

English in Shipping

CARGO CLAIMS

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Prevention of Cargo Claims

By The Japan Ship Owners' Mutual Protection & Indemnity Association

Due to its frequency and the amounts involved, P&I Clubs are much concerned about the cargo claims. Our record shows, the reported cargo claims in 2008 policy year is counted approx. 2,700, whilst the total number of all kinds of claims reported in the same policy year is approx. 6,200. The cargo claims occupy about 44% of the all claims.

Most of the cargo loss or damage resulting cargo claims can be prevented by a proper maintenance of vessels and proper care of cargo. If a vessel causes loss or damage to her cargo and if carriers are held liable, carriers would have to compensate cargo interests for their damages. Furthermore, extra time and costs will be incurred in discharging the damaged cargo. In the worst case, cargo receivers might refuse to take delivery of the damaged cargo, that results in delay in the vessel's departure. Moreover, carriers' reputation may be deteriorated, which might result in loss of business. Accordingly, carriers are required to take proper care of cargo throughout their loading, navigating, discharging and delivering operations.

Now we are pleased to introduce you some points to prevent cargo claims in two installments. We hope that this would be of some assistance to you.

I. Major types of cargo claims and their typical causes

A. Wet damage

- Insufficient water tightness of hatch covers
- Bilge water remained in holds
- Rain during loading/discharging
- Dew condensation
- Ingress of ballast water into holds
- Crack of shell plate

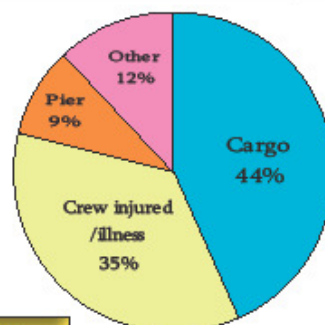
B. Physical damage

- Cargo collapse
- Insufficient or improper lashing

C. Shortage

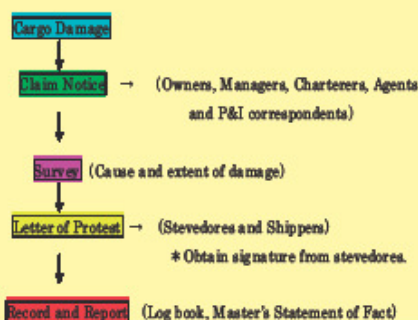
- Different methods for measures
- Adhesion of cargo to holds/tanks
- Spillage during loading/discharging
- Cheating by stevedores

Claims Data of 2008 Policy Year



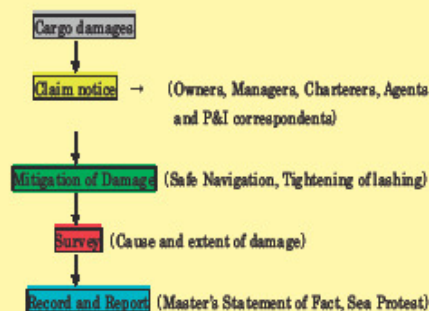
II. Flow chart

Cargo damage at loading port (e.g. Damage by stevedore's rough handling)



B. Cargo damage during the voyage

(e.g. Cargo collapse and/or water ingress during rough seas)



Speaking skills:

1. Discuss the ways to prevent cargo claims with your partner
2. Discuss the details of the types of cargo damage

Writing skills:

1. Summarise the cargo damage procedure at the loading port following the flow chart above
2. Summarise the cargo damage procedure during the voyage following the flow chart above

Vocabulary development:

1. Read the above text and design your own **cargo damage dictionary** by underlining the cargo damage terms (e.g. *cargo claims*) and their 'verb + noun collocations' (e.g. *prevent the cargo claim*)

Cargo Claims Guide

Source text: Capital Transportation Logistics ·

Nashua, New Hampshire · 888-289-4600 · www.shipandsave.com

1. [What is a claim?](#)
2. [Where can I obtain a claim form?](#)
3. [When do I file a claim?](#)
4. [Who should file a claim?](#)
5. [With whom should the claim be filed?](#)
6. [What are the required documents?](#)
7. [What is concealed loss or damage?](#)
8. [What is the burden of proof for a claim?](#)
9. [Should I pay the freight bill?](#)
10. [What should be done with the damaged goods?](#) (i.e. salvage retention)
11. [What happens if a claim is declined?](#)
12. [What is the proper follow up on a claim?](#) (i.e. claim status)
13. [Claim Filing Checklist](#)
14. [Who should I contact for claim prevention assistance?](#)

1. WHAT IS A CLAIM?

A claim is a demand in writing for a specific amount of money that contains sufficient information to identify the shipment received by the originating carrier, delivering carrier, or carrier on whose line the alleged loss, damage, or delay occurred within the time limits specified in the B/L contract.

2. WHERE CAN I OBTAIN A CLAIM FORM?

Claim forms may be obtained from the delivering carrier's website, by calling Capital Transportation Logistics or clicking the link listed below. However, a specific form is not required and the claim can be filed in letter form.

