



U.S. DEPARTMENT OF TRANSPORTATION  
FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION

**LOSS AND DAMAGE CLAIMS  
ON SHIPMENTS TRANSPORTED  
IN INTERSTATE COMMERCE**

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**UNITED STATES CODE**

**TITLE 49**

**TRANSPORTATION**

**SUBTITLE IV--INTERSTATE TRANSPORTATION**

**PART B--MOTOR CARRIERS, WATER CARRIERS,  
BROKERS, AND FREIGHT FORWARDERS**

In this part:

**Board.**--The term "Board" means the Surface Transportation Board. (49 USC § 13102(1))

**Secretary.**--The term "Secretary" means the Secretary of Transportation. (49 USC § 13102(17))

## CHAPTER 135--JURISDICTION

### SUBCHAPTER I--MOTOR CARRIER TRANSPORTATION

#### § 13501. General jurisdiction

The Secretary and the Board have jurisdiction, as specified in this part, over transportation by motor carrier and the procurement of that transportation, to the extent that passengers, property, or both, are transported by motor carrier--

- (1) between a place in--
  - (A) a State and a place in another State;
  - (B) a State and another place in the same State through another State;
  - (C) the United States and a place in a territory or possession of the United States to the extent the transportation is in the United States;
  - (D) the United States and another place in the United States through a foreign country to the extent the transportation is in the United States; or
  - (E) the United States and a place in a foreign country to the extent the transportation is in the United States; and
- (2) in a reservation under the exclusive jurisdiction of the United States or on a public highway.

### SUBCHAPTER III--FREIGHT FORWARDER SERVICE

#### § 13531. General jurisdiction

(a) **In general.**--The Secretary and the Board have jurisdiction, as specified in this part, over service that a freight forwarder undertakes to provide, or is authorized or required under this part to provide, to the extent transportation is provided in the United States and is between--

- (1) a place in a State and a place in another State, even if part of the transportation is outside the United States;
- (2) a place in a State and another place in the same State through a place outside the State; or
- (3) a place in the United States and a place outside the United States.

(b) **Exemption of certain air carrier service.**--Neither the Secretary nor the Board has jurisdiction under subsection (a) of this section over service undertaken by a freight forwarder using transportation of an air carrier subject to Part A of subtitle VII of this title.

## CHAPTER 139--REGISTRATION

#### § 13901. Requirement for registration

A person may provide transportation or service subject to jurisdiction under subchapter I or III of chapter 135 or be a broker for transportation subject to jurisdiction under subchapter I of that chapter, only if the person is registered under this chapter to provide the transportation or service.



**§ 13902. Registration of motor carriers**

**(a) Motor carrier generally.--**

**(1) In general.--**Except as provided in this section, the Secretary shall register a person to provide transportation subject to jurisdiction under subchapter I of chapter 135 of this title as a motor carrier if the Secretary finds that the person is willing and able to comply with--

**(A)** this part and the applicable regulations of the Secretary and the Board;

**(B)** any safety regulations imposed by the Secretary and the safety fitness requirements established by the Secretary under section 31144; and

**(C)** the minimum financial responsibility requirements established by the Secretary pursuant to sections 13906 and 31138.

\* \* \*

**§ 13903. Registration of freight forwarders**

**(a) In general.--**The Secretary shall register a person to provide service subject to jurisdiction under subchapter III of chapter 135 as a freight forwarder if the Secretary finds that the person is fit, willing, and able to provide the service and to comply with this part and applicable regulations of the Secretary and the Board.

\* \* \*

**§ 13906. Security of motor carriers, brokers, and freight forwarders**

**(a) Motor carrier requirements.--**

**(1) Liability insurance requirement.--**The Secretary may register a motor carrier under section 13902 only if the registrant files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary, in an amount not less than such amount as the Secretary prescribes \* \* \*. A registration remains in effect only as long as the registrant continues to satisfy the security requirements of this paragraph.

\* \* \*

**(3) Transportation insurance.--**The Secretary may require a registered motor carrier to file with the Secretary a type of security sufficient to pay a shipper or consignee for damage to property of the shipper or consignee placed in the possession of the motor carrier as the result of transportation provided under this part. A carrier required by law to pay a shipper or consignee for loss, damage, or default for which a connecting motor carrier is responsible is subrogated, to the extent of the amount paid, to the rights of the shipper or consignee under any such security.

