive the inspection may be considered justifiable reason for refusal, by the connecting carrier, to prorate the claim.

C) Photographs:

One of the most important pieces of evidence may be photos of the damaged item and/or its shipping container. Of course, this would not necessarily be recommended procedure for the general "run of the mill" type of cargo claim; however, on anything unusual or potentially expensive, photographs can be invaluable.

LOSS AND DAMAGE FREIGHT CLAIMS RULES

Required delivery procedures

Rule 1 — the carrier who delivers freight to a consignee must require that the consignee sign the delivery receipt acknowledging that the freight was received in good order, except as noted. The consignee must check the freight and note on the delivery receipt any exceptions. The carrier should instruct its drivers to refuse to permit consignees imprinting or writing on the delivery receipt any exception not of a specific nature (eg. Subject to inspection, etc.)

Rule 2 — when a package appears to have been pilfered, a joint inventory shall be made by the carrier and the consignee immediately in order to determine the remaining contents and weight of the package.
Rule 3 — when damage to contents of a shipping container is discovered by the consignee, which could not have been determined at the time of delivery, it must be reported by the consignee to the delivering carrier upon discovery and a request for inspection by the carrier's representative made. Notice of loss or damage and a request for inspection may be given by telephone or in person, but, in either event, must be confirmed in writing. If more than fifteen days pass (or as the original bill of lading or tariff indicates) between delivery of the shipment by the carrier and the report of loss or damage, it is incumbent upon the consignee to offer reasonable evidence to the carrier's representative when inspection is made that the loss or damage was not incurred through some error or omission on the part of the consignee after delivery of the shipment by the carrier. While awaiting an inspection by the carrier, the consignee must hold the shipping container and its contents in the same condition as they were in when the damage was discovered, insofar as it is possible to do so.
Rule 4 — shortage from a package delivered to the consignee without exception, when based only upon the consignee's failure to find the entire invoice quantity in the package or packages, shall not be regarded as a responsibility of the carrier, unless subsequent investigation develops that the loss occurred with the carrier.
Rule 5 — when a package bears evidence of damage an inventory of the contents shall be made jointly before delivery or immediately upon receipt by the consignee and carrier. Similarly, on an interchange of freight between carriers an examination shall be performed.
Rule 6 — the failure of the consignee to comply with the foregoing rules shall be regarded as indicating complete delivery of freight by carrier in good order.
Rule 7 — the consignee shall retain containers and damaged merchandise on shipments found to have damage until liability has been established. When liability is established and settlement arranged, carriers may take possession of the salvage or require appropriate adjustments in lieu.

Papers and documents in support of claims

Rule 8(a) — prior to paying a claim the carrier shall, unless otherwise provided for in these rules, require that it be supported by one or more of the following:

(i) the original bill of lading
(ii) the original paid freight bill
(iii) the consignee's copy of the freight bill
(iv) any other carrier document bearing record of loss or damage if the loss or damage notation is not shown on the freight bill
(v) the original invoice, certified copy thereof or photocopy
(vi) the statement of claim

Rule 8(b) — to facilitate handling, it is required that each claim file be given a claim number by the carrier to which the claim has been presented, and the same procedure shall be followed by other carriers to which the claim may be referred. Carriers shall quote each other's claim number, if it is known, in all claims communications.

Investigation and settlement of claims

Rule 9 — the carrier to which the claim is presented shall acknowledge receipt of the claim to the claimant quoting his claim number, if known, or the date and the amount of the claim, as well as the carrier's assigned claim number under which the investigation will be conducted. Claims properly presented by the claimant shall be investigated, and the carrier liability established by the carrier to which the claim has been presented.

Connecting carriers will respond to, or furnish the specific information requested by the investigating carrier within thirty days. No carrier shall pay a claim, or otherwise prejudice a connecting carrier's position with respect to the exemptions from the carrier's liability on the bill of lading.

When a participating carrier gives notice over the personal signature of an officer that it will defend suit rather than concur in settlement of a claim, such notice will be respected (see litigation procedures).

Carriers are not permitted to adjust freight interline accounts to offset a claim (i.e. Contras) until an investigation of the claim has been completed and respective liability has been established.
Rule 10 — when a claim investigation is completed and responsibility has been established, the carrier which has investigated and paid the claim shall apportion amounts due from other connecting carriers in accordance with the appropriate rule or rules.
Rule 11 — in the disposition of a pro-ratable claim no charge shall be made against another carrier whose proportion after allowance of any salvage credits is less than $10.00.
Rule 12 — all carriers shall, in disposing of damaged merchandise or granting allowances therefor, exercise all reasonable effort in the best judgement possible under the circumstances, to secure the maximum amount obtainable for the damaged merchandise in order to mitigate the loss of all concerned. The salvaging carrier will be expected to reveal the amount realized from the disposition or sale of the salvage.
Rule 13(a) — when the paying carrier has completed settlement of a pro-ratable claim arising out of a shipment handled jointly by three or more carriers, the following procedure shall be used:
The paying carrier shall deduct from the amount of payment of the claim its share of the liability and shall bill its immediate connection in the route of movement for the remaining balance of the amount of the claim payment, including the proportions of all other connecting carriers.