 [Download Loss and Damage Claim Form](#)

3. WHEN DO I FILE A CLAIM?

Claims should be filed promptly once loss or damage is discovered. Time limit for filing a claim is 9 months from date of delivery, or in the event of non-delivery, 9 months after a reasonable time for delivery has elapsed. If a claim is not received by the carrier within this time, payment is barred by law.

4. WHO SHOULD FILE A CLAIM?

A claim may be filed by the shipper, consignee, or the owner of the goods. Be certain to clearly show the name and complete address of the claimant.

If a shipment moved at a released rate, it may be to the consignee's benefit to contact the shipper prior to filing.

5. WITH WHOM SHOULD THE CLAIM BE FILED?

The claim may be filed with the delivering carrier.

6. WHAT ARE THE REQUIRED DOCUMENTS?

A. ORIGINAL INVOICE

The original invoice verifies that the amount of the claim does not exceed the terms of sale (value of the goods) at destination, and excludes any prospective profit. The original invoice must disclose all discounts and allowances, if any.

B. ORIGINAL PAID FREIGHT BILL¹

The original paid freight bill showing that freight charges on the shipment against which the claim is filed have been paid in full. In order for a claim to be finalized, all freight charges must be paid.

C. REPAIR OR REPLACEMENT INVOICE

When sending a repair invoice, it should include a breakdown of hours, labor rate, and materials. (If applicable)

7. WHAT IS CONCEALED LOSS OR DAMAGE?

When damage is discovered after the delivery receipt is signed and the cartons are opened, it is termed concealed damage. When this occurs, the carrier should be immediately contacted at the delivering terminal, to request an inspection. While awaiting inspection, the consignee must hold the shipping container and its contents in the same condition they were in when damage was discovered. The inspection should be accomplished without delay. The carrier will send a representative to perform the inspection or will waive² inspection. If the carrier does not respond within 5 working days, the consignee may make the inspection himself.

See NMFC Item 300135 – Request for Inspection should be confirmed in writing by mail.

The inspection report is not a claim. It is the responsibility of the claimant to file a cargo claim within the prescribed time frame and to respond to any requests from the carrier for supporting documentation. The claim will then be concluded based on facts determined during investigation.

8. WHAT IS THE BURDEN OF PROOF FOR A CLAIM?

The law requires that the claimant accomplish three things:

- The carrier received the freight in good condition at origin
- The freight was short or damaged at destination

¹ Freight bill - Carrier's invoice for freight charges applicable to a shipment. Also called freight invoice. (*Račun za vožarinu, vozarinska faktura*); a bill rendered by a carrier to a consignee of freight and containing an identifying description of the freight, the name of the shipper, the point of origin of the cargo etc.

² Waive:

- to set aside or relinquish ⇒ to waive one's right to something
- to refrain from enforcing (a claim) or applying (a law, penalty, etc)
- *odustati od nečeg (tužbe / zahtjeva / reklamacije)*

- The dollar amount of loss or damage

9. SHOULD I PAY THE FREIGHT BILL?

Section 10761 of the Interstate Commerce Act (49 USC 10761) prohibits a carrier from collecting any charges different from those published in the carrier's effective tariff. The payment of freight charges may not be postponed due to alleged loss or damage. These charges should be paid in full and the portion applicable to the lost or damaged item should be included in the freight claim.

The following items are important to remember:

- Claims and payment of freight charges are two entirely different transactions.
- ICC regulations prohibit withholding payment of freight bills because of a pending claim (Administrative Ruling No. 128)
- Without payment of the freight charges, payment for transportation has not been made. A valid claim will not be paid until freight charges are made.

10. WHAT SHOULD BE DONE WITH THE DAMAGED GOODS? (i.e. SALVAGE RETENTION)

Salvage must be retained until the claim is resolved, or until the claimant is given disposition by the carrier.

No salvage is to be dumped without written authorization from the carrier.

11. WHAT HAPPENS IF A CLAIM IS DECLINED?

If the claim is declined, and the claimant feels it should have been paid, the claimant should present his rebuttal in letter form to the examiner who declined it. If claimant has additional information or evidence, that should be included. Always refer to the assigned claim number when corresponding with an examiner.

12. WHAT IS THE PROPER FOLLOW UP ON A CLAIM? (i.e. CLAIM STATUS)

The carrier will acknowledge the claim in writing within 30 days and assign a number which identifies the shipment. The carrier will pay, refuse payment or make a firm compromise within 120 days after receipt of claim. In all cases make sure the carrier involved with the claim acknowledges receipt of the claim.

13. CLAIM FILING CHECKLIST

Prior to submitting your claim, be sure to check the following items:

- The claim must be in writing, specifying dollar amount and reason for claim, identifying shipment, claimant name and address. Do not submit more than one claim on each form.
- The claim must be filed within applicable time limits.
 - Documents which should be included with a claim: Original Bill of Lading (or Bond of Indemnity)
 - Copy of Paid Freight Bill
 - Original Invoice Showing All Discounts
 - Repair Invoice (If Applicable)
 - Inspection Report (If Applicable)
- Send the claim to your local delivering terminal or to the general claims office.
- Retain copy of claim and all supporting documents for your files.