\* \* \*

**(c) Freight forwarder requirements.--**

**(1) Liability insurance.--**The Secretary may register a person as a freight forwarder under section 13903 of this title only if the person files with the Secretary a bond, insurance policy, or other type of security approved by the Secretary.

\* \* \*

(2) **Freight forwarder insurance.**--The Secretary may require a registered freight forwarder to file with the Secretary a bond, insurance policy, or other type of security approved by the Secretary sufficient to pay, not more than the amount of the security, for loss of, or damage to, property for which the freight forwarder provides service.

(3) **Effective period.**--The freight forwarder's registration remains in effect only as long as the freight forwarder continues to satisfy the security requirements of this subsection.

\* \* \*

## CHAPTER 141--OPERATIONS OF CARRIERS

### SUBCHAPTER I--GENERAL REQUIREMENTS

#### § 14101. Providing transportation and service

(a) **On reasonable request.**--A carrier providing transportation or service subject to jurisdiction under chapter 135 shall provide the transportation or service on reasonable request. In addition, a motor carrier shall provide safe and adequate service, equipment, and facilities.

\* \* \*

## CHAPTER 147--ENFORCEMENT; INVESTIGATIONS; RIGHTS; REMEDIES

\* \* \*

#### § 14704. Rights and remedies of persons injured by carriers or brokers

##### (a) In general.--

(1) **Enforcement of order.**--A person injured because a carrier or broker providing transportation or service subject to jurisdiction under chapter 135 does not obey an order of the Secretary or the Board, as applicable, under this part, except an order for the payment of money, may bring a civil action to enforce that order under this subsection. A person may bring a civil action for injunctive relief for violations of sections 14102 and 14103.

(2) **Damages for violations.**--A carrier or broker providing transportation or service subject to jurisdiction under chapter 135 is liable for damages sustained by a person as a result of an act or omission of that carrier or broker in violation of this part.

(b) **Liability and damages for exceeding tariff rate.**--A carrier providing transportation or service subject to jurisdiction under chapter 135 is liable to a person for amounts charged that exceed the applicable rate for transportation or service contained in a tariff in effect under section 13702.

\* \* \*



**§ 14705. Limitation on actions by and against carriers**

**(a) In general.**--A carrier providing transportation or service subject to jurisdiction under chapter 135 must begin a civil action to recover charges for transportation or service provided by the carrier within 18 months after the claim accrues.

**(b) Overcharges.**--A person must begin a civil action to recover overcharges within 18 months after the claim accrues. If the claim is against a carrier providing transportation subject to jurisdiction under chapter 135 and an election to file a complaint with the Board or Secretary, as applicable, is made under section 14704(c)(1), the complaint must be filed within 3 years after the claim accrues.

**(c) Damages.**--A person must file a complaint with the Board or Secretary, as applicable, to recover damages under section 14704(b) within 2 years after the claim accrues.

**(d) Extensions.**--The limitation periods under subsection (b) of this section are extended for 6 months from the time written notice is given to the claimant by the carrier of disallowance of any part of the claim specified in the notice if a written claim is given to the carrier within those limitation periods. The limitation periods under subsections (b) and (c) of this section are extended for 90 days from the time the carrier begins a civil action under subsection (a) to recover charges related to the same transportation or service, or collects (without beginning a civil action under that subsection) the charge for that transportation or service if that action is begun or collection is made within the appropriate period.

**(e) Payment.**--A person must begin a civil action to enforce an order of the Board or Secretary against a carrier within 1 year after the date of the order.

\* \* \*

**(g) Accrual date.**--A claim related to a shipment of property accrues under this section on delivery or tender of delivery by the carrier.

**§ 14706. Liability of carriers under receipts and bills of lading**

**(a) General liability.**--

**(1) Motor carriers and freight forwarders.**--A carrier providing transportation or service subject to jurisdiction under subchapter I or III of chapter 135 shall issue a receipt or bill of lading for property it receives for transportation under this part. That carrier and any other carrier that delivers the property and is providing transportation or service \* \* \* are liable to the person entitled to recover under the receipt or bill of lading. The liability imposed under this paragraph is for the actual loss or injury to the property \* \* \*. Failure to issue a receipt or bill of lading does not affect the liability of a carrier. \* \* \*

**(2) Freight forwarder.**--A freight forwarder is both the receiving and delivering carrier. \* \* \*

\* \* \*

**(d) Civil actions.**--

**(1) Against delivering carrier.**--A civil action under this section may be brought against a delivering carrier in a district court of the United States or in a State court.

