



## Liability in International full-container-load and less-than-container-load Transportation under Russian Laws

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**ABSTRACT:** There is no economy in the world that could exist without organized circulation of goods both within the country and across its borders. Transportation of both large and small shipments is a rather complex procedure. Increased transportation of small shipments, aside from obvious convenience for small suppliers, created a number of problems related to liability of each party involved in the process. The purpose of this article is to place this type of transportation into a separate legal category, identify a party liable for the loss of or damage to cargo and a party that a claim should be raised against. The main contribution of this article is in the comprehensive approach to studying theoretical and practical problems related to full-container-load and less-than-container-load transportation and identifying the existing definitions of these types of transportation and the liability of carriers involved therein. The major challenge of the article is the analysis of the effective by-laws and codes as well as existing court rulings, in order to demonstrate that the allocation of liability depends on the cause of cargo loss or damage during full-container-load and less-than-container-load transportation. The liability can arise from improper packaging by the consignor, careless handling by the carrier or uncontrolled movement of cargo in transit or at consolidation or bonded warehouses. The study identified the need to establish joint and several liability and introduce the concept of actual carrier.

**Keywords:** FCL, LCL, general cargo, liability, cargo carriage, freight forwarder.

**Abbreviations:** FCL, full container load); LCL, less than container load.

### I. INTRODUCTION

The economic crisis that began 5 years ago decreased the number of large shipments both in Russia and internationally. Decreased share of large shipments promoted active growth of small shipment transportation. Container transport started growing in 2012. Most of these shipments are domestic, but export/import transportation also accounts for a large part of it. Growing number of suppliers are cutting costs by shipping smaller consignments so that they do have to pay for the whole volume of a container to transport their goods. The outcome was legal relationships arising from full-container-load and less-than-container-load transportation.

General cargoes, which are internationally known as FCL (full container load), are gradually yielding to consolidated shipments, or LCL (less than container load) [1–3]. This type of shipment despite a number of advantages for transporting small consignments also gives rise to certain difficulties for shippers.

Given the growth of less-than-container-load shipments both in Russia and internationally, it is important to analyze the legal regulation and legal support of these types of transportation as well as the liability of parties to the transportation process for cargo loss or damage in Russia and internationally.

We assume that studying the features of full-container-load and less-than-container-load shipments will promote broader use of these methods in international transport by small suppliers. It appears the problem can be solved through the integration of Russian laws into

international laws which will require amending national by-laws and codes to adopt a uniform approach to the definitions of these transportation methods and to transport documents and liability and make sure the by-laws and codes meet modern market requirements. The study provides clarifications on national laws and regulations which will facilitate legal support for international transportation of these types.

### II. MATERIALS AND METHODS

The analysis was based on Russian and international regulations, court rulings, rulings of state courts of arbitration, academic studies and Internet resources.

The methodological framework of the study comprises the general scientific methods of analogy, analysis and synthesis, deduction and induction, the systemic and structural approaches as well as special methods peculiar to jurisprudence: doctrinal (descriptive) and comparative methods.

The comparative method was used to identify the peculiarities of FCL and LCL carrier liability and helped to determine the differences in legal regulation of such liabilities.

The systemic and structural method was used to study the characteristics of main categories of FCL and LCL carrier liability.

The doctrinal method, the logical method and the method of analysis and synthesis were needed to study the provisions of transport by-laws, codes, guidelines, and GOST standards defining FCL and LCL and regulating liability that can arise from such transportation.

The study focused on laws and regulations containing provisions on international cargo carrier liability and defining FCL and LCL as well as court rulings on disputes between consignors, consignees and carriers. The study also determined FCL and LCL procedures and frequency of use in the Russian Federation and internationally, identified the causes of FCL and LCL damage or loss and established differences in the carrier's and forwarder's liability.

The works by M.K. Aleksandrov-Dolnik, N.A. Butakova, Y.Y. Eglit, K.Y. Eglite, A.M. Golubchik, V.N. Grechukha, P.B. Katyukha, F.M. Luchansky, V.B. Lyanders, G.A. Morgunov, A.V. Rasulov, P.V. Remeshevsky, Y.V. Shvetsov, A.S. Simonenko, M.A. Tsvileva, V.V. Vyatkina, V.A. Yegiazarov and K.S. Yermolayev provided theoretical basis for this study. Works by these authors offer general information on the liability of parties to the process of transportation by different modes of transport as well as legal regulation of transportation relationships. However, none of these has studied the liability of parties to international FCL and LCL transportation and thus do not describe the liability of persons involved in such transportation.

