

A plaintiff sued a freight company for damages incurred when the freight company's driver negligently destroyed the plaintiff's cargo in a trucking accident. Among the contested issues is the amount of the plaintiff's cargo on the freight company's truck at the time of the accident. At trial, the freight company manager testified that the company creates and keeps a detailed manifest for each load of cargo it transports. The manager further testified that the manifest for the cargo at issue was destroyed in a flood at the company's office but that he carefully reviewed the manifest prior to its destruction. The court allowed the manager to testify to the content of the manifest. The freight company then requested that the court instruct the jury that it must accept that the manager's testimony accurately reflects the content of the manifest.

Should the court issue the requested instruction?

- A. No, because whether the manager's testimony accurately reflects the manifest's content is a question for the jury.
- B. No, unless the court first determines that the manager's testimony accurately reflects the manifest's content.
- C. Yes, because the manifest was not destroyed by the freight company in bad faith.
- D. Yes, because the manifest was prepared prior to the event giving rise to the litigation.

Explanation:

Functions of court & jury under FRE 1008

(admitting other evidence of content)

Court Determines whether proponent has fulfilled factual conditions for admitting other evidence of content of writing, recording, or photograph

Jury Determines any issue about whether:
asserted writing, recording, or photograph ever existed
another writing, recording, or photograph is the original *or*
other evidence of content accurately reflects the content

FRE = Federal Rule of Evidence.

The **best evidence rule** requires that an original or reliable duplicate of a recording, writing, or photograph (referred to as "document") be produced to **prove its content**. However, a party may use other, **secondary evidence** (eg, testimony) to prove a document's content if certain **factual conditions are established** (eg, all originals are lost or destroyed). Whether a party has fulfilled the factual conditions for admitting secondary evidence is a **determination for the court**. But in a jury trial, the **jury determines** any issue about **whether**:

an asserted document ever existed
another document produced at a hearing or trial is the original *or*
other evidence of content **accurately reflects** the content.

Here, the freight company manager testified that the original cargo manifest was destroyed in a flood at the company's office, so the court allowed the manager to testify to the manifest's content. The freight company then requested an instruction that the jury *must* accept that the manager's testimony accurately reflects the content of the cargo manifest. But the jury is free to conclude otherwise—since the issue of accuracy is solely for the jury (**Choice B**). Therefore, the requested instruction is improper, and the court should not issue it.

(Choice C) The manifest was not destroyed by the freight company in bad faith. But this goes to whether the court should allow secondary evidence to prove the manifest's content. It does not justify the issuance of the improper instruction.

(Choice D) The manifest was prepared prior to the event giving rise to the litigation (the trucking accident). But this is no basis for the court to issue the improper instruction.

Educational objective:

The court determines whether a party has fulfilled the factual conditions to admit other evidence to prove the content of a document. But in a jury trial, the jury determines any issue of whether (1) an asserted document ever existed, (2) another document is the original, or (3) other evidence of content accurately reflects the content.

References

Fed. R. Evid. 1002–07 (best evidence rule).

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