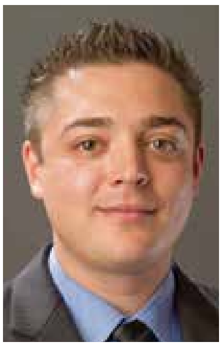
LIGHTENING THE LOAD ON YOUR LIABILITY

By Joe Chillino



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Protecting one's company with a well-structured portfolio of legal liability insurance including adequate limits is an essential part of a comprehensive risk management strategy.

But what happens when policy limits aren't adequate enough to address the risk at hand? A recent situation with a client brings to light an interesting scenario that demonstrates how even with high limits and robust coverage, an in-depth look at your risk management program with both insurance and legal experts is vital.

The client, who we'll refer to as Company A, was contracted to move a large shipment with a value in excess of $1.2 million from the airport for a local delivery. The documentation Company A customarily issues for local truck moves are a trucker's delivery ticket or a straight bill of lading. But these documents do not reference any limits of liability, so they could be liable for the full invoice value in the event of a loss.

Company A has consistently maintained higher than industry standard limits on all coverage lines including US$1 million in Motor Truck Cargo Legal Liability, or MTCLL.

However, as is the case with many transportation companies with a focus on the oil-and-gas industry, shipment values frequently arise that exceed this amount.

Is it cost effective or even possible to maintain adequate limits to cover high-valued loads in full? It is strongly recommended to carry higher-than-standard limits in breakbulk transportation, but there are other strategies that can be employed in conjunction with appropriate liability insurance limits to protect one's company.

One solution to consider is to provide detailed information pertaining to your limitations of liability on documentation provided to clients. This information protects both you and your client.

It is customary to print a company's full terms and conditions on the back of a house bill of lading.

However, in the event that a particular document isn't provided to a customer, other documents such as a material receipts, invoices, delivery tickets and others should also reference these terms.

By including limitations in email signatures and/or a link to your company's website where this information is posted, you provide even more opportunities for your clients to learn of your limitations so they will comply with their own risk management plan.

Implementing these practices is prudent but shouldn't be solely relied upon for a successful defense should a dispute arise. Shipping documents have always been the gold standard for disclosing terms and conditions and should be used whenever possible.

Utilizing service agreements may also be a vital risk management alternative when it is not feasible to issue shipping documents noting limitations.

Liability limitations acceptable to both parties can be agreed upon in advance with clients for all shipments you are contracted to handle. Another benefit of a service agreement is the ability to customize limitations to suit both you and your client.

If standard limitations are not acceptable, ask your client what level would make them comfortable. Having this conversation will clarify each company's position and expectations in the event of a loss, resulting in a win-win for all.

Maintaining limits adequate for standard operations is also very important. If your company is involved in shipping heavy-lift breakbulk cargoes, then it's likely that a US$100,000 MTCLL limit will not adequately cover the majority of loads handled.

Limits appropriate for this coverage can vary based on specific need, so a thorough review of your policy with your insurance broker is recommended. Yet, even maintaining a higher than customary limit may not be sufficient enough for a specific shipment.

If this situation arises, open communication with the shipper is imperative. Advise the shipper of your limits and explain this is the extent of liability for your company.

Also advise them that you can increase your limit further if they wish, but most likely at an additional cost.

Make sure that the ensuing is outlined in writing to protect both parties. If they choose to raise your liability to the full value of the cargo/load then work with your insurance broker on a temporary increase in your MTCLL coverage to accommodate the shipment.

Keep in mind that this situation should be the exception — not the rule — so if it arises frequently, you'll want to consider a higher limit of liability on your coverage.

The best solution for each company will vary depending on specific needs, preferences and resources. Working with an experienced insurance broker who specializes in transportation and a transportation attorney are vital to achieving risk management objectives.

An attorney can offer advice on how to structure a company's procedures, documentation and approach in order to protect itself to the fullest extent.

The insurance broker will assess the company's program and secure customized insurance coverage. Risk management is an ever-changing process that requires constant monitoring and review of procedures by management. However, a firm commitment and investment in expert advice will go a long way — enabling your company to thrive.

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