The connecting carrier, when thus billed, shall promptly remit to the paying carrier the full amount so charged, deduct its proportion of the liability and pass the balance on to the next carrier in the route of movement.
Rule 13(b) — when responsibility for a claim not pro-ratable is definitely attributable to a carrier other than the immediate connecting carrier, the paying carrier shall bill the responsible carrier directly, and the claim documentation shall not pass through the hands of any intermediate carriers which are not participating in the payment of the claim.

Loss and damage claim apportionment

Rule 14(a) — when a pro-rata settlement is indicated between motor carriers, or between motor carriers and other modes of transport, the settlement shall be apportioned on the basis of revenue.
Rule 14(b) — claims shall be pro-rated on the basis of revenue from the last point where the shipment checked in complete and in good order to the point at which the loss or damage was discovered. No investigation, other than the development of the above record, shall be permitted.
Rule 14(c) — a prerequisite to the payment of claims for concealed loss or concealed damage, except when recovered by legal process, shall be complete evidence from the claimant indicating when and where the goods were packed, that the goods were packed in the manner claimed, was complete and in an undamaged condition at the time of delivery to the carrier at the point of the shipment, that it was properly safeguarded at destination by the consignee or his agent against damage or pilferage, and that no such loss or damage occurred while the property was in the possession or control of the con signee or his agent.
Rule 14(d) — claims for concealed loss or damage to freight identified as having been imported from outside continental north america, and not opened until after final delivery, shall be settled on the basis of the pro-rated mileage. Said mileage shall be computed on the basis of the overseas point of origin to the ultimate destination. The highway carrier's share so determined shall be pro-rated on a revenue basis. Claims for shortage from a properly sealed overseas shipping container should not be accepted.
Rule 14(e) — if liability is accepted on claims for concealed loss or damage to freight identified as having had prior transportation or handling and which has not been opened for inspection prior to final transportation by the motor carrier, the claim should be settled on , the basis of a handling pro-rate from the first shipping point to final destination (including shipper, motor carriers, intermediate warehouse, and consignee). The total portion allocated to the motor carriers in this manner will be divided among the carriers on the basis of a revenue pro-rate.
Rule 14(f) — vague, general exceptions such as "rattling", "bad order" or other indefinite exceptions shall not be given at the time freight is inter

changed between connecting carriers. If any apparent basis for an exception exists, an exact inventory of the exception portion shall be taken at the time of interchange and exact existing conditions endorsed on the delivery receipt. If the original or intermediate carrier accepts a vague, general notation on its delivery receipt at the time freight is interchanged, it shall be liable for the full amount of the loss or damage found to exist at the time of ultimate delivery to the consignee, unless by some clear evidence the loss or damage subsequent to interchange can be clearly charged to the receiving carrier.

Rule 15 — when the amount paid in settlement of a claim for loss or damage includes the freight revenue accruing on the loss, or damaged portion of the shipment, a carrier receiving unearned revenue may be charged such unearned revenue. The balance of the amount of the revenue shall be pro-rated between interested carriers on the same basis as the loss or damaged portion of the claim is pro-rated.

Rule 16 — on intermodal shipments the liability of carriers for loss or damage, other than concealed, shall be determined by the transfer record between carriers.

Rule 17 — deleted.

Rule 18 — loss or damage resulting from the error of an employee or negligence on the part of a carrier, shall be charged to the carrier which is at fault, unless contributory negligence is established, in which case the loss or damage shall be apportioned between the carriers at fault in accordance with rule 14(a).

Rule 19 — loss or damage attributable to a cartage company when acting as an agent of the carrier shall be charged to such carrier. Carrier has right to recovery from the cartage company.

Rule 20 — at the option of the paying carrier, on an interline claim for loss of an entire package(s), except when recovered by legal process, a statement may be required from the destination carrier and consignee confirming that the goods have not been received from any source.

Recording and reporting exceptions developed by checking

Rule 21 — package freight must be checked during transfer and a record of any exception placed on the freight bill or, by agreement between carriers, a record maintained at point of such exception. This record must show the date, name of the carrier and all exceptions and will be the evidence which establishes the point at which the shortage or damage was discovered. Failure to show such exceptions shall render the receiving carrier liable for any loss or damage developed by the next subsequent check, unless it is shown that such loss or damage existed prior to such failure. Overages must be reported within two days of discovery to the loading point, or to the general office of the carrier from which the freight is received.

Rule 22 — a notation of shortage or damage which has been made on a freight bill at an intermediate, transfer or checking point shall not be carried forward on the bill of subsequent interline carriers. However, if the shortage or damage is confirmed at the time of delivery, it is permissible for the delivering carrier's agent to endorse the delivery copies of the bill. All of the above is subject to customs regulations governing international traffic.

Rule 23 — the provisions of rule 21 as regards reporting do not apply to perishable freight checking "over". Such shipments shall be immediately, reported to the shipper, consignee and connecting carriers requesting disposal instructions. Meanwhile, the goods should be placed in a protective environment at the risk and expense of the owner immediately in order to minimize any loss or damage.

Rule 24 — when destination addresses on freight are found to differ from those on the bill of lading, the property shall be held and immediate notice given to the shipper in an effort to ascertain the correct destination.

Handling of astray and over freight

Rule 25 — a carrier holding freight for which documentation is missing shall make reasonable efforts to determine ownership.