14. WHO SHOULD I CONTACT FOR CLAIM PREVENTION ASSISTANCE?

If you would like advice or assistance with any aspect of your company's claim prevention program, please call Capital Transportation Logistics.

What question does the text below answer?

a. CLAIM FILING CHECKLIST	1. _____ ? A claim is a demand in writing for a specific amount of money that contains sufficient information to identify the shipment received by the originating carrier, delivering carrier, or carrier on whose line the alleged loss, damage, or delay occurred within the time limits specified in the B/L contract.
b. SHOULD I PAY THE FREIGHT BILL?	
c. WHAT ARE THE REQUIRED DOCUMENTS?	2. _____ ? Claim forms may be obtained from the delivering carrier's website, by calling Capital Transportation Logistics or clicking the link listed below. However, a specific form is not required and the claim can be filed in letter form.
d. WHAT HAPPENS IF A CLAIM IS DECLINED?	
e. WHAT IS A CLAIM?	
f. WHAT IS CONCEALED LOSS OR DAMAGE?	3. _____ ? Claims should be filed promptly once loss or damage is discovered. Time limit for filing a claim is 9 months from date of delivery, or in the event of non-delivery, 9 months after a reasonable time for delivery has elapsed. If a claim is not received by the carrier within this time, payment is barred by law.
g. WHAT IS THE BURDEN OF PROOF FOR A CLAIM?	
h. WHAT IS THE PROPER FOLLOW UP ON A CLAIM? (i.e. CLAIM STATUS)	4. _____ ? A claim may be filed by the shipper, consignee, or the owner of the goods. Be certain to clearly show the name and complete address of the claimant. If a shipment moved at a released rate, it may be to the consignee's benefit to contact the shipper prior to filing.
i. WHAT SHOULD BE DONE WITH THE DAMAGED GOODS? (i.e. SALVAGE RETENTION)	
j. WHEN DO I FILE A CLAIM?	5. _____ ? The claim may be filed with the delivering carrier.
k. WHERE CAN I OBTAIN A CLAIM FORM?	
l. WHO SHOULD FILE A CLAIM?	6. _____ ? A. ORIGINAL INVOICE The original invoice verifies that the amount of the claim does not exceed the terms of sale (value of the goods) at destination, and excludes any prospective profit. The original invoice must disclose all discounts and allowances, if any. B. ORIGINAL PAID FREIGHT BILL The original paid freight bill showing that freight charges on the shipment against which the claim is filed have been paid in full. In order for a claim to be finalized, all freight charges must be paid.
m. WHO SHOULD I CONTACT FOR CLAIM PREVENTION ASSISTANCE?	
n. WITH WHOM SHOULD THE CLAIM BE FILED?	C. REPAIR OR REPLACEMENT INVOICE When sending a repair invoice, it should include a breakdown of hours, labor rate, and materials. (If applicable)