Trial, if the action is brought in a district court of the United States is in a judicial district, and if in a State court, is in a State through which the defendant carrier operates.

**(2) Against carrier responsible for loss.**--A civil action under this section may be brought against the carrier alleged to have caused the loss or damage, in the judicial district in which such loss or damage is alleged to have occurred.

**(3) Jurisdiction of courts.**--A civil action under this section may be brought in a United States district court or in a State court.

**(4) Judicial district defined.**--In this section, "judicial district" means--

**(A)** in the case of a United States district court, a judicial district of the United States; and

**(B)** in the case of a State court, the applicable geographic area over which such court exercises jurisdiction.

**(e) Minimum period for filing claims.**--

**(1) In general.**--A carrier may not provide by rule, contract, or otherwise, a period of less than 9 months for filing a claim against it under this section and a period of less than 2 years for bringing a civil action against it under this section. The period for bringing a civil action is computed from the date the carrier gives a person written notice that the carrier has disallowed any part of the claim specified in the notice.

**(2) Special rules.**--For the purposes of this subsection--

**(A)** an offer of compromise shall not constitute a disallowance of any part of the claim unless the carrier, in writing, informs the claimant that such part of the claim is disallowed and provides reasons for such disallowance; and

**(B)** communications received from a carrier's insurer shall not constitute a disallowance of any part of the claim unless the insurer, in writing, informs the claimant that such part of the claim is disallowed, provides reason for such disallowance, and informs the claimant that the insurer is acting on behalf of the carrier.

\* \* \*

## TITLE 49--TRANSPORTATION

### CHAPTER III--FEDERAL MOTOR CARRIER SAFETY ADMINISTRATION, DEPARTMENT OF TRANSPORTATION

#### PART 370--PRINCIPLES AND PRACTICES FOR THE INVESTIGATION AND VOLUNTARY DISPOSITION OF LOSS AND DAMAGE CLAIMS AND PROCESSING SALVAGE

|        |                               |
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| Sec.   |                               |
| 370.1  | Applicability of regulations. |
| 370.3  | Filing of claims.             |
| 370.5  | Acknowledgment of claims.     |
| 370.7  | Investigation of claims.      |
| 370.9  | Disposition of claims.        |
| 370.11 | Processing of salvage.        |

AUTHORITY: 49 U.S.C. 13301 and 14706; 49 CFR 1.48.

SOURCE: 62 FR 32042, June 12, 1997, unless otherwise noted.

##### **§ 370.1 Applicability of regulations.**

The regulations set forth in this part shall govern the processing of claims for loss, damage, injury, or delay to property transported or accepted for transportation, in interstate or foreign commerce, by each motor carrier, water carrier, and freight forwarder (hereinafter called carrier), subject to 49 U.S.C. subtitle IV, part B.

##### **§ 370.3 Filing of claims.**

(a) *Compliance with regulations.* A claim for loss or damage to baggage or for loss, damage, injury, or delay to cargo, shall not be voluntarily paid by a carrier unless filed, as provided in paragraph (b) of this section, with the receiving or delivering carrier, or carrier issuing the bill of lading, receipt, ticket, or baggage check, or carrier on whose line the alleged loss, damage, injury, or delay occurred, within the specified time limits applicable thereto and as otherwise may be required by law, the terms of the bill of lading or other contract of carriage, and all tariff provisions applicable thereto.

(b) *Minimum filing requirements.* A written or electronic communication (when agreed to by the carrier and shipper or receiver involved) from a claimant, filed with a proper carrier within the time limits specified in the bill of lading or contract of carriage or transportation and:

(1) Containing facts sufficient to identify the baggage or shipment (or shipments) of property,

(2) Asserting liability for alleged loss, damage, injury, or delay, and

(3) Making claim for the payment of a specified or determinable amount of money, shall be considered as sufficient compliance with the provisions for filing claims embraced in the bill of lading or other contract of carriage; *Provided, however,* That where claims are electronically handled, procedures are established to ensure reasonable carrier access to supporting documents.

