

Book Review

FREIGHT CLAIMS IN PLAIN ENGLISH, William J. Augello, Shipper's National Freight Claim Council, Inc., 120 Main St., Huntington, N.Y. 11743, October 1979, pp. 744, \$39.50

This long-anticipated volume is a welcome addition to the sparse legal and technical literature on carrier liability law and freight claims management. The existing works in the field, to which Augello's hefty book will inevitably be compared, are *Miller's Law of Freight Loss and Damage Claims*, now in its Fourth Edition, revised by the late Richard R. Sigmon, and *How to Recover for Loss and Damage to Goods in Transit* by Saul Sorkin. *Freight Claims in Plain English* is distinguished from the other texts by its inclusion of the latest available material and its innovative departure from traditional legal language to break new ground in the use of direct, readily understood English.

Prior to analyzing the merits of Augello's treatise, however, it seems appropriate to look at the author's background and the activities which led to the book's publication by the Shipper's National Freight Claim Council [SNFCC]. A psychology major at Dartmouth, Augello obtained an LL.B. at Fordham, and then studied traffic management at the Academy of Advanced Traffic. He has practiced transportation law for twenty seven years and is the senior member of the Huntington, N.Y., firm of Augello, Pezold and Hirschmann. He is a well-known member of the Motor Carrier Lawyers Association, a member of the National Industrial Traffic League and the New York Bar Association. His legal dossier includes serving as counsel for several shipper associations, and for the past five years representing the newly-formed SNFCC.

SNFCC was founded in late 1973 by a group of shippers and receivers who decided the time was overdue for a shippers' group to tackle the increasingly frustrating field of freight loss and damage claims. Augello was retained in the dual role of Executive Director and General Counsel. The centerpiece of the Council's education program was a series of some eighty six seminars attended by more than 4,300 people interested in the freight claims field. Augello personally conducted all but a few of the seminars, and the material developed for the seminar lectures provided the basis for the book, and shaped its two-part format.

Part I—"The Legal Principles of Freight Claims, From a Claimant's Standpoint"—contains Augello's substantive analysis of claims law. It is divided into decimally-numbered sections covering the different transport

modes, and then delves into various sub-topics including: 1) Burdens of Proof; 2) Bill of Lading Exceptions to Liability; 3) Measure of Damages, Including Special Damages; 4) Time Limits; 5) Procedural Considerations; 6) Specific Claim Problems, Including Concealed Damage; and 7) Aids to Claim Recovery.

Augello is content to leave the history of carrier liability law and its musty origins in English common law to other writers. The classic decision of Lord Holt in *Coggs v. Barnard*,¹ decided in 1704, is not even listed in the Table of Cases, but 491 other modern and current cases are cataloged. Other areas of the subject already covered in depth by other writers are likewise not treated extensively in this text. An example of a subject the author chose not to duplicate is the terms and conditions of the uniform bill of lading contract, which is analyzed in depth in *Miller's*. Complete texts of the conditions of both rail and motor bills, a sample household goods bill, and a suggested form for an exempt commodities motor bill of lading, however, are included as Appendices. Ocean carrier liability is not covered as extensively as in *Sorkin*,² but both air and ocean carrier liability is discussed, and the Carriage of Goods by Sea Act³ and the recently developed but as yet unratified Hamburg Rules⁴ are reproduced in the extensive appendices.

Part I is made more understandable and more valuable to the reader by the frequent use of questions and answers, as well as a liberal sprinkling of claim tips of practical counsel on how common problems can be avoided or mitigated. Section captions and generous use of blank space complement the clear language of the text. Augello uses two recent cases to focus attention on seemingly basic but still controversial legal issues, and reproduces the complete reports on the decisions as Appendices. The first of these cases is the oft-cited *Missouri Pacific Railroad Co. v. Elmore & Stahl*,⁵ a decision of the United States Supreme Court in which the author was counsel of record. This landmark decision is treated extensively in both Parts I and II, and deals with significant issues of burdens of proof. A proper understanding of *Elmore & Stahl* is regarded by the author as a requisite foundation for any in-depth comprehension of the remainder of the statutory and case law covered.

The other recent decision discussed at some length is the 1976 decision of the California Court of Appeals in *Vacco Industries v. Navajo Freight*

1. 2 Lid. Raymond 909 (1704).