a) CLAIM FILING CHECKLIST b) SHOULD I PAY THE FREIGHT BILL? c) WHAT ARE THE REQUIRED DOCUMENTS? d) WHAT HAPPENS IF A CLAIM IS DECLINED? e) WHAT IS A CLAIM? f) WHAT IS CONCEALED LOSS OR DAMAGE? g) WHAT IS THE BURDEN OF PROOF FOR A CLAIM? h) WHAT IS THE PROPER FOLLOW UP ON A CLAIM? (i.e. CLAIM STATUS) i) WHAT SHOULD BE DONE WITH THE DAMAGED GOODS? (i.e. SALVAGE RETENTION) j) WHEN DO I FILE A CLAIM? k) WHERE CAN I OBTAIN A CLAIM FORM? l) WHO SHOULD FILE A CLAIM? m) WHO SHOULD I CONTACT FOR CLAIM PREVENTION ASSISTANCE? n) WITH WHOM SHOULD THE CLAIM BE FILED?	7. _____ ? When damage is discovered after the delivery receipt is signed and the cartons are opened, it is termed concealed damage. When this occurs, the carrier should be immediately contacted at the delivering terminal, to request an inspection. While awaiting inspection, the consignee must hold the shipping container and its contents in the same condition they were in when damage was discovered. The inspection should be accomplished without delay. The carrier will send a representative to perform the inspection or will waive inspection. If the carrier does not respond within 5 working days, the consignee may make the inspection himself. See NMFC Item 300135 – Request for Inspection should be confirmed in writing by mail. The inspection report is not a claim. It is the responsibility of the claimant to file a cargo claim within the prescribed time frame and to respond to any requests from the carrier for supporting documentation. The claim will then be concluded based on facts determined during investigation. 8. _____ ? The law requires that the claimant accomplish three things: • The carrier received the freight in good condition at origin • The freight was short or damaged at destination • The dollar amount of loss or damage 9. _____ ? Section 10761 of the Interstate Commerce Act (49 USC 10761) prohibits a carrier from collecting any charges different from those published in the carrier's effective tariff. The payment of freight charges may not be postponed due to alleged loss or damage. These charges should be paid in full and the portion applicable to the lost or damaged item should be included in the freight claim. The following items are important to remember: • Claims and payment of freight charges are two entirely different transactions. • ICC regulations prohibit withholding payment of freight bills because of a pending claim (Administrative Ruling No. 128) • Without payment of the freight charges, payment for transportation has not been made. A valid claim will not be paid until freight charges are made. 10. _____ ? Salvage must be retained until the claim is resolved, or until the claimant is given disposition by the carrier. No salvage is to be dumped without written authorization from the carrier. 11. _____ ? If the claim is declined, and the claimant feels it should have been paid, the claimant should present his rebuttal in letter form to the examiner who declined it. If claimant has additional information or evidence, that should be included. Always refer to the assigned claim number when corresponding with an examiner.
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a) CLAIM FILING CHECKLIST b) SHOULD I PAY THE FREIGHT BILL? c) WHAT ARE THE REQUIRED DOCUMENTS? d) WHAT HAPPENS IF A CLAIM IS DECLINED? e) WHAT IS A CLAIM? f) WHAT IS CONCEALED LOSS OR DAMAGE? g) WHAT IS THE BURDEN OF PROOF FOR A CLAIM? h) WHAT IS THE PROPER FOLLOW UP ON A CLAIM? (i.e. CLAIM STATUS) i) WHAT SHOULD BE DONE WITH THE DAMAGED GOODS? (i.e. SALVAGE RETENTION) j) WHEN DO I FILE A CLAIM? k) WHERE CAN I OBTAIN A CLAIM FORM? l) WHO SHOULD FILE A CLAIM? m) WHO SHOULD I CONTACT FOR CLAIM PREVENTION ASSISTANCE? n) WITH WHOM SHOULD THE CLAIM BE FILED?	12. _____ ? The carrier will acknowledge the claim in writing within 30 days and assign a number which identifies the shipment. The carrier will pay, refuse payment or make a firm compromise within 120 days after receipt of claim. In all cases make sure the carrier involved with the claim acknowledges receipt of the claim. 13. _____ ? Prior to submitting your claim, be sure to check the following items: • The claim must be in writing, specifying dollar amount and reason for claim, identifying shipment, claimant name and address. Do not submit more than one claim on each form. • The claim must be filed within applicable time limits. ○ Documents which should be included with a claim:Original Bill of Lading (or Bond of Indemnity) ○ Copy of Paid Freight Bill ○ Original Invoice Showing All Discounts ○ Repair Invoice (If Applicable) ○ Inspection Report (If Applicable) • Send the claim to your local delivering terminal or to the general claims office. • Retain copy of claim and all supporting documents for your files. 14. _____ ? If you would like advice or assistance with any aspect of your company's claim prevention program, please call Capital Transportation Logistics.
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1. WHAT IS A CLAIM?

A claim is a demand in *speech / writing / letter* for a specific amount of money that contains sufficient information to identify the *ship / shipment / shipping / package* received by the originating carrier, delivering carrier, or carrier on whose line the alleged loss, damage, or delay occurred within the time limits specified in the B/L contract.

2. WHERE CAN I OBTAIN A CLAIM FORM?

Claim forms may be _____ from the delivering carrier's website, by calling Capital Transportation Logistics or clicking the link listed below. However, a specific form is not required and the _____ can be filed in letter form.

3. WHEN DO I FILE A CLAIM?

Claims should be _____ promptly once loss or damage is discovered. Time limit for filing a _____ is 9 months from date of delivery, or in the event of non-delivery, 9 months after a reasonable time for delivery *has elapsed / expanded / extended*. If a claim is not received by the carrier within this time, payment is *brought / barred / borne / bearing* by law.

4. WHO SHOULD _____ A CLAIM?

A claim may be filed by the shipper, _____, or the owner of the goods. Be certain to clearly show the name and complete address of the *claimant / sender / author*.

If a shipment moved at a released rate, it may be to the consignee's benefit to contact the shipper _____ to filing.

5. WITH WHOM SHOULD THE CLAIM BE _____?

The _____ may be filed with the *contracting / delivering / receiving / carrying* carrier.

6. WHAT ARE THE REQUIRED DOCUMENTS?

A. ORIGINAL INVOICE

The original invoice verifies that the amount of the _____ does not exceed the terms of sale (_____ of the goods) at destination, and excludes any prospective profit. The original _____ must disclose all discounts and allowances, _____ any.

B. ORIGINAL PAID FREIGHT BILL

The original paid freight bill showing that freight *cargoes / charges / taxes / fees* on the shipment against which the claim is _____ have been paid in full. In order for a claim to be finalized, all freight charges must be _____.

