

# Common Carriers--Limitations of Liability as to Value of Property

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## NOTES AND COMMENT

### COMMON CARRIERS—LIMITATION OF LIABILITY AS TO VALUE OF PROPERTY

The time-honored description of the common carrier's status of "insurer"<sup>1</sup> has in modern times been subjected to considerable qualification. One reads that this changed view results from a realization that the carrier, like the innkeeper, needs no longer be held in the ancient suspicion of collusion between it and the thief.<sup>2</sup> Insofar as limitation of liability as to value is concerned, it is submitted that the present evolutionary stage of common carrier liability is the product of no more than expedient economics.

The most significant modern step has been the enactment of the Carmack Amendment, which provides:

Any common carrier, railroad, or transportation company . . . shall be liable . . . for any loss, damage, or injury to such property . . . and no contract, receipt, rule, regulation or other limitation of any character whatsoever, . . . shall exempt such common carrier, railroad, or transportation company . . . provided, however, that the provisions hereof respecting liability for full actual loss, damage, or injury notwithstanding any limitation of liability . . . shall not apply . . . to property, except ordinary livestock, received for transportation concerning which the carrier shall have been or shall be expressly authorized or required by order of the Interstate Commerce Commission to establish and maintain rates dependent upon the value declared in writing by the shipper or agreed upon in writing as the released value of the property, in which case such declaration or agreement shall have no other effect than to limit liability and recovery to an amount not exceeding the value so declared or released . . .<sup>3</sup>

Thus, the Carmack Amendment restates the common-law rule against *exemption* from liability, and provides a uniform method for permitting *limitation* of liability.<sup>4</sup> The statute takes cognizance of the importance of the value of the article in rate construction; the charge should bear some reasonable relation to the care to be exercised over

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<sup>1</sup> STORY, BAILMENTS (5th ed. 1851) § 491; HUTCHINSON, CARRIERS (3d ed. 1906) § 152.

<sup>2</sup> ". . . owing to the improved state of society and the rapidity and comparative safety of modern modes of carriage, there is not now the same necessity as formerly existed for holding carriers to the rigorous accountability of insurers against all losses except those caused by the act of God or of the public enemy, have induced the courts of many of the states of this country to relax the vigor of this rule at least insofar as to permit the carrier to qualify this liability by express contract with his employer." HUTCHINSON, CARRIERS (3d ed. 1906) § 389; *accord*, DOBIE, BAILMENTS AND CARRIERS (1914) 122.

<sup>3</sup> 49 U. S. C. A. § 20(11).

<sup>4</sup> *Erie R. R. Co. v. Stone*, 244 U. S. 332, 37 Sup. Ct. 633 (1917); *American Exp. Co. v. United States Horse Shoe Co.*, 244 U. S. 58, 37 Sup. Ct. 595 (1917); *Boston & M. R. R. Co. v. Hooker*, 233 U. S. 97, 34 Sup. Ct. 526 (1914); *Chicago, R. I. & P. Ry. v. Cramer*, 232 U. S. 490, 34 Sup. Ct. 383 (1914); *Missouri, K. & T. Ry. Co. v. Harriman Bros.*, 227 U. S. 657, 33 Sup. Ct. 397 (1913); *Adams Express Co. v. Croninger*, 226 U. S. 491, 33 Sup. Ct. 148 (1912).

the property.<sup>5</sup> The schedule of rates must be reasonable and may not represent an attempt to limit to an arbitrary amount.<sup>6</sup> Gross disproportion between the value of an interstate shipment and the agreed value in the receipt does not prevent the application of the rule that a carrier may limit its liability.<sup>7</sup> A rate based on the agreed value must bear a fair relation to an unconditional rate.<sup>8</sup> The reasonableness of the released rate is to be determined by the Interstate Commerce Commission and may not be attacked collaterally in an action for the value of the goods.<sup>9</sup>

In *Union Pacific R. R. v. Burke*,<sup>10</sup> Mr. Justice Clarke wisely refuted the carrier's contention that a limitation of liability was valid although the shipper was given no choice of rates. The decision checked what might well have been an unhealthy development for, if a carrier may limit liability without offering a lower rate in consideration, it would be a short step, indeed, to the universal limitation of liability with no special benefit to the public. This would be *exemption* and not true *limitation*. It has now been clearly settled that a limitation of liability will be sustained only where a choice of rates has been extended and the limitation made the basis of the reduced rate.<sup>11</sup> A common carrier is required to obtain by order of the Commission the right to adopt alternative rates based on declared value of shipments, and where it does not do so, a shipper suing for the loss of goods is not restricted to a recovery of the declared value.<sup>12</sup> The carrier may not *exempt* itself from liability for negligence even though a special consideration was furnished.<sup>13</sup> When a railroad acts as a

<sup>5</sup> Adams Express Co. v. Croninger, cited *supra* note 4.