### III. RESULTS AND DISCUSSION

As noted above, *FCL* and *LCL* carrier liability has not been fully studied before.

*General cargo* has no definition in effective laws but is defined in the logistic rules and standards of various industries.

GOST 26653-2015 *Interstate Standard. Preparation of General Cargoes for Transportation. General Requirements*<sup>1</sup> defines *general cargoes* as "Various unit loads: metal products, mobile machinery (wheeled or tracked self-propelled and towed vehicles), large-size and heavy loads, reinforced-concrete articles and structures and other construction loads, unitized loads including hazardous loads in containers, loads in overpacks, including loads in flexible containers, timber cargo, unit loads, including freight containers".

*Rules for Cargo Transshipment Services in a Seaport*<sup>2</sup> classify all cargoes by types and subtypes depending on the content, physical properties, packaging and other features.

Article 8 of the above Rules states the following:

"A cargo transshipment contract can have as its subject matter, cargoes in various containers and unit loads whose quantity is determined by counting individual items, including metal products, mobile machinery (self-propelled or towed), reinforced-concrete articles and structures, timber cargo (timber, timber products), loads in freight containers, loads in overpacks, large-size, heavy and long loads (whose length and mass exceed

the maximum length and mass established by transportation rules for the applicable mode of transport) (hereinafter referred to as *general cargoes*)."

Paragraph 24, Appendix 4 to the *Sanitary Rules for Sea and River Ports of the USSR*<sup>3</sup> also defines *general cargo* as a unit load (i.e. belonging to one owner – author's comment).

Moreover, there is a number of regulations for packaging general cargoes, e.g. RD 31.11.21.13-96 *Safety Rules for the Carriage of Goods in Overpacks by Sea*<sup>4</sup>. These rules have provisions for general cargo transportation including rules for safe transportation of large-size and heavy cargoes, mobile machinery, goods in overpacks, cargo in various containers and unit loads. [4] defines *full container load* as "an amount of goods to be transported that fills a container. With a Full Container Load, your shipment will be the only cargo in the container."

According to logistic web-sites, *general cargo* or *Full Container Load* means that all goods in a container are listed in one bill of lading and thus belong to one party. And it does not matter whether the container is full, payment is made for one container [5, 6].

Some foreign researchers conclude that a container as such is a general cargo<sup>5</sup>[7], however it is hard to agree with this contention, given the practice of less-than-container-load shipment when one container holds several cargoes from different consignors.

Unit loads packaged so that they are single indivisible items occupying more than 2/3 of a container can also be classified as general cargoes. In this case, the client can be sure that only their cargo is in the container and there is no risk of the cargo damage by other consignors' goods.

To summarize the above, we can say that general cargo, or FCL, shipment is transportation of general cargoes (unit loads in special packaging) owned by one consignor to a consignee without opening of the cargo transportation container until the cargo is received by the consignee at the unloading location.

The following are normally considered as advantages of this type of transportation:

- 1) transportation in a separate sealed container which will protect cargo from aggressive conditions existing when goods of several clients are transported together. The shipper can also control the process of loading the goods and sealing the container. When the container is transshipped it will not be opened because the cargo will be shipped from departure to destination in the same container

<sup>3</sup> Sanitary Rules for Sea and River Ports of the USSR (approved by the Chief State Sanitary Inspector of the USSR on 2 June 1989, No. 4962-89). Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>4</sup> RD 31.11.21.13-96. Safety Rules for the Carriage of Goods in Overpacks by Sea (approved by Decree of the Federal Maritime Transport Service of Russia No. 44 of 29 November 29 1996). Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>5</sup> A box which has various kinds of things inside.

<sup>1</sup> GOST 26653-2015: Preparation of general cargoes for transportation. General requirements (put into effect by Decree of the Federal Agency for Technical Regulation and Metrology No. 325-st of 17 May 2016). Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>2</sup> Rules for Cargo Transshipment Services in a Seaport (approved by Decree of the Ministry of Transport of Russia No. 182 of 9 July 2014). Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

and therefore no actions will be taken that could contribute to damaging the cargo;

- 2) any category of goods whatsoever can be transported;
- 3) single freight rate per container;
- 4) cargo owner receives documents confirming delivery from the carrier;
- 5) goods can be loaded in the manufacturer's or vendor's warehouse and tracked through the carrier without intermediaries.