C. REPAIR OR REPLACEMENT INVOICE

When invoice a sending repair, it should include a *list / breakdown / division / allocation* of hours, labor rate, and materials. (If applicable)

7. WHAT IS CONCEALED LOSS OR DAMAGE?

When damage is discovered after the delivery receipt is *called / signed / written / spoken* and the cartons are opened, it is termed _____ damage. When this occurs, the *consignee / carrier / shipper / port authority* should be immediately contacted at the delivering terminal, to request an inspection. While awaiting inspection, the consignee must hold the shipping

container and its contents in the same _____ they were in when damage was discovered. The inspection should be accomplished without _____. The carrier will send a representative to perform the inspection or will **warn / waive / wait / waste** inspection. If the carrier does not **answer / reply / respond / return** within 5 working days, the consignee may make the inspection himself.

Request for Inspection should be confirmed in **letter / writing / post / document** by mail.

The inspection report is not a claim. It is the responsibility of the _____ (*person who makes a claim*) to file a cargo claim within the prescribed time frame and to respond to any requests from the carrier for supporting documentation. The _____ will then be concluded based on facts determined during **investigation / examination / study / research**.

8. WHAT IS THE BURDEN OF _____ FOR A CLAIM?

The law requires that the claimant accomplish three things:

- The carrier received the _____ in good condition at origin
- The freight was short or _____ at destination
- The dollar amount of _____ or damage

9. SHOULD I PAY THE FREIGHT BILL?

Section 10761 of the Interstate Commerce Act (49 USC 10761) prohibits a carrier from **gathering / collecting / getting / filing** any charges different from those published in the carrier's effective **tariff / tariff**. The payment of freight charges may not be postponed due to _____ (*navodni*) loss or damage. These charges should be paid in full and the **portion / part / section / division** applicable to the lost or damaged item should be included in the freight claim.

The following items are important to remember:

- Claims and payment of freight charges are two entirely different **actions / activities / transactions / transfers**.
- ICC regulations prohibit withholding payment of freight bills because of a **falling / coming / pending / holding** claim (Administrative Ruling No. 128)
- Without payment of the freight charges, payment for transportation has not been made. A valid claim will not be paid until freight charges are made.

10. WHAT SHOULD BE DONE WITH THE DAMAGED GOODS? (i.e. SALVAGE RETENTION)

Salvage must be retained until the _____ is resolved, or until the claimant is given disposition by the carrier.

No salvage is to be **dumped / dived / jumped / thrown** without written authorization from the carrier.

11. WHAT HAPPENS IF A CLAIM IS DECLINED?

If the claim is _____, and the claimant feels it should have been _____, the claimant should **prepare / present / show / prevent** his rebuttal in letter form to the examiner who _____ it. If _____ has additional information or evidence, that should be included.

Always **prefer / refer / return / resend** to the assigned claim number when corresponding with an examiner.

12. WHAT IS THE PROPER FOLLOW UP ON A CLAIM? (i.e. CLAIM STATUS)

The carrier will **acknowledge / deny / refuse / accept** the claim in writing within 30 days and assign a number which identifies the shipment. The carrier will pay, refuse payment or make a firm compromise within 120 days after _____ of claim. In all cases make sure the carrier involved with the claim _____ (=confirms) receipt of the claim.

13. CLAIM FILING CHECKLIST

_____ to (=before) submitting your claim, be sure to _____ the following items:

- The claim must be in writing, specifying dollar amount and _____ for claim, identifying shipment, _____ name and address. Do not submit more than one claim on each form.
- The claim must be filed within applicable time _____.
 - Documents which should be included with a claim: Original _____ of Lading (or _____ of Indemnity)
 - Copy of Paid _____ Bill
 - Original Invoice Showing All _____ (=reductions in price)
 - Repair Invoice (If Applicable)
 - Inspection Report (If _____)
- Send the _____ to your local delivering terminal or to the general claims office.
- Retain _____ of claim and all supporting documents for your _____ (=records).

14. WHO SHOULD I CONTACT FOR CLAIM PREVENTION ASSISTANCE?

If you would like advice or _____ with any aspect of your company's claim prevention program, please call Capital Transportation Logistics.

(Read instructions on Back Before Filling in This Form)

This claim for \$ _____ is made against your company for ☐ Damage in connection with the following described shipment:
☐ Loss

If shipment reconsigned en route, state particulars: _____

(Number and description of articles, nature and extent of loss or damage, invoice price of articles, amount of claim, etc.)

The following documents are submitted in support of this claim:

☐ Original Bill of Lading ☐ Original invoice or certified copy

☐ Original paid freight bill or other carrier document bearing notation of loss or damage if not shown on freight bill

☐ Carrier's Inspection Report Form (Concealed loss or damage). ☐ Shipper's concealed loss or damage form

☐ Consignee concealed loss or damage form. ☐ Other particulars obtainable in proof of loss or damage claimed

INDEMNITY AGREEMENT

The foregoing statement of facts is hereby certified as correct.

(Date)	(Claimant's Name)
	(Signature)
	(Company, Address, Title)

Collate: to gather or arrange in their proper sequence (the pages of a report, the sheets of a book, the pages of several sets of copies, evidence, documents etc.).