<sup>6</sup> *In re Released Rates*, 13 I. C. C. 550 (1908).

<sup>7</sup> George N. Pierce Co. v. Wells Fargo & Co., 236 U. S. 278 (1915); Donlan v. Southern Pac. Co., 151 Cal. 763, 91 Pac. 603 (1907); Zimmer v. N. Y. Central R. R. Co., 137 N. Y. 460, 33 N. E. 642 (1893). *Contra*: Southern Express v. Gibbs, 155 Ala. 303, 46 So. 465 (1908).

<sup>8</sup> Louisiana Sugar Planter's Ass'n v. Illinois Central R. R. Co., 31 I. C. C. 311 (1914), 34 I. C. C. 253 (1915); *see* General Electric Co. v. Aberdeen R. R. Co., 159 I. C. C. 327 (1929). As lamps do not combine a high susceptibility to damage with a wide range in value, they are not a class of freight for which released rates would be proper; *Armour v. Director General*, 183 I. C. C. 669 (1931). Where rates were based on value, declared by the shipper which were not required by tariffs to be actual values, they, in effect, were attempts to limit carrier's liability and so void. In *Released Rates on Stone in the Southeast*, 93 I. C. C. 90 (1924), it was pointed out that the fact that claims are frequent in the carriage of a specific article is not *per se* a valid reason for the establishment of released rates.

<sup>9</sup> Boston & M. R. R. v. Hooker, cited *supra* note 4.

<sup>10</sup> 255 U. S. 317, 41 Sup. Ct. 283 (1921).

<sup>11</sup> A. C. Lawrence Leather Co. v. Compagnie Générale Transatlantique, 12 F. (2d) 83 (1926), *aff'd*, 18 F. (2d) 930 (C. C. A. 2d, 1927), *cert. denied*, 274 U. S. 761, 47 Sup. Ct. 770 (1927).

<sup>12</sup> Western Assur. Co. v. Wells Fargo & Co., 143 Minn. 60, 173 N. W. 402 (1919). *Contra*: Missouri Pacific Ry. Co. v. Harper Bros., 201 Fed. 671 (C. C. A. 7th, 1912).

<sup>13</sup> The Ansaldo San Giorgio I. v. Rheinstron Bros. Co., 297 U. S. 551, 55 Sup. Ct. 217 (1934); New York Central R. R. v. Lockwood, 17 Wall. 357

private carrier, the rule that a common carrier cannot stipulate for exemption from liability for negligence is inapplicable.<sup>14</sup>

The Carmack Amendment was aimed at the chaotic conflict between the state courts regarding carrier liability, and was intended to provide uniform rules for movements in interstate commerce. This statute has effected assumption by Congress of complete authority over the liability of carriers, rendering inoperative state regulations respecting interstate shipments.<sup>15</sup> But, the Carmack Amendment does not interfere with a state statute incidentally affecting the remedy, such as a moderate attorney fee in case of recoverable contested claims.<sup>16</sup> In *Adams v. Croninger*,<sup>17</sup> the court said, "The congressional action has made an end to this diversity, for the national law is paramount, and supersedes all state laws as to the rights and liabilities and exemptions created by such transaction."

The carrier may by contract partially exonerate itself and limit liability, but such agreement must rest on a consideration other than the mere agreement to transport at the regular rate.<sup>18</sup> A valid limitation will limit the claimant's recovery to the agreed valuation even though the carrier's employees stole part of the shipment, where the employees have not acted for the benefit of the carrier.<sup>19</sup> Generally, limitations must be expressly consented to by the shipper; but, where the carrier has a released rate on file with the Interstate Commerce Commission, knowledge of such limitation is presumed.<sup>20</sup> The shipper's agent is presumed to have authority to agree to a limitation of liability.<sup>21</sup> Where the consignor's employee had no knowledge of the true value and the carrier's agent was so informed, the declared value being \$50, the carrier was not liable for actual value.<sup>22</sup> In an interstate shipment, the bill of lading constitutes the contract between sender and carrier and where the transportation rate is based on the value, recovery is limited to the declared value, notwithstanding that

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(U. S. 1873); *York Co. v. Illinois Central R. R.*, 3 Wall. 107 (U. S. 1865).