2. S. SORKIN, HOW TO RECOVER FOR LOSS AND DAMAGE TO GOODS IN TRANSIT (1976).

3. 46 U.S.C. §§ 1300-1315 (1977).

4. *The United Nations Convention on the Carriage of Goods by Sea* (1978); reprinted in W. AUGELLO, FREIGHT CLAIMS IN PLAIN ENGLISH, Appendix 14 (1979).

5. 377 U.S. 134 (1964).

*Lines*⁶ which involved a number of substantive issues (e.g., “shippers load and count” notations, inherent vice defense, replacement costs including profit as a measure of damages, and the procedural matter of the use of expert witnesses in a sophisticated carrier defense).

Part II of the book is titled “Fifty Carrier Declinations—And What To Do About Them”. Augello suggests that readers should use Part II with its sample declination letters (actual letters edited for publication) as a test to check comprehension of the legal principles covered in Part I. The declination statements are divided into three sections: 1) Disallowances in General; 2) When Liability is Denied; and 3) When Liability is Admitted, but Claim is Disallowed as Filed. The author strongly recommends in a welcome explanatory introduction that claims personnel should read the text thoroughly before attempting to use it as a research tool. He also urges use of Part II to help analyze each factual claim situation to determine its significant characteristics, to properly “pigeonhole” each claim, and to properly apply the pertinent legal principles presented in Part I. Part II provides a series of questions and commentaries on each declination to direct the user in his own inquiry, and to help him determine what are proper as opposed to improper grounds for disallowance. Part II is copiously cross-referenced to both the legal provisions in Part I, and extensive reference material in the Appendices.

The introductory chapter includes a special section on how to read and evaluate legal decisions. This section is especially helpful to the lay reader in understanding the precedential value of court decisions, and deciding if cases cited in a claims dispute are “on point” with the facts of the case. Augello urges claims personnel to become the paralegals of their companies knowing when to seek professional counsel and how to assist attorneys in technical claims matters.

A section is included on two available procedures for the arbitration of claims disputes. One is a program developed by the Association of American Railroads in conjunction with the American Arbitration Association, and the other is the Transportation Arbitration Board [T.A.B.] developed jointly by SNFCC and the National Freight Claim Council of the American Trucking Association. Augello is a founder, director and officer of T.A.B. Included in the Appendices are rules for both arbitration plans, arbitration agreement forms for T.A.B., and printed decisions in seven noteworthy T.A.B. cases. The book also includes in the Appendices a conversion table of the Interstate Commerce Act prior and subsequent to the 1978 Recodification, the Commission's regulations on freight claims, and the Warsaw Convention,⁷

6. 63 Cal. App. 3d 262, 133 Cal. Rptr. 628 (1976) cert. denied. 431 U.S. 916 (1977).

7. *Convention for the Unification of Certain Rules Relating to International Transportation by Air*, 49 Stat. 3000, 137 L.N.T.S. 11 (1929).

plus an extensive list of federal regulations and rulings, tariff provisions, legal forms and claim charts. Finally, the work is made infinitely more valuable to the researcher by an exhaustive index requiring sixty one pages.

In the book's strength may also lie its greatest weakness. The author's accomplishment in simplifying material of inherent complexity may mislead the inexpert reader to conclude that the law is more clear and less ambiguous than is warranted by reality. This criticism of the tendency towards generalization, however, is one that can be lodged against virtually all textbooks, and not just this one which bears the author's enormous talent in translating legalese into plain English.

Legal scholars will undoubtedly wish that Augello had utilized his special experience and legal knowledge to address additional substantive areas of claims law. Claims experts using the book as a research tool may also be disappointed, as was this reviewer, when they find that a specific topic has been omitted. (The specific instance was a search for the case law on when carrier liability commences; happily the subject is covered in other sources.) Carriers may prefer *Miller's* carrier viewpoint, and attorneys are likely to feel more comfortable with *Sorkin's* copious citations. Claimants will, however, predictably find *Freight Claims in Plain English* just what they have been waiting for—an invaluable reference work and working tool. Its value as a textbook for study will be obvious to anyone interested in teaching the subject. In this reviewer's opinion, *Freight Claims in Plain English* will prove a good investment for anyone (carrier, claimant or lawyer) who wants to have the latest and most understandable text in the freight claims field.

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