HERE'S A CLAIM… WHAT'S NEXT?

Minimize Loss by Familiarity with Process

By Paul Kwiatkowski

Let's be frank – it's a treacherous world and incidents of cargo damage or loss occur when least expected. Ship sinkings, train derailments, truck overturns or stolen trailer loads of cargo happen despite the best planning and preparations.

While no one can predict when or what kind of disaster may strike, it is possible to be prepared to manage the situation. Knowing what to do and expect from the claims process can save time, money and frustration.

Legal Liability

Every claim has a legal liability. Underlying carriers that handled cargo may have some liability for loss or damage while in transit under their bill of lading.

To make a claim against the carrier, the shipper must notify the carrier of the loss in a timely fashion. Recovery is limited by various laws and conventions depending on the mode of transit. Also, under a legal liability claim, the burden of proof is on the shipper establishing the carrier is liable.

Carriers have various defenses that can be grounds for denying a claim. They include losses caused by acts of God, failure to provide timely notice, and losses caused by shipper-loaded cargo.

For a shipper to collect more than what the carrier is legally liable for, they must prove gross negligence on the part of the carrier. The shipper will still most likely have to sue to recover losses.

The costs of proving a carrier liable lie with the shipper; these costs include survey fees and court costs. Without having one's interests insured by a cargo insurance policy, recovery is limited and can be costly and time consuming if pursued.

A carrier's liability is limited to the following restrictions: ocean cargo is limited by the Carriage of Goods by Sea Act; international air cargo is limited by the Warsaw Convention/Montreal Protocol; and domestic transit in the US is limited by typically 50 cents per pound.

COGSA limits liability to US$500 per package, or per customary freight unit. International air is limited by the Warsaw Convention's Montreal Protocol to US$19 special drawing rights (SDR) per kilo. SDRs float on a currency exchange system and were US$29.96 per kilo as of December 2013. Domestic transit in the U.S. typically incurs a liability of 50 cents per pound and depends on the bill of lading.

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Cargo Insurance

All-risk cargo insurance is designed to cover the shipper's interest for external causes of loss that occur in transit. In the event of a loss, cargo policyholders should pursue the course of action detailed below and make note of the documentation needed to settle the claim.

Firstly, immediately document cargo conditions upon delivery. This includes notations on bills of lading and photographing cargo. If a bill of lading is signed off clean with no damage, it is difficult to establish carrier liability as outlined above.

Secondly, take necessary steps to prevent additional loss or damage. These steps may include separating wet from dry cargo, repacking, and moving goods to a secure location. Costs incurred should be covered as part of the "sue and labor" clause under the insurance policy.

Thirdly, preserve all packing, damaged goods, and seals for the claims adjustor. Then notify your insurance broker or company of the loss so that a claims adjustor can be assigned. On exports, the certificate of insurance should have a party to contact overseas.

Lastly, file a formal written notice with all applicable carriers.

The insurance company requires several documents to settle the claim. These documents may include: proof of insurance, copy of the pre-shipment survey report , commercial invoice with terms of sale (Incoterms), copies of applicable bills of lading and delivery receipts with any noted exceptions, claims statement to include itemization of loss/damage claimed, copies of loss notice to carriers, carrier replies, claims adjustor survey report, packing lists, and repair estimates.

With project cargo, the only party to determine the extent of loss may be the manufacturer. If the shipper needs to send an employee to determine the loss, those expenses should be covered as part of the claim. However, before these expenses are incurred, they should be cleared by the insurance company.

Every claim is unique. The most common delays we see in the claims settlement process are attributed to missing and incomplete documentation, repair estimates or survey reports. Should unforeseen and unexpected cargo loss occur, knowing what to expect and what action to take should help to minimize losses. BB

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