<sup>14</sup> *Santa Fe & P. R. R. Co. v. Grant Bros. Construction Co.*, 228 U. S. 177, 33 Sup. Ct. 474 (1913); *Crane v. Railway Express Agency*, 369 Ill. 110, 15 N. E. 866 (1938).

<sup>15</sup> *American Ry. Exp. v. Levee*, 263 U. S. 19, 44 Sup. Ct. 11 (1923); *Boston & M. R. R. v. Piper*, 246 U. S. 439, 38 Sup. Ct. 354 (1918); *Charleston & W. C. R. R. v. Varnville Furniture Co.*, 237 U. S. 597, 35 Sup. Ct. 715 (1915). A statute of South Carolina subjecting the terminal carrier to a penalty for failure to promptly pay claims for damages to interstate shipments was held invalid.

<sup>16</sup> *Missouri, K. & T. Ry. Co. v. Harris*, 234 U. S. 412, 34 Sup. Ct. 790 (1914).

<sup>17</sup> See note 4 *supra*.

<sup>18</sup> *Hubbard v. Matson Nav. Co.*, 34 Cal. 475, 93 P. (2d) 846, *cert. denied*, 310 U. S. 628, 60 Sup. Ct. 975 (1939).

<sup>19</sup> *Moore v. Dunpan*, 237 Fed. 780 (1916).

<sup>20</sup> *Boston & M. R. R. v. Hooker*, cited *supra* note 4.

<sup>21</sup> *American Express v. Daniel*, 269 U. S. 40, 46 Sup. Ct. 15 (1925).

<sup>22</sup> *Ibid.*

the shipping document is not signed by the shipper.<sup>23</sup> The shipper having had the benefit of the lower rate, is estopped from asserting a higher value despite the fact that he did not sign.<sup>24</sup> The consignor's acceptance of the receipt containing provisions limiting liability, makes these stipulations binding on the consignee even though the consignor gave no valuation and even though no inquiry as to the valuation was made by the carrier.<sup>25</sup> The Interstate Commerce Commission has held that where a rate based on a released valuation and an unreleased rate were in effect, and the shipper failed to declare a valuation, having knowledge of such rate, the unreleased rate applied to his shipment.<sup>26</sup> There is sufficient agreement on the shipper's part if he signs a printed form of shipping contract which states a specific value.<sup>27</sup> Where an interstate motor carrier limited liability without authority of the commission, and without having filed its schedule of rates varying with the agreed value, the attempt to limit liability was declared inoperative.<sup>28</sup> In *Atchison, T. & S. F. Ry. v. Robinson*,<sup>29</sup> the carrier made a special contract for an interstate shipment, agreeing not to limit its liability. The agreement was held invalid because the carrier's tariffs on file with the commission graduated the rates according to declared value. The court said, "To maintain the supremacy of such oral agreements would defeat the primary purpose of the Interstate Commerce Act, so often affirmed in the decisions of this court. These are to require equal treatment of all shippers, the charging of but one rate to all, and the filing of that one rate as required by the act." A limitation of liability in a contract made by the originating carrier inures to the benefit of succeeding lines;<sup>30</sup> but, an initial carrier may not limit its liability for loss or damage occurring on its own line.<sup>31</sup> In *Barrymore Clothes v. Goodman's N. Y. & Conn. Express Corp.*,<sup>32</sup> the plaintiff could recover only \$50, because the carrier limited liability to that amount on its receipt and

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<sup>23</sup> *Railway Express Agency v. Stephens*, 183 Okla. 615, 83 P. (2d) 858 (1938).

<sup>24</sup> *American Ry. Exp. Co. v. Lindenburg*, 260 U. S. 584, 34 Sup. Ct. 206 (1922).

<sup>25</sup> *Huddy v. Railway Express Agency*, 181 S. C. 508, 188 S. E. 247 (1936).

<sup>26</sup> *Western Shade Cloth Co. v. Canadian N. Ry. Co.*, 147 I. C. C. 535 (1928).

<sup>27</sup> *Great Northern Ry. Co. v. O'Connor*, 232 U. S. 508, 34 Sup. Ct. 380 (1914); *Hart v. Pennsylvania*, cited *supra* note 13.

<sup>28</sup> *American Tobacco Co. v. Whitney*, 291 Ky. 281, 163 S. W. (2d) 817 (1942); *accord*, *Thomas v. National Delivery Ass'n, Inc.*, 24 F. Supp. 171 (1937).