(c) *Documents not constituting claims.* Bad order reports, appraisal reports of damage, notations of shortage or damage, or both, on freight bills, delivery receipts, or other documents, or inspection reports issued by carriers or their inspection agencies, whether the extent of loss or damage is indicated in dollars and cents or otherwise, shall, standing alone, not be considered by carriers as sufficient to comply with the minimum claim filing requirements specified in paragraph (b) of this section.

(d) *Claims filed for uncertain amounts.* Whenever a claim is presented against a proper carrier for an uncertain amount, such as "\$100 more or less," the carrier against whom such claim is filed shall determine the condition of the baggage or shipment involved at the time of delivery by it, if it was delivered, and shall ascertain as nearly as possible the extent, if any, of the loss or damage for which it may be responsible. It shall not, however, voluntarily pay a claim under such circumstances unless and until a formal claim in writing for a specified or determinable amount of money shall have been filed in accordance with the provisions of paragraph (b) of this section.

(e) *Other claims.* If investigation of a claim develops that one or more other carriers has been presented with a similar claim on the same shipment, the carrier investigating such claim shall communicate with each such other carrier and, prior to any agreement entered into between or among them as to the proper disposition of such claim or claims, shall notify all claimants of the receipt of conflicting or overlapping claims and shall require further substantiation, on the part of each claimant of his/her title to the property involved or his/her right with respect to such claim.

##### **§ 370.5 Acknowledgment of claims.**

(a) Each carrier shall, upon receipt in writing or by electronic transmission of a proper claim in the manner and form described in the regulations in the past, acknowledge the receipt

of such claim in writing or electronically to the claimant within 30 days after the date of its receipt by the carrier unless the carrier shall have paid or declined such claim in writing or electronically within 30 days of the receipt thereof. The carrier shall indicate in its acknowledgment to the claimant what, if any, additional documentary evidence or other pertinent information may be required by it further to process the claim as its preliminary examination of the claim, as filed, may have revealed.

(b) The carrier shall at the time each claim is received create a separate file and assign thereto a successive claim file number and note that number on all documents filed in support of the claim and all records and correspondence with respect to the claim, including the acknowledgment of receipt. At the time such claim is received the carrier shall cause the date of receipt to be recorded on the face of the claim document, and the date of receipt shall also appear in the carrier's acknowledgment of receipt to the claimant. The carrier shall also cause the claim file number to be noted on the shipping order, if in its possession, and the delivery receipt, if any, covering such shipment, unless the carrier has established an orderly and consistent internal procedure for assuring:

(1) That all information contained in shipping orders, delivery receipts, tally sheets, and all other pertinent records made with respect to the transportation of the shipment on which claim is made, is available for examination upon receipt of a claim;

(2) That all such records and documents (or true and complete reproductions thereof) are in fact examined in the course of the investigation of the claim (and an appropriate record is made that such examination has in fact taken place); and

(3) That such procedures prevent the duplicate or otherwise unlawful payment of claims.

### **§ 370.7 Investigation of claims.**

(a) *Prompt investigation required.* Each claim filed against a carrier in the manner prescribed in this part shall be promptly and thoroughly investigated if investigation has not already been made prior to receipt of the claim.

(b) *Supporting documents.* When a necessary part of an investigation, each claim shall be supported by the original bill of lading, evidence of the freight charges, if any, and either the original invoice, a photographic copy of the original invoice, or an exact copy thereof or any extract made therefrom, certified by the claimant to be true and correct with respect to the property and value involved in the claim; or certification of prices or values, with trade or other discounts, allowance, or deductions, of any nature whatsoever and the terms thereof, or depreciation reflected thereon; *Provided, however,* That where property involved in a claim has not been invoiced to the consignee shown on the bill of lading or where an invoice does not show price or value, or where the property involved has been sold, or where the property has been transferred at bookkeeping values only, the carrier shall, before voluntarily paying a claim, require the claimant to establish the destination value in the quantity, shipped, transported, or involved;

*Provided, further,* That when supporting documents are determined to be a necessary part of an investigation, the supporting documents are retained by the carriers for possible FHWA inspection.