Translate the 'Standard Form' above into Croatian

(for technical terms use the English –Croatian Maritime Dictionary (www.pfri.uniri.hr/~bopri))



Marine Cargo Claim Form

Policy No.:		Claim No.:	
Name of Insured:			
Address:			
Tel/Mobile No(s):		Fax No/s:	
E-mail:		I.D. Card/Co. Reg. No.:	
Consignment:			
Vessel:		Country of Origin:	
Date of Arrival:		Date of Goods Cleared:	
Loss Type:	☐ Shortages ☐ Wetting ☐ Damages		
Estimate of Loss:	€	Sum Insured Value:	€
Were the goods transhipped? ☐ Yes ☐ No			
Who is your Shipping Agent?			
Who is your haulier (burdnar)?			
Terms of shipment: (Tick applicable)	☐ CIF ☐ FOB ☐ Ex WORKS ☐ CFR ☐ FAS ☐ FCA ☐ Other		
Address where goods can be surveyed if necessary:			

INCOTERMS:

CIF (Cost, Insurance, Freight)

FOB (Free on Board)

Ex Works (Free from manufacturer's premises)

FAS (Free Alongside)

CFR (Cost and Freight) *A trade term requiring the seller to arrange for the carriage of goods by sea to a port of destination, and provide the buyer with the documents necessary to obtain the goods from the carrier. Under CFR, the seller does not have to procure marine insurance against the risk of loss or damage to the goods during transit.*

FCA (FCA-Free Carrier-(named place) Free Carrier" *means that the seller fulfils his obligation to deliver when he has handed over the goods, cleared for export, into the charge of the carrier named by the buyer at the named place or point. If no precise point is indicated by the buyer, the seller may choose within the place or range stipulated where the carrier shall take the goods into his charge. When, according to commercial practice, the seller's assistance is required in making the contract with the carrier (such as in rail or air transport) the seller may act at the buyer's risk and expense.*

FIO - Free In and Out - *confers the responsibility to the charterers (shippers / receivers) to arrange the stevedores and to load / discharge the cargo on their own account ie free of expense to vessel owners, who are still accountable for port charges.*

FIOST - Free In and Out Stowed and Trimmed - *as for FIO, but also including stowing and trimming free of expense to vessel owner.*

A Guide to Marine Cargo Claims

Source text: ONC Lawyers, Hong Kong, www.onc.hk

What to Do When Your Cargo is Lost or Damaged?

Carriage of goods by sea typically involves multiple parties and numerous related contracts. When a cargo is lost or damaged, it is not at all easy to determine who has been at fault and who should be liable. Before finding out who to blame, there is something more important that the consignee or cargo owner should do first.

1. engage a surveyor to ascertain and collate evidence of the loss or damage;
2. notify the following parties or their agents in writing of the loss or damage:-
 - the insurer,
 - the carrier,
 - the sub-carrier or other bailee³ or their agents where the goods have been shipped or handled by them before delivery to the consignee.

Unless a notice is given in the above manner, there is a presumption of good order at delivery against the consignee or on-carrier. Such a notice is called a bad order receipt.

If the carrier has abandoned the voyage and delivers the damaged goods at an intermediate port, the insurance cover may then come to an end. The consignee must notify the underwriters at once and request the cover to continue.

³ depozitar

What to Do When Your Cargo is Lost or _____ ?

Carriage of _____ by sea typically involves multiple parties and numerous related contracts. When a cargo is lost or damaged, it is not at all easy to determine who has been at _____ (*=who is to blame*) and who should be liable. Before _____ out who to blame, there is something more important that the consignee or _____ owner should do first.

1. engage a _____ to ascertain and collate evidence of the loss or damage;
2. notify the following parties or their _____ in writing of the loss or damage:-
 - the insurer,
 - the carrier,
 - the sub-carrier or other _____ (*a person to whom the possession of goods is transferred under a bailment*) or their agents where the goods have been shipped or handled by them before delivery to the consignee.

Unless a _____ is given in the above manner, there is a presumption of good order at delivery against the consignee or on-carrier. Such a notice is called a _____ order receipt. If the carrier has abandoned the _____ and delivers the damaged goods at an intermediate _____, the insurance cover may then come to an end. The consignee must _____ (*advise, inform*) the underwriters at once and request the cover to continue.

What If General Average Has Arisen?

This arises when a deliberate sacrifice or expenditure is incurred for the common safety of the other cargo interests. In a general average situation, all the consignees of the cargoes on board the carrying ship will be notified as soon as possible and those consignees whose cargoes are not sacrificed and thereby indirectly benefited would likely be asked to furnish general average security by way of an average bond together with additional security. If an underwriters' guarantee is required as the form of additional security, those consignees should immediately inform the insurers who will then make the necessary arrangements.

If a general average deposit is required, the consignees will have to pay the amount demanded in return for a receipt for it. They should then request the insurers to reimburse the amount paid.