<sup>29</sup> *Atchison, T. & S. F. Ry. Co. v. Robinson*, 233 U. S. 173, 34 Sup. Ct. 556 (1914).

<sup>30</sup> *Kansas City Southern Ry. Co. v. Carl*, 227 U. S. 639, 33 Sup. Ct. 391 (1912).

<sup>31</sup> *Atlantic Coast Line R. R. Co. v. Ward*, 4 Ala. App. 374, 58 So. 677 (1912); *Chicago, R. I. & P. Ry. Co. v. Miles*, 9 Ark. 573, 123 S. W. 775 (1909); *see Gamble-Robinson Commission v. Union Pacific R. R. Co.*, 180 Ill. App. 256 (1913), *aff'd*, 262 Ill. 400, 104 N. E. 666 (1914).

<sup>32</sup> Not officially reported, 29 N. Y. S. (2d) 199 (1941).

there was no evidence that the limitation was to apply only on interstate shipments. In an action against an interstate motor carrier for loss of shipment, the carrier, although it had obtained from the commission a released rate order limiting its liability on certain types of merchandise which determined rates to be assessed, could not rely on the released rates order, as there was no evidence of compliance with the terms of the order and of the Motor Carrier Act of 1935 as to filing and posting of the order and tariffs, shipper not being charged with notice of the released rates.<sup>33</sup> Agreements limiting liability of common carriers are in derogation of common law and are to be strictly construed.<sup>34</sup> The carrier's theory of defense where the shipper sues for more than the agreed value is estoppel.<sup>35</sup> In a theatre's action for special damages sustained through an interstate carrier's delay in delivering motion picture films, charging negligence and knowledge on the part of the carrier that the theatre would suffer loss if the films were not delivered promptly, liability was held limited to \$50 under a stipulation in the shipping receipt.<sup>36</sup>

Where the shipper understates the actual value in order to obtain the benefit of the lower rate, he may receive the agreed valuation, and a contention that the shipper may not recover anything on the ground of misrepresentation will fail.<sup>37</sup> It is difficult to see any objection to a shipper's undervaluation where additional valuation results in graduated incremental charges; the shipper should be given the opportunity to conclude that the assessments are in the nature of "insurance premiums", not warranted by the risk involved—or, he may decide to carry his own insurance. There is a distinction between a case where the lower rate dependent upon the restricted liability of the carrier is called a released rate, and a case where the value stated is a part of the description of the article, and is not merely the exercise of an opinion by the shipper as to which of two or more rates he will accept.<sup>38</sup> Rates graded according to the actual value need not be authorized by the Commission.<sup>39</sup>

<sup>33</sup> *Mickey Finn Clothes v. Yale Transport Corp.*, 175 Misc. 242, 23 N. Y. S. (2d) 84 (1940).

<sup>34</sup> *Reich v. McGill*, 119 N. J. L. 358, 196 Atl. 651 (1938); *Inland Waterways Corp. v. Hallevey & Carey*, 52 F. (2d) 13 (1931); *Hoye v. Pennsylvania R. R. Co.*, 191 N. Y. 101, 83 N. E. 586 (1908); *Southern R. R. Co. v. Webb*, 143 Ala. 304, 39 So. 262 (1905); *Russell v. Erie R. R. Co.*, 70 N. J. L. 808, 59 Atl. 150 (1904).

<sup>35</sup> *Union Pacific R. R. Co. v. Burke*, 255 U. S. 317, 41 Sup. Ct. 283 (1921); *D'Utassy v. Barrett*, 219 N. Y. 420, 114 N. E. 786 (1916).

<sup>36</sup> *Pastime Amusement Co. v. Southeastern Express Co.*, 181 S. C. 203, 186 S. E. 283, cert. granted, 298 U. S. 653, 56 Sup. Ct. 954, rev'd, 299 U. S. 29, 57 Sup. Ct. 73 (1936). The court held, "The words of the statute are comprehensive enough to embrace all damages resulting from any failure to discharge a carrier's duty with respect to any part of the transportation to the agreed destination."

<sup>37</sup> *Wells Fargo & Co. v. Neiman-Marcus Co.*, 227 U. S. 469, 33 Sup. Ct. 267 (1912).

<sup>38</sup> *Norcross Bros. Co. v. Louisville & N. R. R. Co.*, 29 I. C. C. 109 (1914).

<sup>39</sup> *Cudahy Packing v. Director General*, 104 I. C. C. 705 (1925); *Crown Overall Co. v. Director General*, 100 I. C. C. 471 (1925).