Other advantages attributed to shipments with one consignor's cargo filling a whole container include [8]:

- cargo protection against external and environmental factors during cargo transportation, loading, unloading and handling;
- time saving due to faster loading and unloading and thus lower costs;
- outdoor storage and therefore lower storage costs;
- lower risk of cargo damage by fire, seawater or rainwater;
- saving on packaging.

On the other hand, there are some drawbacks as well:

- 1) first and foremost, high cost of transportation;
- 2) necessity to have a sufficiently large consignment to fill a container;
- 3) necessity to pay the full price of a container transportation even if your goods do not occupy its full volume;
- 4) necessity of proper preparation of cargo for transportation taking into account the requirements of the Code of Safe Practice for Cargo Stowage and Securing (CSS Code)<sup>6</sup>.

*LCL* or *consolidated shipment* means that cargoes of different shippers are collected in one freight container and then transported to their consignees. [9] note that the *consolidated shipment* in Russia refers to transporting small cargoes from different consignors to different consignees in one direction by one vehicle wherein the forwarder providing the service offers its clients a fixed fare depending on volume or weight and bears the risk of being unable to fill a container.

The term *consolidated shipment*, just like *general cargo*, is not defined in the effective laws but is used in a number of regulations, particularly in the decree of the Ministry of Labor and Social Development of the Russian Federation *On the Approval of the Interindustry Time Allowances for Loading/Unloading of Railway Cars and Road Vehicles and Warehouse Operations*<sup>7</sup>, decree of the Ministry of Transport of the Russian Federation *On the Approval of the Rules for Accepting Orders by Carriers from Consignors for Transporting Cargoes by*

<sup>6</sup> Code of Safe Practice for Cargo Stowage and Securing. Resolution of Assembly No. A.714(17) adopted on 6 November 1991. Retrieved from: <http://docs.cntd.ru/document/420378304>.

<sup>7</sup> On the Approval of the Interindustry Time Allowances for Loading/Unloading of Railway Cars and Road Vehicles and Warehouse Operations: Decree of the Ministry of Labor and Social Development of the Russian Federation No. 76 of 17 October 2000. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

*Rail*<sup>8</sup>, decree of the Federal Customs Service *On the Approval of the Operating Instruction for Customs Officials Using Inspection Systems for Customs Inspections*<sup>9</sup>. Moreover, this type of transportation has a number of significant differences from *general cargo* shipment.

In particular, one of the first stages in this case is sorting out similar loads at a consolidation warehouse which is followed by selecting loads with the same destination, preparing necessary documentation and, only then, loading them into a container. Loads in such a warehouse will wait until a complete consignment is assembled which often does not allow predicting the exact time of departure and guaranteeing that goods will not be exposed to the risk of damage or loss while waiting for shipment [10]. Moreover, the load can be exposed to this risk if improperly packed or secured in a vehicle. Therefore, cargo should be consolidated by competent professionals as it is very important that transported goods are compatible and do not damage each other [11].

Currently, the load consolidation procedure in international transportation requires further legal regulation. This type of transportation services is usually provided by forwarders which accumulate small consignments to fill a container for shipment.

Thus, the following advantages of consolidated shipment or LCS can be mentioned:

- 1) low price for small consignments;
- 2) consignor pays for their goods only, not for empty volume in the container;
- 3) consignor is freed of the necessity to make out a number of documents required for transportation;

However, besides these advantages, there are some drawbacks:

- 1) necessity to wait until a complete consignment is assembled in a consolidation warehouse;
- 2) longer time in transit than FCL because goods from different suppliers in the same consignment have to be unloaded at several destinations;
- 3) restrictions on the type, volume and mass of loads;
- 4) dealing, on the matters of transportation, with a forwarder acting as an intermediary rather than the actual carrier.

In our opinion, one of the key differences between FCL and LCL, aside from the above, is that a contract to transport *FCL* is usually concluded with the carrier directly thus allowing claims for property loss or damage be brought against the carrier. On the other hand, a

<sup>8</sup> On the Approval of the Rules for Accepting Orders by Carriers from Consignors for Transporting Cargoes by Rail, Decree of the Ministry of Transport of the Russian Federation No. 228 of 27 July 2015. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>9</sup> On the Approval of the Operating Instruction for Customs Officials Using Inspection Systems for Customs Inspections, Decree of the Federal Customs Service No. 2354 of 9 December 2010. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

contract for *LCL* transportation is concluded with a forwarder which will deliver the load to a consolidation warehouse and prepare it for shipment.