(c) *Verification of loss.* When an asserted claim for loss of an entire package or an entire shipment cannot be otherwise authenticated upon investigation, the carrier shall obtain from the consignee of the shipment involved a certified statement in writing that the property for which the claim is filed has not been received from any other source.

### **§ 370.9 Disposition of claims.**

(a) Each carrier subject to 49 U.S.C. subtitle IV, part B which receives a written or electronically transmitted claim for loss or damage to baggage or for loss, damage, injury, or delay to property transported shall pay, decline, or make a firm compromise settlement offer in writing or electronically to the claimant within 120 days after receipt of the claim by the carrier; *Provided, however,* That, if the claim cannot be processed and disposed of within 120 days after the receipt thereof, the carrier shall at that time and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing or electronically of the status of the claim and the reason for the delay in making final disposition thereof and it shall retain a copy of such advice to the claimant in its claim file thereon.

(b) When settling a claim for loss or damage, a common carrier by motor vehicle of household goods as defined in Sec. 375.1(b)(1) of this chapter shall use the replacement costs of the lost or damaged item as a base to apply a depreciation factor to arrive at the current actual value of the lost or damaged item; *Provided,* That where an item cannot be replaced or no suitable replacement is obtainable, the proper measure of damages shall be the original costs, augmented by a factor derived from a consumer price index, and adjusted downward by a factor depreciation over average useful life.

### **§ 370.11 Processing of salvage.**

(a) Whenever baggage or material, goods, or other property transported by a carrier subject to the provisions in this part is damaged or alleged to be damaged and is, as a consequence thereof, not delivered or is rejected or refused upon tender thereof to the owner, consignee, or person entitled to receive such property, the carrier, after giving due notice, whenever practicable to do so, to the owner and other parties that may have an interest therein, and unless advised to the contrary after giving such notice, shall undertake to sell or dispose of such property directly or by the employment of a competent salvage agent. The carrier shall only dispose of the property in a manner that will fairly and equally protect the best interests of all persons having an interest therein. The carrier shall make an itemized record sufficient to identify the property involved so as to be able to correlate it to the shipment or transportation involved, and claim, if any, filed thereon. The carrier also shall assign to each lot of such property a successive lot number and

note that lot number on its record of shipment and claim, if any claim is filed thereon.

(b) Whenever disposition of salvage material or goods shall be made directly to an agent or employee of a carrier or through a salvage agent or company in which the carrier or one or more of its directors, officers, or managers has any interest, financial or otherwise, that carrier's salvage records shall fully reflect the particulars of each such transaction or relationship, or both, as the case may be.

(c) Upon receipt of a claim on a shipment on which salvage has been processed in the manner prescribed in this section, the carrier shall record in its claim file thereon the lot number assigned, the amount of money recovered, if any, from the disposition of such property, and the date of transmittal of such money to the person or persons lawfully entitled to receive the same.

## **BASIC RIGHTS AND OBLIGATIONS OF CARRIERS AND SHIPPERS WITH RESPECT TO LOSS AND DAMAGE CLAIMS**

### **Carrier's Basic Liability**

Freight carriers essentially are fully liable for the actual value of any goods which they may lose or damage. There are several exceptions which relieve the carrier of any responsibility (such as, if caused by an Act of God) or which limit the carrier's responsibility (so-called released rates, an option which must be selected by the shipper of the goods). Basically, it is the carrier's responsibility to deliver the goods in the same condition as tendered to it at the point of origin.

### **Bill of Lading**

All regulated common carriers are required to issue a receipt or bill of lading for any property they receive for transportation. Shippers should be familiar with the language on the document, particularly the reverse side which may contain standard clauses, including several on cargo claims. The courts normally will apply all provisions of the bill of lading, which is signed by the shipper and carrier.

### **When Receiving Goods**

A critical time in the establishment of a sound base upon which to build a cargo claim is when the goods are being received. A person knowledgeable about the receiving of freight should be assigned to that task. A shipping invoice, bill of lading, or other documents evidencing the goods given to the carrier and the carrier's copy of the bill of lading or freight bill should be checked against the goods at time of delivery. Basically, the *count and condition* of the cartons, crates, etc., being delivered should be verified.