A shipper will not be permitted to state a lower value and then in an action for the full value attempt to introduce parol evidence.<sup>40</sup> An agreement that insurance covering an interstate shipment of cigarettes should be accepted in lieu of the motor carrier's common-law liability was held void as violating the Motor Carrier Act.<sup>41</sup> Where a carrier has paid a claim at the agreed value, and the shipper sues on an insurance policy procured by the carrier for the benefit of both, the insurance being without tariff authority, the suit is not maintainable, as it violates provisions against departure from the published rates.<sup>42</sup> In *New York Central v. Goldberg*,<sup>43</sup> the shipper's agent innocently misdescribed a consignment of furs as "dry goods" which was rated lower. The carrier, unable to produce the furs, relied on *Adams v. Croninger*. The court, stressing a bill of lading clause stating, "If upon inspection it is ascertained that the articles shipped are not described in this bill of lading, the freight charges must be paid on the articles actually shipped," held that the misdescription merely imposed on the shipper an obligation to pay the corrected charges and did not affect the liability of the carrier for a failure to deliver, there being no clause limiting liability.

A source of irreconcilable conflict has been the question of damages recoverable where part of the shipment, transported under released rates, has been lost or damaged. One line of decisions permits recovery of the actual loss, not exceeding the released value;<sup>44</sup> another holds that there may be recovery of a proportional amount of the released value, based on the ratio which the value of the goods lost or damaged bore to the value of all goods shipped.<sup>45</sup> Some of the decisions under the first rule point out that no ratio is stipulated in the contract and refuse to read one into it.<sup>46</sup> The Supreme Court has held that the ratio theory should be invoked when the goods are homogeneous.<sup>47</sup> The text-writers generally prefer the ratio basis of

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<sup>40</sup> *Missouri, K. & T. Ry. Co. v. Harriman Bros.*, cited *supra* note 4.

<sup>41</sup> *Axton-Fisher Tobacco Co. v. Ziffrin Truck Lines*, 36 F. Supp. 777 (1941); see *Hartford Ins. Co. v. Payne*, 199 Iowa 1008, 203 N. W. 4 (1925). Where a common carrier required the shipper to insure it against loss, the contract was held invalid, as the burden of liability for carrier's negligence was shifted to the shipper.

<sup>42</sup> *Duplan Silk Co. v. American & Foreign Marine Ins. Co.*, 205 Fed. 724 (C. C. A. 2d, 1913).

<sup>43</sup> 250 U. S. 85, 39 Sup. Ct. 402 (1919).

<sup>44</sup> *Aronstein v. N. Y. Central R. R. Co.*, 136 Misc. 352, 243 N. Y. Supp. 221 (1930); *Cent. of Ga. R. R. Co. v. Broda*, 190 Ala. 216, 67 So. 437 (1914); *Visanaka v. Southern Express Co.*, 92 Sup. Ct. 573, 75 S. E. 962 (1912); *Huguelet v. Warfield*, 84 S. C. 87, 65 S. E. 985 (1909).

<sup>45</sup> *Western Transit Co. v. Leslie & Co.*, 242 U. S. 448, 37 Sup. Ct. 391 (1917); *Stratton v. C. M. & St. P.*, 41 S. D. 79, 168 N. W. 757 (1918); *Frank v. Mich. Cent. R. R. Co.*, 169 App. Div. 69, 154 N. Y. Supp. 701 (1915); *United Lead Co. v. Lehigh R. R. Co.*, 156 App. Div. 525, 141 N. Y. Supp. 310 (1913).

<sup>46</sup> *Chenango Textile Corp. v. Willock*, 247 App. Div. 638, 288 N. Y. Supp. 270 (1936); *Illinois Cent. v. H. E. Wilson Co.*, 131 Tenn. 699, 176 S. W. 1036 (1915).

<sup>47</sup> *Western Transit Co. v. Leslie & Co.*, cited *supra* note 45.

measuring damages.<sup>48</sup> The sharply divergent decisions are cogent evidence of the fact that the contract terms in issue are equivocal. It is submitted that the courts embracing the ratio theory have lost sight of the elementary contract rule that where a term admits of two constructions it should be resolved against the party drawing the contract. Surely, if the ratio measure is the more proper, the carriers can embody into their bills of lading and released rate orders, clearer and unambiguous conditions to achieve the desired intent.