Thus, it seems necessary to define liabilities of parties involved in transportation of *FCL* and *LCL* in case of their loss or damage. The problem of cargo loss or damage in transit is quite common, especially for multimodal transport [12], because, in addition to standard loading and unloading procedures, containers with valuable cargo are also transshipped from one vehicle to another which leads to widespread theft [13, 14].

Civil liability in transportation arises from certain circumstances described in transportation laws. The existence of these circumstances is necessary for the attribution of liability to parties involved in cargo transportation.

According to the Civil Code of the Russian Federation<sup>10</sup> and its transportation by-laws and codes, cargo transportation liability can be occasioned by two types of causes:

- 1) causes related to preparation and dispatch/receipt of loads;
- 2) causes related to transportation per se.

Such liability normally arises when there are circumstances allowing identification of party at fault and holding it liable.

Such circumstances usually include:

- unlawful behavior;
- infliction of harm;
- causal relationship between the unlawful behavior and deleterious consequences.

[15] noted that one feature of contracts of carriage presently is that, due to development of society, carriage is an activity that is not necessarily performed by the carrier personally. However, the fact that it was an employee of the carrier that neglected their duty in the course of carriage does not relieve the carrier of their liability. The authors believe that these new types of relations between carriers and their employees shifted liability from vehicle owners to carriers.

Liability of participants of such transportation is based on the common principle of liability in civil law but has its own peculiarities [16, 17], in particular, it is not possible to limit liability established by law. However, this liability can be increased. Moreover, liability in cargo transportation can arise both from violation of contract terms and from failure to act under the contract.

The Civil Code of the Russian Federation holds the carrier liable for damaged or lost cargo if the cargo was lost or damaged after it had been accepted for transportation[18].

An analysis of Article 12 of the Civil Code of the Russian Federation identifies remedies available to a consignee whose rights have been violated. Such remedies for carriage contracts include: payment of damages and fines, and in this case the carrier will have to pay "fixed damages" directly established by law. Another important remedy is carrier's liability insurance.

<sup>10</sup> Civil Code of the Russian Federation (Part 2), Federal Law No. 14-FZ of 26 January 1996. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

What should be noted in case of *FCL* and *LCL* is a broader range of items that can be transported which all by itself makes legal relationships more complex. Nonetheless, despite all the peculiarities of *FCL* and *LCL* transportation, it is possible to identify the following:

- carrier's liability;
- liability of the forwarder arranging the transportation.

In accordance with a principle established by the *Railway By-laws of the Russian Federation*<sup>11</sup> and *Domestic Waterborne Transport Code of the Russian Federation*<sup>12</sup>, the carrier that delivered cargo will be held liable despite the fact that the actual violation can be made by any co-carriers at any stage of transportation.

Features of *LCL* transportation that create material risks for consignors and complicate attribution of liability are:

- 1) transportation is arranged by a forwarder (rather than *actual carrier*);
- 2) overly long chain of cargo passage from consignor to carrier and consignee;
- 3) presence of loads from different carriers in the same container.

Let's discuss each item in greater detail.

Forwarder's liability is usually determined by its legal status as it carries out the whole cycle of transportation from the cargo dispatch by consignor to its receipt by the consignee, and allocation of liability between the forwarder and actual carriers is very important in this case.

The necessity of this allocation is brought about by the forwarder's obligation to get the cargo transported either by direct participation in transportation or by subcontracting it to carriers, i.e. by arranging transportation.

Forwarders are authorized to engage third parties for transportation by the federal law *On Forwarding*<sup>13</sup>, which also defines forwarders' liability.

In accordance with Article 7 of the above law, if a forwarder accomplished transportation using its own means and resources and acted in all respects as the person actually transporting the load then the forwarder is fully liable for loss, short delivery of or damage to the load.