As goods are being unloaded, cartons, crates, containers, etc., should be counted. If there is a shortage, a proper notation should be made on the carrier's copy and the receiver's copy of the bill of lading, freight bill, or delivery receipt. The notation should be *as detailed as possible*. Such detail is necessary since notations to the effect of "subject to further inspection" or "subject to hidden loss or damage," normally will not be accepted by carriers or courts as an establishment of carrier liability. It is best that the driver initial the document's notated by the receiver on the receiver's documents and the receiver initial the driver's notations on the driver's documents. Also, the receiver should check the labels on all cartons or containers to be certain that they belong to the receiver. Misdeliveries can occur.

The receiver should carefully check for any visible signs of damage to the cartons or containers, including any unusual "rattles." *If evidence of damage exists*, the package should be opened immediately and a joint inventory and *detailed* description of the results of the examination should be endorsed on both the carrier's delivery receipt and the receiver's copy. The courts have generally ruled that a receiver of goods (consignee) may not open the containers and examine the contents before giving a receipt to the carrier, unless the containers indicate the probability of damage.

The law on the subject of accepting damaged merchandise is quite clear. The fact that goods are damaged during transportation does not of itself justify a refusal to accept them. When, however, the damage is such

that the entire value of the goods is destroyed, a receiver may refuse to accept them, and hold the carrier responsible for their value. Whenever practical, however, goods should be accepted and all necessary steps taken to minimize the damage, including minimal movement of the goods and *retention in original containers* to await inspection by the carrier or its representative.

### **Filing a Claim**

A loss and/or damage claim must be filed within nine (9) months from the date of delivery, or in the case of loss within nine (9) months after a reasonable time for delivery has elapsed. A claim must be submitted to the carrier in writing and (1) contain facts sufficient to identify the baggage or shipment (or shipments) of property; (2) assert liability for alleged loss, damage, injury, or delay; and (3) make claim for the payment of a specified or determinable amount of money.

The notation of loss or damage at the time of delivery does not constitute the filing of a claim. Thus, a claim should be filed immediately *in writing* with the carrier. The carrier may provide a standard claim form upon request but the claim may also be filed in a letter format as long as it meets the above requirements. Most claims must be supported by the original bill of lading (or a bond of indemnity in lieu thereof), evidence of the freight charges, and the original invoice for the goods shipped if it is available. To save time, these documents should be attached to the claim form or letter and copies of the documents retained by the receiver for its records.

### **Inspection Report**

Receivers should also request an inspection of the damage which request may be done orally to save time and then confirmed in writing. Carriers may or may not include an inspection of the goods as part of their investigation. Many times the amount of the claim does not warrant its sending out an inspector. If the carrier requests the receiver to complete an inspection form, the receiver should do so to the best of its ability.

When an inspection is made, it is a “joint” inspection by the receiver and the carrier’s representative. Both sign the report so the receiver should read it thoroughly to insure its accuracy and the receiver should not agree to something which would relieve the carrier of liability unless the facts are correct. Examples might be that all of the damage could have been noted at delivery rather than a partial notation, or inadequate or no interior packing, etc. *The completion of an inspection report does not comply with the claim filing requirements.*

### **Claim Processing by Carrier**

A carrier is required to respond in writing to a claim within 30 days of its receipt of the claim and indicate at that time if any additional documentary evidence or other pertinent information may be required by it to process the claim. The carrier must pay or decline the claim or make a firm compromise settlement offer within 120 days after receipt of the claim. If the carrier cannot process and dispose of the claim within 120 days, it must at the time of the expiration of the 120-day period and at the expiration of each succeeding 60-day period while the claim remains pending, advise the claimant in writing of the status of the claim and the reason for the delay in making a final disposition.

If a carrier pays a claim for the full invoice price of damaged goods, it is entitled to the goods as salvage. Receivers should not release damaged goods for salvage until the carrier has acknowledged liability for the full value.

### **Concealed Damage Claims**

Shipments may be received where there is no visible evidence of loss or damage but after delivery, and after signing the freight bill without exceptions, loss or damage is discovered. This type of claim is called one of concealed loss or damage and presents one of the major problems in the claim handling and settlement procedures. In these instances, the carrier, when it received the shipment, signed the bill of lading as receiving the goods in “apparent good order” without physically opening the cartons and inspecting the contents. Upon delivery, the receiver similarly accepted the shipment in “apparent good order” and made no notations to the contrary on the bill of lading or delivery receipt.

