



## **The McMillan Rail Shippers' Guide** Liability (Cargo Claims and Third Party Liability)

The Railway Traffic Liability Regulations (Regulations) set forth rules pertaining to the railway company's liability to a shipper for lost, damaged or delayed freight. However, you and the railway company may agree to different terms in a confidential contract.

The Regulations' general rule is that the railway company is liable, in respect of goods in its possession, for any loss or damage to the goods, or delay in transportation unless that liability is limited by the Regulations. The railway company, however, is not liable for loss or damage due to circumstances such as an act of God, strike, defective freight, legal authority, quarantine or any negligence on your part.

The Regulations require that if the railway company loses your freight, you must notify it of your loss within four months after a reasonable delivery period has expired. For damaged freight, you must notify the railway company of the damage within four months after the railway company delivers the goods.

The Regulations do not specifically address the allocation of liability to or of third parties (Third Party Liability). This can be a contentious issue, for example, when a railway accident involves a release of dangerous goods. While confidential contracts sometimes address Third Party Liability, the railway company cannot unilaterally impose liability obligations on a shipper in the absence of a written agreement signed by the shipper (or by an association or other entity representing shippers).

To discuss any question regarding a railway company's liability under the Regulations or under the terms of a confidential contract, send an email or telephone a member of McMillan's Rail Transportation Group at the contacts below.

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