Rule 26 — when a shipment of which the "over" freight is a part has been identified, the "over" freight shall be forwarded to the proper destination on an "astray" bill. Delivery shall only be effected upon the presentation of the original bill of lading or other proof of ownership.

If the "over" freight cannot be otherwise identified, it shall be opened and inventoried for description and quantity for possible tracing by the shipper and/or consignee and held for proof of ownership.

"Over" freight shall be forwarded "free astray" to the carrier whose records disclose a shortage. Before the overage is forwarded, however, the carrier reporting the shortage shall furnish a certified copy of its billing as proof of ownership. Connecting lines should accept any such "astray" freight and forward it by the most direct route via the carrier designated in the billing, even though its records may not show how the shipment was originally handled.

Carriers who are dealing with an overage shall ensure that, whenever practical, it bears the full name and address of the shipper and consignee as revealed by the foregoing investigation before tendering it to another carrier. All confusing marks shall be erased. The carrier who effects delivery of "over" freight to a consignee is expected to assume the responsibility for collecting sufficient charges to protect all other interested carriers. This may be necessary to maintain the integrity of any applicable rates and charges. It is necessary to conform to customs regulations prior to the implementation of this rule.

Reporting refused freight at destination

Rule 27(a) — when non-perishable freight is refused at destination, such refusal shall be reported within five days (sundays and legal holidays not included) to the shipper, consignee and connecting carriers.

Rule 27(b) — a "notice of refusal" shall show the reason for nondelivery.

Failure to comply with rule 27(a) and 27(b) may render the delinquent carrier negligent and responsible for the payment of a subsequent claim by another carrier under its legal liability.

Rule 28 — explosives and other dangerous goods which may be subject to special regulations must be handled accordingly, but for the general purpose of freight claims adjustment, rule 27 shall govern.

Rule 29 — in the event of litigation involving one or more carriers and a claimant, refer to appendix "c".

Apportionment of claims where equipment interchanges

Rule 30(a) — in the absence of a specific agreement between all highway carriers, claims arising out of the interchange of trailers shall be apportioned under this section.

Rule 30(b) — when carrier liability has been established, and when the records show that the freight on an interchanged vehicle was checked and loaded in full and in good order by the loading carrier and unloaded by destination carrier, or loaded by shipper and unloaded by destination carrier, or loaded by carrier and unloaded by consignee and moved under perfect seal record, claim for shortage of a package or visible shortage from a package, responsibility for which cannot be located, shall adjust on the basis of 50°/O to the loading carrier and 50°/O to the unloading carrier. Intermediate carriers having clear seal records will not participate in the claim.

Rule 30(c) — when one or more participating carriers have an imperfect seal record they should assume full responsibility for the loss on an equal basis.

Rule 30(d) — claims for concealed loss or damage or for visible damage, where responsibility cannot be determined, should be prorated under rule 14(a).

Rule 30(e) — equipment should be inspected while empty before loading by the carrier furnishing the equipment and, if necessary, properly cleaned and placed in good condition so loss of, or damage to, freight will not result from any defects in the equipment, or by filth, waste, oil, grease, or anything else liable to cause loss of or damage to freight. This inspection shall be governed by the kind of freight to be loaded and its susceptibility to loss or damage. Inspection shall be carried out at the point of loading, but if operating conditions render this impractical, equipment may be inspected at the yard or terminal from which the equipment is dispatched for loading, provided that the movement from such dispatch point to the point of loading is without intermediate loading or use. The carrier furnishing the equipment should keep a permanent record showing that the equipment was inspected, the name of the person making the inspection, and the condition of the equipment. Loss or damage resulting from a failure to properly

inspect, clean and repair equipment shall be charged to the carrier at fault. When the physical facts developed by inspection at destination or enroute proves beyond a reasonable doubt that the equipment was not so inspected, repaired or cleaned, such facts shall govern.

Rule 30(f) — where damage to freight results from leakage of the vehicle, claims for such damage shall be pro-rated on a revenue basis, unless the facts indicate that the loading carrier knew, or by a reasonable inspection could have ascertained, that the vehicle was defective.

Rule 30(g) — if the loss or damage is alleged to have occurred due to causes outlined in section (e) of this rule, the carrier at destination, after having been notified of such loss or damage, shall inspect both the freight and equipment and shall keep a permanent record showing the name of the person making the inspection, the extent of the loss or damage, the apparent cause, whether the defects are old, and when the equipment was last loaded.

Rule 30(h) — when the cargo is shipped under protective services, claims for shortage shall be adjusted between participating carriers under paragraphs (b) and (c). Claims for damage due to delay, or resulting from a failure in the protective service, shall be adjusted on the basis of negligence as revealed by investigation, unless otherwise agreed, in writing, by the interested carriers.

Rule 30(i) — when a check at the point where the unit breaks bulk reveals "over," short or damaged freight, such exception shall be reported promptly in writing to the loading carrier, if known, otherwise to the unloading carrier's immediate connection. In the event the carrier notified is an intermediate carrier, or is other than the carrier actually performing the loading, the carrier who is notified shall assume the unloading carrier's responsibility of promptly notifying the actual loading carrier, if known, otherwise its immediate connection.