In accordance with Paragraph 8 of the *Digest of Court Rulings on Disputes Related to Cargo Carriage and Forwarding Contracts*<sup>14</sup>, a forwarder is also liable for loss, short delivery or damage to cargo if the forwarder

<sup>11</sup> Railway By-laws of the Russian Federation: Federal Law No. 18-FZ of 10 January 2003. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>12</sup> Domestic Waterborne Transport Code of the Russian Federation: Federal Law No. 24-FZ of 7 March 2001. Accessed through the ConsultantPlus legal reference system. (Retrieved on January 19, 2020).

<sup>13</sup> On Forwarding: Federal Law No. 87-FZ of 30 June 2003. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>14</sup> Digest of Court Rulings on Disputes Related to Cargo Carriage and Forwarding Contracts approved by the Presidium of the Supreme Court of the Russian Federation on 20 December 2017. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

undertook to deliver the cargo which made them liable for the cargo loss in transportation. This is confirmed by the ruling of the Presidium of the Supreme Court of the Russian Federation *On Some Issues of Application of Laws on Contract for Cargo, Passenger and Baggage Carriage by Road and Forwarding Contract*<sup>15</sup> which holds the forwarder liable for loss, short delivery or damage to cargo under Paragraph 2, Article 6 and Article 7 of the Federal Law *On Forwarding* if the forwarder:

- 1) actually transported cargo using forwarder's own vehicles;
- 2) issued its own shipping document, for example forwarder's certificate of receipt, or in some other way expressed its intention to guarantee safe delivery of cargo, including undertaking to perform a contract of carriage.

Therefore, whenever a consignee can prove actual carriage, intention or undertaking to deliver cargo, the forwarder will be held liable.

However, the fact that the forwarder is held liable does not prevent it from recovering its losses from underlying carriers.

Moreover, Paragraph 4, Article 173 of the *Merchant Shipping Code of the Russian Federation*<sup>16</sup> states that "if carrier and actual carrier are responsible, they are jointly and severally liable", i.e. the cargo owner, at its discretion, can bring claims against the forwarder or actual carrier or both.

However, in case of LCL transportation, there is a number of complexities which we would like to discuss in greater detail.

As mentioned above, before a cargo to be transported on the LCL basis is placed in a container it is delivered to a consolidation warehouse where it will wait until a complete consignment of compatible goods with the same destination is assembled. When sufficient quantity of loads is collected, they are stowed in a container and follow the selected route whose destination is either the consignee or a bonded warehouse<sup>[19]</sup>.

The warehouse receives the cargo, checks unit packs, the condition and mass of the cargo and keeps it until claimed by the consignee. It should be noted, however, that the condition and mass are only checked if the cargo container or packaging is damaged. If the container looks good it is not possible to detect cargo damage. When the cargo is received and a loss or damage are discovered, the consignee's claim under the effective laws should be brought against the carrier that delivered the cargo whether it was involved in inflicting loss on the consignee or not. The carrier has to compensate the consignee for the sustained loss and

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<sup>15</sup>On Some Issues of Application of Laws on Contract for Cargo, Passenger and Baggage Carriage by Road and Forwarding Contract: Ruling of the Presidium of the Supreme Court of the Russian Federation No. 26 of 26 June 2018. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>16</sup>Merchant Shipping Code of the Russian Federation: Federal Law No. 81-FZ of 30 April 1999. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

only then the carrier can claim the cost from the person that, in the carrier's opinion, damaged or lost the cargo.

This arrangement seems quite simple when there is clear evidence that the loss or damage was caused by a specific party of the transportation relationships (forwarder, carrier). But what if the loss or damage were caused by owners of cargoes transported with the damaged cargo? Or if the loss was due to careless storage or handling in the bonded warehouse?

In accordance with provisions of the *Railway By-laws of the Russian Federation*, the *Merchant Shipping Code of the Russian Federation* and the *Domestic Waterborne Code of the Russian Federation*, the carrier is relieved of liability if it proves that the loss or damage were caused by circumstances it could not prevent or eliminate.

The most complete description of consignor's liability for nonconformity or improper packaging of cargo is given in the *Railway By-laws of the Russian Federation* (hereinafter referred to as the By-laws). For example, in accordance with Article 27 of the By-laws, a consignee is responsible for the accuracy of data entered into a waybill.

In accordance with Article 98 of the By-laws, if a consignor entered wrong names of cargo, special marks, data on cargoes or their properties into a waybill which reduced the cargo transportation cost or can impact on the safety of rail transport movement or operation or the consignor shipped cargoes whose transportation by rail is prohibited, the consignor has to pay the carrier a fine five times the cost of transporting such cargoes the whole route irrespective of any compensation paid the consignee to the carrier for sustained losses.

