

AN OVERVIEW OF TRANSPORTATION INSURANCE: ARE YOU COVERED?

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- Shipper's insurance – domestic and international
- Carrier's insurance, and the insurance for intermediaries and warehousemen
- The coverage issues that frequently come up for each type of insurance

SHIPPER'S INSURANCE

- Cargo losses will happen – in all modes



Shipper's Insurance

- Ideally, shippers seeks full compensation or coverage for losses which occur within the supply chain and during transportation, under all circumstances, and at the best cost



- **Can the Shipper just rely on the insurance of the carrier?**
 - Carrier's insurance based on liability
 - Carriers have conditions, exclusions and limitations of liability in bills of lading and tariffs
 - Carrier's insurance has limits and exclusions
 - The amount of insurance may be insufficient
 - Without insurance, carrier may have insufficient assets

Shipper's Insurance

- Trade off – the shipper can pay higher freight rates and declare full value for the cargo, OR
- Shipper pays a premium for its own insurance
- Cargo insurance then covers and the insurance company subrogates and deals with the issues

Shipper's Insurance

- Domestic, or inland insurance
- International – ocean marine, international air carriage
- Shipper's interest insurance is “all risk” – it covers all risks of “accidental loss” by an “external cause”.
- Insurance is only for “fortuities”, not events that are bound to happen.

Not A Fortuity



Shipper's Insurance

- Some examples of losses which are not accidental or fortuitous:
 - Inherent vice
 - Improper packaging, protection or preparation of the goods
 - Shipper's policy usually specifically excludes for these causes of loss as well

Shipper's Insurance

- Example of inherent vice: cargo of horseradish, discovered on destination to have sulphur smell.
- The cause was either the failure to properly clean the horseradish of bacteria before transit or the failure of the carrier to maintain the agreed temperature in the container.
- The first is excluded, the second is covered carrier fault.

Shipper's Insurance

- **Scope of the insurance:**
 - Domestic insurance generally covers throughout the 48 contiguous states, many cover Canada, and some cover Alaska and Hawaii
 - Ocean cargo covers international ocean, and also usually covers air, either in the main form or by endorsement
 - Both types of coverage apply while the goods are in “due course of transit”

Shipper's Insurance

- **Scope of insurance, cont.**
 - Coverage can be extended to cover the period while the goods are being loaded or unloaded
 - Ocean marine insurance applies “warehouse to warehouse”
 - Separate coverage or an endorsement is needed to cover warehousing risks
 - Examples of “in transit” and warehouse to warehouse

Shipper's Insurance – Areas of Concern

- **Commodities** – be sure they are properly identified in the application and policy
- **Valuation** – be sure that the valuation or policy limit is sufficient for the types of commodities being shipped
- **Control of damaged goods:** you can purchase policies with the right to control the disposition of damaged goods. Some clauses even allow the insured to determine whether and to what extent the goods are damaged.

Shipper's Insurance – Exclusions

- **Temperature change:**
 - the standard policies will often exclude losses caused by changes in temperature
 - Some courts have strictly enforced this exclusion to exclude loss caused by any temperature change, external or internal
 - Other courts have limited its application to external changes in the weather

Shipper's Insurance -- Exclusions

- **Refrigerated cargo** – the policy only covers spoilage or deterioration if the insured can prove that it was caused by derangement or breakdown of the refrigeration machinery
- Usually the breakdown must be for 24 or more consecutive hours
- “Derangement”: a functional or mechanical disorder, as distinguished from human failure to operate the equipment at the appropriate capacity. (Pre-Peg case)

Shipper's Insurance -- Exclusions

- **Delay** – the policy will often exclude all losses caused by delay, loss of market and loss of use.
- **Contamination** is also excluded by some policies. If you are shipping goods that are vulnerable to contamination, work with your broker to address this.
- **Free of Capture and Restraint** losses which are caused by the actions of a government, foreign or domestic, in detaining or restraining, or even destroying cargo may be excluded.

Shipper's Insurance

- Claims - Most policies require that notice be provided as soon as practicable. Submit your notice promptly and put all carriers on notice as well. Failure to do so jeopardizes coverage.
- Ocean marine policies usually have a one-year limit of suit time against the insurer, and domestic policies are often two years.