After having been reported to the loading carrier as outlined above, overages should only be handled in accordance with rules 25 and 26.

Appendix "A"

STANDARD BILL OF LADING

The following provisions shall apply to all transportation of goods by for-hire highway carriers licensed under the motor vehicle transport act (Canada, R.S.C. 1970, M-14) or under provincial statutes with the exception of the transportation of:

A) used household goods,
B) livestock,
C) bus parcel express shipments,
D) the personal luggage of bus passengers,
E) such other specific commodities as may be specified by provincial law.

II. BILL OF LADING

1. A bill of lading shall be completed as provided herein for each shipment.
2. On each article covered by the bill of lading, there shall be plainly marked thereon by the consignor, the name of the consignee and the destination thereof. This regulation does not apply in cases where the shipment is from one consignor to one consignee and constitutes a truck-load shipment.
3. The bill of lading shall be signed in full (not initialled) by the consignor and by the carrier as an acceptance of all terms and conditions contained thereon.
4. At the option of the carrier, a waybill may be prepared by the carrier and the waybill shall bear the same number or other positive means of identification as the original bill of lading. Under no circumstances shall the waybill replace the original bill of lading.

III. CONDITIONS OF CARRIAGE

1. Liability of carriers

"The carrier of the goods herein described is liable for any loss of or damage to goods accepted by him or his agents except as hereinafter provided." In effect, this condition indicates that the carrier who enters into an agreement with a shipper by means of the bill of lading is responsible and liable for everything and anything that might happen to the shipment while it is in transit to the consignee. The only means by which that carrier's responsibility or liability is limited, therefore, are the conditions which follow on the bill of lading.

2. Liability of originating and delivering carriers

"Where a shipment is accepted for carriage by more than one carrier, the carrier issuing the bill of lading (hereinafter called the originating carrier) and the carrier who assumes responsibility for delivery to the consignee (hereinafter called the delivering carrier), in addition to any other liability hereunder, are liable for any loss of or damage to the goods while they are in the custody of any other carrier to whom the goods are or have been delivered and from which liability the other carrier is not relieved."

The originating and destination carriers are thus responsible to the claimant for loss or damage caused by the intermediate carriers.

3. Recovery from connecting carrier

"The originating carrier or the delivering carrier, as the case may be, is entitled to recover from any other carrier to whom the goods are or have been delivered the amount of the loss or damage that the originating carrier or delivering carrier, as the case may be, may be required to pay hereunder resulting from loss of or damage to the goods while they were in the custody of such other carrier. When shipments are interlined between carriers, settlement of concealed damage claims shall be pro-rated on the basis of revenues received."

If a carrier has reimbursed the claimant up to the full extent of its liability, this condition gives that carrier the right to recover the amount paid from the carrier with whom the actual loss occurred. When liability for concealed damage has been accepted by a carrier, the claims between carriers shall be pro-rated on the basis of revenues earned.

4. Remedy by consignor or consignee

"Nothing in articles 2 or 3 deprives a consignor or consignee of any rights he may have against any carrier."

This section simply indicates that there is no intent in sections 2 and 3 above to prevent the claimant from recovering or taking action against any or all of the carriers involved in any particular shipment.

5. Exceptions from liability

"The carrier shall not be liable for loss, damage or delay to any of the goods described in the bill of lading caused by an act of god, the queen's or public enemies, riots, strikes, a defect or inherent vice in the goods, the act or default of the consignor, owner or consignee, authority of law, quarantine or differences in weights of grain, seed, or other commodities caused by natural shrinkage."

The intent of this section is to remove liability from a carrier for loss, damage and delay resulting directly from an event or occurrence over which the carrier can exert no control.

Lightning, tempests, unusually low temperatures, heavy falls of snow out of season, etc., are "acts of god." The carrier is not liable in cases where it was impossible for him to have protected against such acts. But, notwithstanding this, a carrier could be held liable if he failed to take reasonable precautions. Sometimes the consignees forget that speed of service is not every thing; a carrier's first duty is to carry safely. Some occurrences such as hurricanes, earthquakes or floods could easily be interpreted as "acts of god." On occasion, there may be an unusual occurrence that is more subtle over which there could be disagreement as to whether or not it would fall into this category. There is, however, a substantial number of court decisions on this topic. When involved in a disagreement of this nature, we recommend that you seek the advice of a solicitor for clarification of your position.

The reference to "queen's or public enemies" means enemies against the duly constituted government.

"Defect or inherent vice" relates to articles that, due to their physical properties, have a high damage susceptibility beyond the control of the

carrier, and regardless of the manner of handling and/or packaging, become damaged. The clue to look for is the cause of damage, loss or delay that is completely beyond the control of the carrier. We emphasize that the intent of this section is not to provide an avenue of escape from a claim which the carrier could have prevented but, rather, to exclude liability for conditions completely beyond the carrier's control. The "act or default of the consignor, owner or consignee" clause is intended to cover such areas as "shipper's load and-count," improper interior or exterior packaging, etc. "Shipper's load and count" is of particular importance; here the carrier would not be responsible for damages or shortages caused by improper loading by the shipper, or non-receipt or misdescription of the goods described in the bill of lading.