Should such circumstances be discovered, the carrier makes a General Format Certificate and a Notice of Damage in accordance with the decree of the Ministry of Railways of Russia *On the Approval of Rules for Issuing Certificates during Cargo Transportation by Rail*<sup>17</sup>. The amount of fine is calculated in accordance with these documents and a notice of fine is sent to the consignor.

The most complete description of consignor's responsibility is given in GOST 26653-2015 *Preparation of General Cargoes for Transportation. General Requirements*.

In accordance with paragraph 4.2 of this GOST, cargo preparation for transportation shall ensure, among other things, preservation of the cargo and vehicles throughout the transportation period, compliance with requirements for cargo stowage and securing applicable to employed mode of transport, cargo packing strength required for handling, placing in storage and stacking, cargo preservation when exposed to the standard dynamic loads of the employed mode of transport and proper securing of cargo in a cargo transport unit in accordance with the applicable standards, technical specifications and detail design documentation.

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<sup>17</sup>On the Approval of Rules for Issuing Certificates during Cargo Transportation by Rail: Decree of the Ministry of Railways of Russia No. 45 of 18 June 2003. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

Paragraph 4.11 of this GOST holds a consignor liable for consequences of providing wrong information about cargo and its properties, flaws in marking, containers and internal packaging of cargo (breakage, failure, deformation, leakage, etc.) as well as for the use of containers and packaging not suitable for the cargo properties or weight or not complying with the established standards, technical specifications or detail design documentation for specific types of products which brought about circumstances impacting on transportation safety and preservation of transported cargo.

Paragraph 4.12 of this GOST requires that cargo and its container provided for transportation ensure preservation during transshipment.

Paragraph 2 of the *Digest of Court Rulings on Disputes Related to Cargo Carriage and Forwarding Contracts* states that a carrier shall not be held liable for loss, short delivery or damage to cargo due to improper packaging of the cargo by the consignor unless the carrier undertook to package the cargo.

Paragraph 22 of the ruling of the Presidium of the Supreme Court of the Russian Federation *On Some Issues of Application of Laws on Contract for Cargo, Passenger and Baggage Carriage by Road and Forwarding Contract* holds a carrier liable for loss, short delivery or damage to cargo due to improper packaging if:

- 1) the carrier undertook to package the cargo;
- 2) when the cargo was accepted, the packaging flaws were obvious or known to the carrier from the information provided by the consignee but the carrier did not make appropriate comments in the waybill (Paragraph 3, Article 307, Civil Code of the Russian Federation).

An analysis of Article 796 of the *Civil Code of the Russian Federation*, Article 56 of the *Code of Civil Procedure of the Russian Federation*<sup>18</sup>, Article 65 of the *Code of Arbitration Procedure of the Russian Federation*<sup>19</sup> shows that the burden of proving that cargo was lost or damaged due to improper packaging is placed upon the carrier which consolidates even further its inequality to other participants of transportation.

Paragraph 23 of the ruling of the Presidium of the Supreme Court of the Russian Federation *On Some Issues of Application of Laws on Contract for Cargo, Passenger and Baggage Carriage by Road and Forwarding Contract* states that according to Article 796 of the Civil Code of the Russian Federation, part 5, Article 34 and Article 36 of the *By-laws of Road Transport and Urban Electric Land Transport*<sup>20</sup>, a carrier

<sup>18</sup>Code of Civil Procedure of the Russian Federation: Federal Law No. 138-FZ of 14 November 2002. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>19</sup>Code of Arbitration Procedure of the Russian Federation: Federal Law No. 95-FZ of 24 July 2002. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>20</sup> By-laws of Road Transport and Urban Electric Land Transport: Federal Law No. 259-FZ of 8 November 2007.

is responsible for the preservation of cargo from its acceptance for transportation to its delivery to the consignee or its authorized representative unless the carrier proves that the loss, short delivery or damage to the cargo were due to the consignor's fault, including improper packaging of the cargo (Article 404 of the Civil Code of Russian Federation).