All receivers of freight should inspect the condition and count of the merchandise as soon as possible after delivery. A claimant’s position can only be improved by the prompt reporting of any damage or loss. The receiver should retain the cartons or containers, including packing material, until an inspection has been made or waived.

One of the major problems when dealing with concealed damage claims is establishing which party caused the damage. It is possible that the merchandise may have been damaged prior to, during, or after transportation. In this type of claim the burden of proof ordinarily shifts to the claimant to show that the carrier caused the damage, or, stated differently, to show that others who handled the goods did not cause the damage. Carriers will consider many factors during the course of their investigations of concealed damage claims--factors such as, but not limited to, the nature of the goods, adequacy of packaging,, movement before pickup or after delivery, when the damage was reported, retention and condition of original cartons, etc.

A claimant need not accept a declination of a claim based solely upon the receiver not having made a notation on the receipt at the time of delivery. A claimant is allowed to present evidence to indicate the actual condition of the goods and to support its position that the damage was caused by the carrier.

If it is difficult or impossible to determine definitely when, where, and how concealed loss or damage occurs, and who is responsible for it, there is no prohibition against the carrier offering a compromise offer of settlement. A claimant may accept or reject any such offer. If a compromise offer of settlement from a carrier is accepted by a receiver, the receiver might consider contacting the shipper as an additional source of recovery.

### **Two or More Carriers**

Sometimes goods are transported by two or more carriers from point of origin to point of destination on a through bill of lading. Claims may be filed with either the originating or delivering carrier, even though it may not be known which one may have caused the loss or damage. Connecting carriers may have to confer about various aspects of liability; but once the validity of a claim is established, they may not withhold settlement with the claimant until they agree between themselves who actually caused the loss or damage.

### **Insurance Requirement**

All motor common carriers of property and freight forwarders are required to maintain cargo insurance for the protection of the shipping public. Under this protection, the insurance company is directly liable to a shipper or receiver for any cargo claim for which the motor carrier or freight forwarder may be legally liable. Thus, it is normal for an insurance company to decline a claim its insured has declined. However, this insurance protection is of primary importance if a motor carrier unduly delays in settlement or is in poor financial condition including the filing of bankruptcy. No limitations in the policy itself, such as deductibles, may be used as a defense by the insurance companies against claims filed under the Federal Motor Carrier Safety Administration's prescribed cargo endorsements.

The name and address of the insurance company and the cargo policy number may be obtained by writing to the Federal Motor Carrier Safety Administration (FMCSA), Section of Insurance, HIA-30, 400 Seventh Street, SW MC-PA, Washington, D.C. 20590.

### **Commencement of Suit**

A claimant wishing to bring a civil action against a carrier for any claim disallowances must do so within two (2) years of the date the carrier gives the claimant written notice that it has disallowed any part of the claim specified in the notice. All motor carriers are required to designate an agent for service of legal process in each state into or through which it may operate. The name of this process agent may be obtained by writing to the FMCSA, Section of Insurance, HIA-30, 400 Seventh Street, SW MC-PA, Washington, D.C. 20590.

As an alternative to civil action, since January 1, 1996, all household goods carriers have been required to belong to a dispute settlement program which arbitrates loss and damage claim matters. The American Movers Conference (AMC) arbitration program has been accepted by the FMCSA. To qualify for the arbitration program, a claimant must send a letter of notification to the AMC within 60 days after a final offer or denial of a claim. For shipments delivered after January 1, 1996, "the carrier must not require the shipper to agree to utilize arbitration prior to the time that a dispute arises. If the dispute involves a claim for \$5,000 or less and the shipper requests arbitration, such arbitration shall be binding on the parties. If the dispute involves a claim for more than \$5,000 and the shipper requests arbitration, such arbitration shall be binding on the parties only if the carrier agrees to arbitration." 49 U.S. Code § 14708.

### **FMCSA Assistance**

The Federal Motor Carrier Safety Administration cannot arbitrate claims and does not have the statutory authority to adjudicate complaints to a final resolution. If a claimant is dissatisfied with a claim settlement or offer to settle, the claimant must pursue civil court action *except* that a loss and/or damage claim on a household goods shipment also may be pursued through arbitration through the carrier's dispute settlement program.