Put the parts of the sentences in the right order (make the necessary changes, e.g. fullstops, capital letters, commas etc.):

What If General Average Has Arisen?

when a deliberate sacrifice or expenditure is incurred for the common safety of the other cargo interests this arises

will be notified as soon as possible in a general average situation all the consignees of the cargoes on board the carrying ship

would likely be asked to furnish general average security by way of an average bond the consignees whose cargoes are not sacrificed and thereby indirectly benefited together with additional security

those consignees should immediately inform the insurers if an underwriters' guarantee is required as the form of additional security who will then make the necessary arrangements

in return for a receipt for it the consignees will have to pay the amount demanded if a general average deposit is required

they should then amount reimburse the insurers to request the paid

What Evidence Is Required?

The consignee or cargo owner has the initial burden of proving the physical loss or damage. This is usually done by proving the condition at shipment by production of a clean bill of lading and at discharge by a surveyor report or bad order receipts; or in the case of non-apparent loss or damage, by a notice of loss within three days of taking delivery, unless the cargo has been the subject of a joint survey at the time of delivery. When the claimant has made out a prima facie case, the burden of proof is then shifted to the carrier who must then prove to the contrary to establish his defence.

1. The best way of proving the loss of or damage to cargo is to immediately call for a joint survey, one which is attended by representatives of both the cargo receiver and the carrier.

In addition, the following documents may be required:

2. Policy of certificates of insurance, if appropriate

3. Shipping documents

- Certificates of origin, condition and suitability of goods for export
- Particulars of specifications, weight and/or measurement
- Invoices in respect of the full interest insured
- Bills of lading (and charterparty, if appropriate)
- Letter of indemnity, if any

4. Transit ex ship to final destination

- Receipt given by the carrier on collection of the goods
- Receipt given to the carrier upon delivery of the goods

5. Damaged goods

- Surveyor report
- Details of sale, where damaged goods have been disposed of
- Details of costs of reconditioning, if goods have been reconditioned

6. Short delivery

- Short landing certificates, if issued by the carrier
- Surveyor report

The above list may not be exhaustive, further documents may be required if necessary.

[Read the text above and discuss the meaning of the underlined terms \(concepts\)](#)

How to Claim on Policies?

The cargo owner or claimant must check what type of insurance has been taken out. Once notified, the insurer will usually appoint a surveyor to examine the goods. Cargo insurance is usually written in one of two ways, either all risks (Institute Cargo clause (A)) or named perils (Institute Cargo clauses (B) and (C)). In the former case, the insurer agrees to indemnify for all risks of loss of or damage to the subject-matter insured and in the latter, for loss or damage caused by or attributable to a particular peril or risk, for example fire or explosion, etc. The insured is entitled to claim whether he has suffered a total loss in his goods, which arises when the goods insured have been destroyed, or a partial loss. In some situations, the claimant may claim for constructive total loss if, for example, the goods have suffered such damage that they could not be preserved without an expenditure which would exceed their value. In this case, a notice of abandonment must be tendered to the insurers without delay.

Supply the missing verbs in the right place

How to Claim on Policies?

- The cargo owner or claimant must what type of insurance has been **(check, taken out)**.
- Once, the insurer will usually a surveyor to the goods **(appoint, notified, examine)**.
- Cargo insurance usually in one of two ways, either all risks (Institute Cargo clause (A)) or named perils (Institute Cargo clauses (B) and (C)) **(written, is)**.
- In the former case, the insurer to for all risks of loss of or damage to the subject-matter insured and in the latter, for loss or damage by or attributable to a particular peril or risk, for example fire or explosion, etc. **(agrees, caused, indemnify)**
- The insured is to claim whether he has a total loss in his goods, which when the goods insured have been, or a partial loss. **(arises, entitled, suffered, destroyed)**
- In some situations, the claimant may for constructive total loss if, for example, the goods have such damage that they could not be without an expenditure which would their value. **(claim, exceed, suffered, preserved)**
- In this case, a notice of abandonment must to the insurers without delay. **(tendered, be)**

Supply the missing words:

The cargo owner or claimant must _____ what type of insurance has been taken out. Once notified, the insurer will usually _____ a surveyor to _____ the goods. Cargo insurance is usually written in one of two ways, either all _____ (Institute Cargo clause (A)) or named _____ (Institute Cargo clauses (B) and (C)). In the _____ case, the insurer agrees to indemnify for all risks of loss of or damage to the subject-matter insured and in the _____, for loss or damage caused by or attributable to a particular peril or risk, for example fire or explosion, etc.

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Who Is Entitled to Sue Whom?

Contract

Once the consignee or cargo owner has ascertained the extent of the loss or damage, he will then have to consider against whom he should claim for his loss. If the cargo has been insured, he, being the insured, or where the benefit of the policy of insurance has been assigned to him, will have a right to make a claim against the insurer.

Independent of any insurance, the shipper, who has entered into a contract of carriage with the carrier, may rely on the contract of carriage and claim against the carrier. The terms of the contract is evidenced in the bill of lading. The consignee is not the original party to that contract of carriage.

However, upon receiving the bill of lading from the shipper, he will also acquire the right to sue the carrier by reason of the transfer of the bill of lading to himself.