The carrier is not liable when a shipment is lost, damaged or delayed by "authority of law." This would include shipments held by law enforcement agencies, departments of agriculture, pure food inspectors or other government agencies.

Article 5 also removes carrier liability for loss, damage or delay resulting from riots, strikes, quarantine, and differences in weights of grain, seed, livestock or any other commodities caused by natural shrinkage.

6. Delay

"No carrier is bound to transport the goods by any particular vehicle or in time for any particular market or otherwise than with due dispatch, unless by agreement specifically endorsed on the bill of lading and signed by the parties thereto."

The onus is on the carrier to deliver freight as quickly as is reasonably practical. However, there is no responsibility on the part of the carrier to get the goods to their destination within a specific period of time, by a specific date, or in time for a particular market. The only exception to this would occur when a shipper and carrier agree on a specific date and time for delivery of a shipment, and both parties endorse the bill of lading accordingly.

7. Routing by carrier

"In case of physical necessity where the carrier forwards the goods by a conveyance that is not a licensed for-hire vehicle, the liability of the carrier is the same as though the entire carriage were by licensed for-hire vehicle."

This article gives the carrier the right to use any route or type of conveyance it deems necessary between the point of origin and the destination. However, the carrier is not relieved of liability.

8. Stoppage in transit

"Where goods are stopped and held in transit at the request of the party entitled to so request, the goods are held at risk of that party."

This article applies to stoppage in transit and the possibility of reconsignment. In either case the original transit is at an end and the carrier assumes the role of a warehouseman. As a warehouseman, the carrier is no longer the absolute insurer but it is liable only for negligence. The carrier is not responsible for forced entry, fire or other circumstances over which he has no control.

The bill of lading does not establish ownership, regardless of whether the freight charges are prepaid or collect. It is difficult for the carrier to establish when title passes from the seller (usually the shipper) to the buyer. It is a matter of the intention of the parties and is often set out in an agreement between the seller and the buyer. The carrier cannot be presumed to know details of any such agreement. Unless it is expressly notified the title remains with the shipper except under stoppage in transit. If the shipper gives an improper notice of stoppage he would then be liable.

Order bills of lading are a different matter. Here the ownership is the shipper's until the order of bill of lading has been properly endorsed and delivered to the carrier. At this time we know that ownership has passed to the buyer.

9. Valuation

"Subject to article 10, the amount of any loss or damage for which the carrier is liable, whether or not the loss or damage results from negligence, shall be computed on the basis of:

a) the value of the goods at the place and time of shipment including the freight and other charges if paid, or
b) where a value lower than that referred to in paragraph (a) has been represented in writing by the consignor or has been agreed upon, such lower value shall be the maximum liability."

This condition defines the extent of dollar value for which a carrier may become liable in the event of loss or damage to all, or any part of, the shipment. The limit is the value of the goods when they were sitting on the shipper's dock waiting to be picked up by the carrier. Over and above the claim for the actual value of the goods, the carrier may also be liable for any freight or other charges that have actually been paid on the goods. Examples of other charges would include: Duty and brokerage fees on an import shipment, storage fees, etc.

The value of the goods for which a carrier is liable may also be lower than "the value of the goods at the place and time of shipment". If a shipper declares a value on the bill of lading which is actually lower than the real value of the goods, the liability of the carrier would be limited to the lower value.

10. Maximum liability

"The amount of any loss or damage computed under paragraph (a) or (b) of article 9, shall not exceed $2.00 per pound unless a higher value is declared on the face of the bill of lading by the consignor."

This condition limits the carrier's maximum liability to $4.41 per kilogram times the weight of the total shipment (see article 9), unless the shipper specifies a higher value on the bill of lading.

The intent of this section is to protect the carrier against exposure to claims for items of high value, unless the shipper has indicated the value of the shipment in the appropriate space on the bill of lading. When a higher value is shown on the bill of lading, the carrier is afforded the opportunity of knowing what it is dealing with, so that special precautions may be taken to protect that shipment.

It is important to note that the extent of a carier's liability is not determined by the carrier; it is the shipper who determines the extent of the carrier's liability by declaring a value less than, equal to, or greater than $4.41 per kilogram.

11. Consignor's risk

"Where it is agreed that the goods are carried at the risk of the consignor of the goods, such agreement covers only such risks as are necessarily incidental to transportation and the agreement shall not relieve the carrier from liability for any loss or damage or delay which may result from any negligent act or omission of the carrier, his agents or employees and the burden of proving absence from negligence shall be on the carrier."

On occasion, a shipper will ask a carrier to transport a commodity which is unusually susceptible to loss or damage and the carrier accepts the shipment with the understanding that it moves "at the risk of the consignor of the goods."

The carrier must accept liability for loss or damage if the loss or damage occurred as a result of the carrier's negligence. The shipper, or claimant does not have to prove that the loss or damage occurred as a result of the carrier's negligence; rather, the onus is on the carrier to prove that the loss did not occur as a result of its own negligence.

12. Notice of claim

a) "no carrier is liable for loss, damage or delay to any goods carried under the bill of lading unless notice thereof setting out particulars of the origin, destination and date of shipment of the goods and the estimated amount claimed in respect of such loss, damage or delay is given in writing to the originating carrier or the delivering carrier within sixty (60) days after the delivery of the goods, or, in the case of failure to make delivery, within nine (9) months from the date of shipment.
b) the final statement of the claim must be filed within nine (9) months from the date of shipment together with a copy of the paid freight bill."

