
Chapter 3

Managing Transportation Risk

Carrier Liability

A contract of carriage, whether negotiated or regulated, as in the case of bills of lading, sets the limits of carrier liability and establishes the exemptions from that liability in the event of loss of, or damage to, goods while in transit (see Chapter 4 on documentation).

1. Exemptions

There are four basic exemptions from liability allowed by common law to a carrier:

i. Act of God. An accident due solely to natural causes, without human intervention and which could not have been prevented by any reasonable amount of foresight or care.

Example: Frost in southern Canada in August would probably be ruled an "Act of God," but in January freezing weather is something a carrier should foresee.

ii. Enemies of the Queen or State. Enemies of the state to which the carrier belongs.

Example: International terrorism; does not include robbers on land, but could include pirates on the high seas.

iii. Defect or inherent vice in the goods. An inherent characteristic in the goods, at the time of shipment, which would result in their damage or destruction, even if they had not been shipped.

Example: Fermentation or evaporation of liquids, decay of fruit, or the loss of animals by starvation as a result of their refusal to eat in transit.

iv. Act or default of the shipper or owner. Damage or loss caused by negligence of the shipper in preparing the shipment.

Example: The shipper providing poor or inadequate packaging for transport, or improperly loading a container or ULD.

Liability can be extended beyond statutory limits, as per contract between carrier and shipper.

In negotiating contracts of carriage, you should always enquire about the amount of liability and insurance coverage for damage and/or loss of goods carried by the carrier or freight forwarder. Adequate coverage should not be assumed.

2. Bills of Lading and Liability Coverage

Generally, a bill of lading is a memorandum of the terms and conditions of the contract between the shipper and the carrier for the transportation of the goods to the destination named in the contract. In some instances, such as rail and trucking, the bill of lading can be the contract of carriage.

An ocean bill of lading, on the other hand, is not in itself a contract: it is primarily a receipt for goods and evidence of a contract. This "receipt" usually contains a multitude of clauses outlining the responsibilities and immunities of the owner of the goods as well as those of the owner of the vessel. The acceptance by the shipper of the tendered ocean bill of lading is an acknowledgement that the contract includes the terms printed thereon.

Among the clauses appearing in fine print on the back of any bill of lading, sometimes in abbreviated form, are the terms and conditions setting limits of liability and specifying carrier exemptions. These terms and conditions are regulated by both domestic legislation and international conventions applicable to each mode of transport.

Liability is not usually open-ended or automatically set at the value of the goods, but can be limited by a formula applicable only under certain conditions. There is no uniform "maximum limit of liability" applicable to all modes of transport. Each mode has its own bill of lading, governed by its own regulatory legislation or international convention, and hence its own limit of liability.