The carrier is the person who undertakes the duty of transporting the goods. In some cases a forwarder may contract with a shipper in the capacity of a carrier. It is therefore the forwarder who will be liable to the shipper on the contract of carriage.

Having acquired the right to sue, we need to consider whom to sue. It is usual for claims to be brought against the contractual carrier as named in the bill of lading, who is likely to be the shipowner or the demise charterer.

Answer the following questions:

1. When does the consignee or cargo owner decide against whom he should claim for his loss?
2. In which case will the insured have a right to make a claim against the insurer?
3. What does the shipper rely on in order to claim against the carrier?
4. Where are the terms of the contract evidenced ?
5. Who are the original parties to the contract of carriage?
6. In what case does the consignee acquire the right to sue the carrier?
7. What is the duty of the carrier?
8. Who else can enter the contract with a shipper in the capacity of a carrier?
9. In this case, who will be liable to the shipper on the contract of carriage?
10. Who are claims usually brought against in the contracts of carriage?

Supply the missing terms

Who Is Entitled to Sue Whom?

Once the consignee or cargo owner has _____ the extent of the loss or damage, he will then have to consider against whom he should claim for his _____. If the cargo has been insured, he, being the insured, or where the benefit of the policy of insurance has been assigned to him, will have a right to make a _____ against the insurer.

Independent of any insurance, the _____, who has entered into a contract of carriage with the _____, may rely on the contract of carriage and claim against the carrier. The terms of the contract is evidenced in the _____. The consignee is not the original party to that _____.

However, upon receiving the bill of lading from the shipper, he will also acquire the right to _____ the carrier by reason of the _____ of the bill of lading to himself.

The carrier is the person who _____ the duty of transporting the goods. In some cases a _____ may contract with a shipper in the capacity of a carrier. It is therefore the forwarder who will be _____ to the shipper on the contract of carriage.

Having _____ the right to sue, we need to consider whom to sue. It is usual for claims to be _____ against the _____ carrier as named in the bill of lading, who is likely to be the shipowner or the demise _____.

Tort⁴/Bailment⁵

Apart from the contract of carriage, a person involved in the sea transport *may owe a duty in tort to the cargo owner* to exercise due care in handling his cargo. Such duty of care exists irrespective of whether there is any contract between the two parties. A bailment is the relationship that exists when the bailor⁶ of the goods allows another to have temporary custody of them. Warehousemen and depositories are bailees, as well as carriers.

An action for negligence may lie against any person if the cargo is lost or damaged through his negligent acts or omissions, whether he is the carrier, the carrier's servants, or independent contractors such as stevedores.

An action for conversion or wrongful interference with the goods may be brought against anyone who has delivered the goods to a party not entitled to them, whether or not he may have acted in good faith and without negligence.

If the shipowner or demise charterer is not the contractual carrier, any claim against them has to be founded in tort or bailment, since there is no direct contractual relationship between the shipper and the shipowner or demise charterer. A claim in tort or bailment may sometimes deprive the shipowner or demise charterer of the protections afforded to them by the bill of lading.

⁴**Tort:** a civil wrong arising from an act or failure to act, independently of any contract, for which an action for personal injury or property damages may be brought

Tort laws are laws that offer remedies to individuals harmed by the unreasonable actions of others. Tort claims usually involve state law and are based on the legal premise that individuals are liable for the consequences of their conduct if it results in injury to others (McCarthy & Cambron-McCabe, 1992). Tort laws involve civil suits, which are actions brought to protect an individual's private rights. There are two major categories of torts typically seen in education-related cases: intentional and negligence.

(Hrv. 'delikt', 'krivica', 'odgovornost' (u građanskom pravu), zaštita prava pojedinca od drugih pojedinaca; odgovornost pojedinca)

⁵ 1. *roba na čuvanju*; 2. *jamstvo; kaucija*; A bailment is delivery of goods by one person to another for some purpose under a contract.

⁶ **Bailor:** deponent

Supply the missing terms:

Apart from the contract of carriage, a person involved in the *may owe a duty in tort to the cargo owner* to due care in handling his cargo. Such duty of care exists irrespective of whether there is any contract between the two parties. A is the relationship that exists when the bailor of the goods allows another to have temporary of them.

Warehousemen and depositories are, as well as carriers. **(bailees, exercise, bailment, custody, sea transport)**

An action for may lie against any person if the cargo is lost or damaged through his acts or omissions, whether he is the carrier, the carrier's servants, or independent contractors such as. **(negligence, stevedores, negligent)**

An action for conversion or interference with the goods may be anyone who has delivered the goods to a party not to them, whether or not he may have acted in good and without negligence. **(wrongful, brought against, entitled, faith)**

If the or demise charterer is not the, any claim against them has to be founded in tort or bailment, since there is no direct contractual relationship between the and the shipowner or demise charterer. A or bailment may sometimes deprive the shipowner or demise charterer of the protections afforded to them by the bill of lading. **(claim in tort, contractual carrier, in tort, shipper)**