13. Articles of extraordinary value

"No carrier is bound to carry any documents, specie! Or any articles of extraordinary value unless by a special agreement to do so. If such goods are carried without a special agreement and the nature of the goods is not disclosed hereon, the carrier shall not be liable for any loss or damage in excess of the maximum liability stipulated in article 10 above."

The shipper must notify the carrier in advance of any shipment that includes documents, specie (coins), rare stamps, antiques, etc., or any other item of extraordinary value. On receipt of notification, the carrier must develop a special agreement, or endorsement, on the bill of lading stipulating the value of the items along with the special agreement to transport the items. If no special agreement exists between the shipper and the carrier on items of this nature, then the carrier's liability is restricted to $2.00 per pound.

14. Freight charges

a) "if required by the carrier the freight and all other lawful charges accruing on the goods shall be paid before delivery and if upon inspection it is ascertained that the goods shipped are not those described in the bill of lading the freight charges must be paid upon the goods actually shipped, with any additional charges lawfully payable thereon.

b) should a consignor fail to indicate that a shipment is to move prepaid, or fail to indicate how the shipment is to move, it will automatically move on a collect basis."

The owner or consignor of the goods is responsible for all lawful freight charges. The carrier may demand charges before final delivery.

15. Dangerous goods

"Every person, whether as principal or agent, shipping explosives or dangerous goods without previous full disclosure to the carrier as required by law, shall indemnify the carrier against all loss, damage or delay caused thereby, and such goods may be warehoused at the consignor's risk and expense."

Anyone shipping explosives or other dangerous goods such as corrosive or lethal chemicals, or any other harmful material, without previously disclosing the nature of the goods, will be liable to the carrier for any cost suffered by the carrier as a result of problems caused by those goods during transportation. This applies even though the shipper may not have been aware of the dangerous nature of those goods.

16. Undelivered goods

a) "where, through no fault of the carrier, the goods cannot be delivered, the carrier shall immediately give notice to the consignor and consignee that delivery has not been made, and shall request disposal instructions.

b) pending receipt of such disposal instructions
   i) the goods may be stored in the warehouse of the carrier, subject to a reasonable charge for storage, or
   ii) provided that the carrier notified the consignor of his intention, the goods may be removed to, and stored in, a public or licensed warehouse, at the expense of the consignor, without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage."

This condition is intended to allow a carrier some scope in dealing with freight which for some reason cannot be delivered or has been refused by the consignee. In most general freight operations, goods which have been refused for delivery pose problems. Before anything can be done with refused freight, the carrier must notify the consignor and the consignee of the carrier's inability to deliver the goods.

The goods may be stored at the carrier's warehouse or, after notification to the consignor, stored in a public warehouse at which time the carrier's liability ceases. The goods may be returned to the consignor if disposal instructions are not received within 10 days.

17. Return of goods

"Where notice has been given by the carrier pursuant to article 16a and no disposal instructions have been received within 10 days from the date of such notice the carrier may return to the consignor at the consignor's expense all undelivered shipments for which such notice has been given."

The goods may be returned to the consignor, at his expense, if disposal instructions are not received within 10 days.

18. Alterations

"Subject to article 19, any limitation on the carrier's liability on the bill of lading, and any alteration, or addition or erasure in the bill of lading shall be signed or initialled by the consignor or his agent and the originating carrier or his agent and unless so acknowledged shall be without effect."

Since the bill of lading, which includes all of the above terms and conditions, is evidence of a contract between the shipper and the carrier, no charge can be made without agreement between the two parties. Neither the shipper nor the carrier may add to, delete or modify any of the terms or conditions on the bill of lading unless the addition, deleting or modification is agreed to by both the shipper and carrier by means of their signatures or initials on the bill of lading endorsing the change.

19. Weights

"It shall be the responsibility of the consignor to show correct shipping weights of the shipment on the bill of lading. Where the actual weight of the shipment does not agree with the weight shown on the bill of lading, the weight shown thereon us subject to correction by the carrier."

It is the responsibility of the shipper to show the correct weights on the bill of lading.

It is the responsibility of the shipper to show the correct weights on the bill of lading.

20. C.O.D. Shipments

a) "a carrier shall not deliver a C.O.D. Shipment unless payment is received in full.

b) the charge for collecting and remitting the amount of c.o.d. Bills for C.O.D. Shipments must be collected from the consignee unless the consignor has otherwise so indicated and instructed on the bill of lading.

c) a carrier shall remit all C.O.D. Monies to the consignor or person designated by him within 15 days after collection.

d) a carrier shall keep all C.O.D. Monies separate from the other revenues and funds of his business in a separate trust fund or account.

e) a carrier shall include as a separate item in his schedule of rates the charges for collecting and remitting money paid by consignees."

C.O.D. Means "cash on delivery." The carrier must maintain a separate C.O.D. Account and remit collections to the consignor within 15 days.

Appendix "B-1"

INSPECTION REPORT OF LOSS OR DAMAGE DISCOVERED AFTER DELIVERY

Terminal .... Date .... 20 .... Report Number ....

