1026.5 BAILMENT: NEGLIGENCE OF CARRIER PRESUMED

There is no dispute that (goods) were delivered to (carrier) in good condition and were damaged while in (carrier)'s possession. The law provides that, from these facts, you may presume that the damage to the goods was due to the negligence of (carrier). But there is evidence in the case which may be believed by you that (carrier) was free from negligence (or that, notwithstanding its negligence, the negligence did not contribute to the damage). You must resolve the conflict. Unless (carrier) convinces you by the greater weight of the credible evidence, to a reasonable certainty, that it is more probable that (carrier)was not negligent, you must find (carrier) negligent.

COMMENT

This instruction and comment were approved in 1974. Editorial changes were made in 2004.

14 Am. Jur.2d Carriers, § 620, p. 134; M. Capp Mfg. Co. v. Moland, 22 Wis.2d 424, 430, 126 N.W.2d 34 (1964); Mastercraft Paper Co. v. Consolidated Freightways, 55 Wis.2d 674, 680-81, 200 N.W.2d 596 (1972); L. L. Richards Mach. Co. v. McNamara Motor Express, 7 Wis.2d 613, 616, 97 N.W.2d 396 (1959).

Wis. Stat. § 407.301(4) provides: "The issuer [carrier] may by inserting in the bill the words 'shipper's weight, load and count' or other words of like purport indicate that the goods were loaded by the shipper; and if such statement is true the issuer [carrier] shall not be liable for damages caused by the improper loading. But their omission does not imply liability for such damages." See M. Capp Co. v. Moland, supra; Mastercraft Paper Co. v. Consolidated Freightways, supra.

"A notation or statement in a bill of lading that the goods were received by the carrier in apparent good order or condition makes a prima facie case, and the burden is then on the carrier to prove that they were not in good condition when received." 13 C.J.S. Carriers § 254(d) p. 538. "The presumption can be overridden if the carrier establishes the defect it claims existed was a hidden or concealed defect, . . . the burden is on the carrier to overcome the presumption." Allis-Chalmers Mfg. Co. v. Eagle Motor Lines, 55 Wis.2d 39, 46, 198 N.W.2d 162 (1972).

Damage caused by any carrier en route may be recovered from the delivering carrier, and the delivering carrier may recover, in turn, from the carrier on whose line the injury shall have been sustained.

Carmack amendment to the Interstate Commerce Act, 49 U.S.C.A. § 20(11), (12); Rudy v. Chicago, M., St. P. & P. R.R., 5 Wis.2d 37, 42, 92 N.W.2d 367 (1958).

"The law imposes a duty of reasonable inspection on an intermediate railroad carrier with respect to employees of connecting carrier. . . . The duty of reasonable inspection imposed upon originating and intermediate carrier is 'to ascertain whether there is any fairly obvious defect in its construction or state of repair which constitutes a source of danger.'" Huck v. Chicago, St. P. M. & O. Ry., 16 Wis.2d 466, 470-71, 114 N.W.2d 811 (1962).