In *R. H. Macy v. Pennsylvania Transport Co.*,<sup>49</sup> the limitation was almost identical with that of the Uniform Express Receipt which states, "In consideration of the rate charged for carrying said property, which is dependent upon the value thereof and is based upon an agreed valuation of not exceeding fifty dollars for any shipment of 100 pounds or less and not exceeding fifty cents per pound, actual weight, for any shipment in excess of 100 pounds, unless a greater value is declared at the time of shipment, the shipper agrees that the company shall not be liable in any event for more than fifty dollars for any shipment of 100 pounds or less, or for more than fifty cents per pound, actual weight, for any shipment weighing more than 100 pounds, unless a greater value is declared herein . . ." The declared valuation was \$700, the shipment weighed 642 pounds and the plaintiff's action was for \$385, actual value of hosiery lost. The carrier, relying on the ratio theory, contended that recovery was limited to \$70. The court, in holding for the plaintiff, emphasized the fact that the case of *Western Transit Co. v. Leslie & Co.* was not binding, because at the time of the action motor carriers were not within the scope of the Interstate Commerce Act. Aside from the fact that the circumstances in the *Western Transit Co.* case were different, it is submitted that there should be no need for the court's distinction; any espousal of the carrier's argument would have entirely distorted a reasonable reading of the limitation clause. The court could have adopted the conclusion of *Berlinsky v. Barrett*<sup>50</sup> where it was held, "The goods in question actually weighed 270 pounds and hence this consignment comes within the plain language of the instrument wherein it is provided that the express company, in case of loss of the goods, shall not pay over 50 cents per pound, actual weight, for any shipment in excess of 100 pounds."

A careful reading of the Carmack Amendment and the cases decided thereunder, gives the impression that a carrier in seeking a released rate order must offer, in consideration for the privilege, a rate lower than the existing one. Logically, it would seem that having procured a released rate order, the carrier should offer to transport a commodity either at full liability under its old rate, or at less than full liability at a new *reduced* rate. However, it is possible for

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<sup>48</sup> DOBIE, BAILMENTS AND CARRIERS (1914) § 133.

<sup>49</sup> 148 Misc. 129, 266 N. Y. Supp. 194 (1932).

<sup>50</sup> Not officially reported, 173 N. Y. Supp. 449 (1919).



the existing rate structure to be revised upward. This clearly permits the carrier to make use of released rates as a means of escaping liability for the consequences of its negligence in direct contravention of the avowed declarations of the Commission in *In Re Released Rates*.<sup>51</sup> This condition prevails because as an administrative matter, the subject of limitation of liability under released rates authority is separate from the subject of the reasonableness *per se* of the rates involved. Unless existing rates are held in force by outstanding orders of the Commission, carriers are free, by filing tariffs with the Commission in accordance with Section 6 of the Act, to initiate such changes in the measure of those rates as they consider that they are prepared to justify.<sup>52</sup> Orders granting released rates authority do not constitute approval of the measure of rates filed pursuant to the released rate authority.<sup>53</sup> Such rates, or any changes therein, are subject, as in the case of any proposed changes in unreleased rates, to protest and suspension under the provisions of Section 15(7) of the Act.<sup>54</sup> Clearly, this procedure should be amended in order to compel the carrier to set forth and justify its proposed rates at the very time that it applies for a released rate order. Also, any subsequent change of rates should be considered by the Commission before publication with reference to the previously obtained release rate authority.

ANTHONY J. DIMINO.

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#### COST-PLUS-A-PERCENTAGE-OF-COST SYSTEM OF CONTRACTING

During World War I, the Government made extensive use of the cost-plus-a-percentage-of-cost system of contracting as a means of inducing contractors who lacked production experience to accept orders for manufacturing new types of war material. The results attained vindicated the use of this system as a means for rapidly increasing production; however, from a financial viewpoint, the resulting costs were excessive.

Under the cost-plus-a-percentage-of-cost (hereinafter referred to as CPPC) contracts, the fee or profit of the contractor is dependent on the cost of the work; the amount of the fee automatically adjusts itself to variations in costs resulting from changing conditions and requirements during performance. Thus, under a CPPC contract providing for a profit of 7%, if the costs amounted to \$100,000, the

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<sup>51</sup> See note 6 *supra*.

<sup>52</sup> See U. S. C. A. tit. 49.

<sup>53</sup> A typical released rate order (No. 1077, dated May 6, 1944) states in part, "The Commission does not hereby approve the lawfulness, except under Sections 20(11) and 219 of the Interstate Commerce Act, of any rates which may be filed under this authority."

<sup>54</sup> See U. S. C. A. tit. 49.