Shipper .... Origin ....

Consignee .... Destination ....

F/B No. .... ☐ Prepaid ☐ Collect .... Date Consignee requested inspection ....

Date of Billing .... 20 .... Date Delivered .... 20 ....

Date Unpacked .... 20 .... Date of Call .... 20 ....

Loss or Damage .... Could loss or damage have been noticed at time of delivery? ....

Were goods unpacked before inspection was made? .... Were containers and packing available? ....

What evidence was there of pilferage before delivery? ....

Was there sufficient space in package to contain missing goods? .... What material occupied the remaining space? ....

Did comparison of check with invoice or weighing package verify loss? .... If released valuation, show weight of articles damaged or short ....

Kind of container .... (Carton, Box, Crate, etc.) New or old .... Wired ☐ Corded ☐ Strapped ☐ Nailed ☐ Sealed ☐

Box maker's gross weight limit .... Gross weight of loaded carton .... If carton were flaps glued? .... Were seams or edges split? ....

How were goods packed? ....

Do you consider adequately packed or protected? ....

To prevent comparable damage in the future, how in your judgement should they have been packed or prepared for shipment? ....

....

....

Did shipment have prior transportation? .... If so, is merchandise still packed in original container? .... Original point of shipment ....

No. of articles	Describe fully the nature and extent of loss or damage	Invoice price
....	....	....
....	....	....
....	....	....
	(If necessary use other side of this form)	

Will there be salvage? .... What disposition will be made of the salvage? ....

Consignee .... Carrier ....

By .... By .... Inspector

This report is merely a statement of facts and not an acknowledgement of carrier's liability.

When presenting claims for loss and damage, attach the following documents:

1. This Inspection Report
2. Original Paid Freight Bill
3. Original Bill of Lading
4. Original invoice or an exact certified copy showing all discounts
5. Your bill showing nature and amount of claim
6. Shipper's and Consignee's Consealed Loss and Damage Forms

Claim blanks and other necessary forms to properly present your claim may be obtained from carrier's agent.

Appendix "B"

Standard Form for Presentation of Loss and Damage Claims

______ (Name of person to whom claim is presented)

______ (Name of carrier)

______ (Address)

______ (Address of Claimant)

______ (Date)

______ (Claimant's Number)

______ (Carrier's Number)

This claim for $ ______ (Amount of claim) is made against the carrier above by ______ (Name of claimant)

for ______ (Loss or damage) in connection with the following described shipments:

Description of shipment ______

Name and address of consignor (shipper) ______

Shipped from ______ (City, Town or Station) ; To ______ (City, Town or Station)

Final Destination ______ (City, Town or Station) ; Routed via ______

Bill of Lading issued by ______ Co.; Date of Bill of Lading ______

Paid Freight Bill (Pro) Number ______

Name and address of consignee (Whom shipped to) ______

If shipment reconsigned en route, state particulars: ______

______

DETAILED STATEMENT SHOWING HOW AMOUNT CLAIMED IS DETERMINED
(Number and description of articles, nature and extent of loss or damage, invoice price of articles, amount of claim, etc.)

Total Amount Claimed	

IN ADDITION TO THE INFORMATION GIVEN ABOVE, THE FOLLOWING DOCUMENTS ARE SUBMITTED IN SUPPORT OF THIS CLAIM

- ☐ 1. Original bill of lading, if not previously surrendered to carrier.
- ☐ 2. Original paid freight ("expense") bill.
- ☐ 3. Original invoice or photocopy.
- ☐ 4. Other particulars obtainable in proof of loss or damaged claimed.

______

______

Remarks: ______

______

______

The foregoing statement of facts is hereby certified to as correct.

______ (Signature of claimant)

*Claimant should assign to each claim a number, inserting same in the space provided at the upper right-hand corner of this form. References should be made thereto in all correspondence pertaining to this claim.

*Claimant will place check (✓) before such of the documents mentioned as have been attached, and explain under "Remarks" the absence of any of the documents called for in connection with this claim.

Appendix "C"

LITIGATION PROCEDURE

(a) When in the course of investigation and settlement of a claim, interested carrier or carriers are sued, or suit is instituted without claim having been filed, carrier or carriers sued shall advise each interested carrier of the plaintiff's allegations, amount involved, where action is pending, appearance or trial date if known, name of plaintiff, and other information necessary for each carrier to determine its interest in the case. The carrier or carriers sued shall be without cause of action against such carrier or carriers as it or they fail to notify.

Carriers advised of suit must notify carrier or carriers sued, amply in advance of appearance or trial date, whether they desire to defend suit rather than concur in settlement. Failure to reply within the prescribed time will be considered acquiescence that suit may be disposed of at discretion of carrier or carriers sued, and if any payment is made such amount and costs shall be distributed under appropriate rules. When two or more carriers are sued such carriers may promptly agree among themselves whether separate defense shall be conducted by each or one carrier shall defend for account of all, after which all carriers must be so notified.

(b) When suit has been instituted, investigation may be made through interested carriers to develop information as to names of witnesses and other evidence to be used in defense of suit. All previously developed records of carriers from which information is requested shall be produced to prevent duplicate investigations, the specific information desired being clearly stated.