Thus, if cargo was lost or damaged through the fault of one of consignors and the consignor and the carrier proves which specific load in the container caused damage to other loads, the effective laws hold that consignor liable unless the contract makes the carrier or forwarder responsible for cargo packaging. Therefore, if the carrier or forwarder has not undertaken to package cargo and there were no visible damage or other defects in packaging made by the client (consignor), then no legitimate claim for damages can be brought against the forwarder or carrier. These conclusions are confirmed by rulings of State Courts of Arbitration of various districts, in particular:

- 1) ruling of the State Courts of Arbitration of the Far-Eastern District in case No. A51-5620/2018<sup>21</sup>;
- 2) ruling of the State Courts of Arbitration of the Volgo-Viatka District in case No. A43-4015/2018<sup>22</sup>;
- 3) ruling of the State Courts of Arbitration of the Northwestern District in case No. A56-102483/2018<sup>23</sup>.

As regards the risk of accidental loss or damage to cargo in a bonded warehouse, it should be noted that according to Article 412 of the *Customs Code of the Eurasian Economic Union*<sup>24</sup>, one of the condition for including into the register of bonded warehouse owners is insurance of civil liability for damage to third party goods in storage or violation of other provisions of storage contracts with other parties.

Article 414 of the *Customs Code of the Eurasian Economic Union* requires the owner of a bonded warehouse to ensure the preservation of goods in the bonded warehouse and vehicles on its premises used as customs inspection area.

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Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>21</sup>Ruling of the State Courts of Arbitration of the Far-Eastern District No. F03-1248/2019 of 15 April 2019 in case No. A51-5620/2018. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>22</sup>Ruling of the State Courts of Arbitration of the Volgo-Viatka District No. F01-1329/2019 of 7 May 2019 in case No. A43-4015/2018. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>23</sup>Ruling of the State Courts of Arbitration of the Northwestern District No. F07-8828/2019 of 3 October 2019 in case No. A 56-102483/2018. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

<sup>24</sup>Customs Code of the Eurasian Economic Union: Appendix 1 to the Treaty on Customs Code of the Eurasian Economic Union of 11 April 2017. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

However, it is not always possible to get compensation for loss or damage to property in a bonded warehouse. An example is case No. A40-4258/09-24-33125AlfaStrakhovanie vs. Renaissance Group, where the court of first instance, court of appeal and cassation court refused to award damages caused by wrong technology of unloading used by Terminal Premier insured by Renaissance Group, even though under the contract, Terminal Premier undertook to ensure the preservation of cargo.

#### IV. CONCLUSION AND FUTURE SCOPE

An analysis of existing laws and regulations as well as rulings of courts of first instance, courts of appeal and cassation courts yields the following conclusions:

- 1) a carrier which failed to discharge an obligation or discharged it improperly is civilly liable whether it is guilty or not and can be relieved of liability only if it proves that it acted as an agent arranging transportation;
- 2) a carrier is presumed to be guilty and bears the burden of proving its innocence; and an intact security seal does not relieve the carrier of liability for cargo loss and the burden of proving its innocence;
- 3) a carrier may bring claim against a consignor for improper packaging of cargo or withholding information on its content;
- 4) a carrier can also bring claim against a bonded warehouse if the carrier proves that cargo loss was the warehouse's fault. However, even if the warehouse accepts responsibility for cargo received for storage, this provision will not apply if cargo was lost when it was moved into the warehouse.

Even though it is the consignee that is usually considered the "weakest" party in transportation relations, an analysis of existing laws shows that the most vulnerable party in FCL and LCL transportation is the carrier because it is the carrier who receives claims from the consignees and sustains losses unless the carrier is able to prove that the loss or damage was not its fault. Future research may focus on the necessity to establish provisions introducing joint and several liability for all participants of such *transportation chain*. It is the impunity of consignors that save costs by shipping hazardous or improperly packaged goods without advising their carriers or bonded warehouses and often get away with that makes FCL and LCL transportation an extremely dangerous and costly activity lacking a single clear legal framework.

Future research may also develop a definition of *actual carrier* for all types of transportation analogous to that given in Article 187 of *Merchant Shipping Code of the Russian Federation*.

**Conflict of Interest.** The author declares that there are no conflicts of interests regarding the publication of this paper.

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<sup>25</sup> Ruling of the Federal Court of Arbitration of Moscow District No. KG-A40/8241-10 of 9 August 2010 in case No. A40-4258/09-24-331. Retrieved from the ConsultantPlus legal reference system website: <http://www.consultant.ru/>.

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