Broker or Intermediary Insurance

- The transportation broker's insurance generally covers its liabilities for errors and omissions as a broker, such as for negligently selecting a motor carrier.
- It does not generally cover any liability for physical loss or damage to the goods any liability the broker may have as a carrier.
- Some brokers also perform motor carriage and will possess both types of coverage

Broker or Intermediary Insurance

- Brokers should carry excess insurance to provide coverage in the event the amount of insurance that the motor carrier has is less than the shipper's full loss.
- Brokers should also carry contingent cargo insurance. This type of coverage generally only applies when the motor carrier's insurance has been cancelled, expired, or otherwise without force and or effect as respects a given claim.

Motor Carrier Insurance for Cargo Liability

- This policy covers the motor carrier's legal liability for physical loss to cargo while in transit
- Most motor carriers have insurance limits of about \$100,000
- If you are the shipper, be sure to check the carrier's limits, and the trucker should make sure its limits are sufficient for the business it is performing.
- Make sure the transportation broker is hiring truckers with sufficient limits.

Motor Carrier's Insurance -- Issues

- The insurer can raise all of the motor carrier's legal defenses on its behalf, including:
 - Limitation of liability
 - Late notice of claim
 - Two-year suit time limit
 - Tariff defenses

If the motor carrier has valid defenses, the insurer won't pay the claim on demand, even if the motor carrier wants to favor an important client

Motor Carrier's Insurance -- Issues

- **Bill of Lading/Shipping receipt:** most policies only cover where the carrier has issued a bill of lading or shipping receipt
- **Commodities:** the policy may be very specific in the types of commodities it has disclosed to the insurer that it is carrying. Carrying a cargo outside the description may not be covered.

Motor Carrier's Insurance -- Issues

- **In transit:** the goods must be in due course of transit to be covered.
 - A temporary stop over the weekend does not break the transit.
 - But if the goods are held for the shipper's convenience after they are ready for delivery, the carrier is converted to a warehouseman and its motor truck legal liability policy may not cover

Motor Carrier's Insurance -- Issues

- **Physical loss or damage:** the carrier's policy will generally only cover physical loss or damage to the cargo
- It will not cover brand and reputation issues or concerns the shipper has over potential liability for contamination, unless this coverage is purchased.
- A motor carrier may have a contract with the shipper in which it agrees that an entire load is to be considered damaged if any part is damaged.

Motor Carrier's Insurance -- Issues

- **Specified causes of loss clause – Upset and Overturn of transporting vehicle**
- Certain types of losses – may be excluded from coverage unless caused by specific perils
- The types of losses are spoilage, breakage, marring, denting, dampness, changes in temperature, contamination, discoloration, rust, mold, rot, or change in flavor

Motor Carrier's Insurance -- Issues

- **Specified causes of loss clause – Upset and Overturn of transporting vehicle – cont**
- The specified causes of loss are commonly fire; lightning; explosion; windstorm; hail; smoke; riot; strike; vandalism; theft; flood; earth movement; collision, upset, derailment or overturn of the transporting vehicle;
- Can lead to no coverage in a failure to tarp, or in a sudden stop, but no collision, upset or overturn.

Motor Carrier's Insurance -- Issues

- **The Unattended Vehicle Clause:** this type of clause excludes coverage for theft of cargo from an unattended vehicle – may depend on commodity
- The exclusions vary from policy to policy
- Some exclude theft from a vehicle that is left unattended for any length of time under any conditions
- Other exclude coverage if the vehicle is left unattended, unless it is parked in a secure facility

Motor Carrier's Insurance -- Issues

- **Dishonest Acts:** The policy will exclude coverage if any employee or agent of the carrier, or anyone to whom it entrusted the cargo, was involved in dishonest acts which caused the loss
- Many carriers will also have fidelity insurance to provide coverage in this instance, but it almost always provides much less coverage than the cargo policy.
- Generally, the liability insurer needs a confession or conviction to sustain a denial of coverage and the same is needed to get the fidelity insurer to pay.

Motor Carrier's Insurance -- Issues

- **Refrigeration Equipment:** The motor carrier can purchase a policy, or have its policy endorsed, to cover the mechanical breakdown of refrigeration equipment.
- Without this endorsement, losses in the event of refrigeration failure may be excluded by the specified perils clause.
- Usually this coverage requires a breakdown, and does not include a failure to fuel, and usually has a required maintenance schedule that must be followed, or coverage is excluded

The Warehouse's Insurance

- The warehousemen's insurance is also based on its legal liability, and the insurer may raise all defenses the warehousemen has, including the terms of its warehouse receipt.
- The standard of liability for the warehousemen is negligence.
- For instance, the warehouse is not necessarily liable for a theft unless it can be shown that it was negligent in its security procedures
- Mysterious disappearance is excluded