(c) When an amount is recovered, either by judgment or settlement, such amount, plus costs, except as subsequently provided in this rule, shall be apportioned among interested carriers under the appropriate rule, or in accordance with the court's decision should the court rule on individual carrier responsibility.

(d) Settlement on recommendation of counsel for carrier or carriers sued must not be consummated without the concurrence of carriers that have previously served notice that they prefer to defend the suit. If suit is adjusted over the protest of one or more carriers, the carrier or carriers adjusting same shall be without cause of action, except, under appropriate rule or rules, against such carrier or carriers as may have agreed to join in settlement or have failed to reply to notice of suit as provided in Section (a).

(e) When carrier or carriers sued favor settlement but one or more other interested carriers give notice to the carrier or carriers sued that they will defend suit, such notice shall be respected. If the defense is unsuccessful, the expense of litigation (including all costs) shall be assumed by the carrier taking over the defense, or divided equally among carriers preferring that suit be defended. Subject to Section (h).

(f) When carrier or carriers sued prefer that suit be defended, or concur in a like preference expressed by other interested carriers, and such defense is unsuccessful, the costs shall be assumed by the carrier desiring suit defended or divided equally among such carriers when there are more than one; except, that if all carriers concur in defending suit then the costs shall be apportioned as provided in Section (c), subject to Section (h).

(g) When carrier or carriers sued and other interested carrier or carriers fail to agree upon settlement and suit is defended by carrier or carriers sued the carrier or carriers objecting to settlement recommended by counsel for carrier or carriers sued must assume all costs, interest, if any, and total judgment rendered. Among carriers preferring that suit be defended the expense of litigation shall be divided equally and the judgment apportioned under appropriate rule subject to Section (h).

(h) When suit is defended as provided in Sections (e), (f), (9) judgment is issued in favor of plaintiff, carrier or carriers favoring settlement out of court shall pay to the carrier or carriers preferring that suit be defended, an amount equal to their proportion of the sum of the settlement offer plus court costs and attorney fees accruing prior to preparation for defense. At no time shall the payment by carrier or carriers favoring settlement exceed the amount of judgment rendered by the court.

(i) Notice provided for in the preceding sections of this rule must be over the personal signature of an official of carrier or its attorney.

(j) In the event defense of suit has been tendered to carrier or carriers serving notice of its or their desire to take over the defense and such carrier or carriers fail to defend, judgment being rendered against carrier or carriers sued, then carrier or carriers failing to defend in accordance with its or their notice. When two or more carriers were delinquent the amount shall be charged to the most distant delinquent road-haul carrier. The carrier charged shall take the place of settling carrier and distribute the amount paid in accordance with the appropriate rules, except that all costs and interest, if any, shall divide equally among the delinquent carriers.

(k) When suit is successfully defended, i.e., judgment rendered in favor of defendant, or suit is withdrawn or dismissed, all costs shall be apportioned on revenue basis between all carriers participating in the haul. This will apply regardless of provisions of preceding sections of this rule.

Appendix "D"

ARBITRATION PROCEDURES

A number of provincial trucking associations presently operate claim arbitration panels. The following procedure is recommended: When carriers and/or carriers and claimants are unable to agree upon responsibility for loss, damage, injury or delay arising from the transportation of goods or upon the, measure of damages and apportionment thereof, the following arbitration procedure may be invoked:

- all participants in the transportation out of which the claim arose shall execute the "Agreement Submitting Claim File to Arbitration" form. This form is available from the Secretary of the Freight Claims Bureau of the appropriate provincial trucking association. The carrier initially desiring arbitration, or who has been requested to arbitrate by a claimant, and concurs, shall have the duty of securing assent from all interested parties as evidenced by the executed "Agreement Submitting Claim File to Arbitration" form.
- a written request for arbitration must be submitted to the Secretary of the provincial Freight Claims Bureau. The Secretary will reply by enclosing a copy of the "Agreement Submitting Claim File to Arbitration" form together with a request for the submission of a concise summation of the facts and an outline of the positions adopted by the interested parties.

- the Secretary of the provincial Claims Bureau will acknowledge receipt of the papers filed as above and will assign an official arbitration file number, or title of the claim to be arbitrated. The Secretary will then arrange for the appointment of an arbitration panel to hear and decide upon the issue in dispute in each case where a file number or title has been assigned.
- in arranging for the appointment of an arbitration panel, the Secretary is authorized to select three persons, one of whom shall be the Chairman. The Chairman shall be qualified by business and/or professional experience but must not be representative of the interests of either the organized carrier or shipper industries. The two other persons appointed to the arbitration panel shall be selected on the following basis:
  (1) a person designated as "the carrier representative" shall be selected from the membership of the provincial trucking association. He shall not have beneficial or consequential interest in the outcome of the proceedings.
  (2) a person designated as "the shipper representative" shall be selected from the membership ranks of the Canadian Industrial Traffic League or the Canadian Manufacturers' Association, or the Chambers of Commerce, or similar organizations. He shall have no beneficial or consequential interest in the outcome of the proceedings.

Each person so appointed and so designated as in (l) and (2) above shall ensure the parties in interest are accorded adequate notice, proper hearing and due process in the proceedings convened to deliberate the issues in dispute. Other than this, it is expected that each of them shall adjudicate impartially upon the evidence presented.