GLOBAL SHIPPING

PROTECTING THE VALUE OF GOODS

WHITE PAPER

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ACCELERATE YOUR ADVANTAGE®

IN BRIEF

Global shipments via air or ocean carriers are subject to a unique set of international laws that limit the liability of carriers. Understanding policy risks, liability, and exclusions in your marine cargo insurance policy can help you protect the value of goods shipped globally.

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It's important to be aware of the international laws and regulations that may eliminate a carrier's liability due to certain occurrences.

REGULATIONS AND INTERNATIONAL LAW

Did you know that in the case of either damage or loss of your goods, international law significantly limits a carrier's liability? It is important to understand the key regulations that govern carrier liability when selecting a marine cargo insurance policy.

General average and its effect on goods.

Marine shipments are also subject to the York-Antwerp Rules.[1] While at sea, should the ship be subject to an extraordinary sacrifice or expenditure, the ship owner may declare general average. When this happens, all consignees with freight on the vessel are required to share in the cost of the expenditure before the goods are released, a process that can take months or years to complete.

For example, if a ship suffers a fire in the cargo hold, water may be poured into the hold to extinguish the fire. Cargo not impacted by the fire could be damaged by the water. The ship owner may declare general average, and all the property that has been saved at the completion of the voyage contributes to the financial compensation for the water damage suffered.

Compensation calculations for general average.

The York-Antwerp Rules were developed to provide a uniform approach to the handling of general average losses. Many contracts of carriage provide for the application of these rules, however, where they do not apply, general average claims and compensation are determined by local law. The York-Antwerp Rules state there is a general average act when, and only when, any extraordinary sacrifice or expenditure is intentionally and

General average

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reasonably made or incurred for the common safety for the purpose of preserving from peril the property involved in a common maritime adventure.

At the time the voyage is completed the level of the sacrificial losses will not normally be known. Shipowners will usually call for security from cargo interests against which the assessed contributions can be enforced. The amount of the claim is usually calculated by average adjusters, appointed by shipowners. The contribution of each cargo owner is calculated on a percentage of the cargo owner’s interest or commercial invoice value, and this can range 1 to 100 percent.

The shipowners have a lien on the cargo until each cargo owner’s contribution or security is satisfied. If a shipment is secured with all-risk coverage, the insurance provider should guarantee the cargo owner's contribution or security so cargo can be released. If the shipment is not secured with insurance, the cargo owner will be required to post their contribution or security in cash, prior to the release of their cargo.

International air freight: The Warsaw and Montreal Conventions.

In 1929, the Warsaw Convention developed a set of rules regarding carrier liability for air freight. While they have been modified throughout the years, the latest standards are commonly known as the Montreal Convention of 1999.[2] Under these standards, carrier liability is limited if damage was caused by:

- An inherent defect, quality, or vice of the cargo
- Defective packing of the cargo
- An act of war or armed conflict
- An act of a public authority carried out in connection with the entry, exit, or transit of the cargo

If an air carrier is held legally liable for damage, the settlement is based on the weight of the goods. The amount recoverable is the value of goods or 19 SDRs per kilogram, whichever is less.

Ocean Freight: The Hague Rules and COGSA

In 1936, the U.S. officially accepted the Hague Rules through passage of the Carriage of Goods by Sea Act (COGSA).[3] Section 4 of these rules expressly removes the ocean carrier's liability for loss or damage to cargo that arises from one of the seventeen stated liability exclusions:

1. Act, neglect, or default of the master, mariner, pilot, or the servants of the carrier in the navigation or in the management of the ship
2. Fire, unless caused by the actual fault or privity of the carrier
3. Perils, dangers, and accidents of the sea or other navigable waters
4. Act of God
5. Act of war
6. Act of public enemies
7. Arrest or restraint of princes, rulers, or people or seizure under legal process
8. Quarantine restrictions
9. Act or omission of the shipper or owner of the goods, his agent, or representative
10. Strikes or lockouts, or stoppage or restraint of labor
11. Riots and civil commotions
12. Saving or attempting to save life or property at sea
13. Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality or vice of the goods
14. Insufficiency of packing
15. Insufficiency or inadequacy of marks
16. Latent defects not discoverable by due diligence
17. Any other cause arising without the actual fault and privity of the carrier and without the fault or neglect of the agents or servants of the carrier, but the burden of proof shall be on the person claiming the benefit of this exception to show that neither the actual fault or privity of the carrier nor the fault or neglect of the agents or servants of the carrier contributed to the loss or damage.

If a carrier is proven legally liable, under COGSA their limit of liability is $500 per package or customary shipping unit, or the actual value of the goods, whichever is less.

Inland trucking/domestic freight.

Unlike ocean and air, which are regulated by one set of international rules and regulations, inland trucking/domestic freight is regulated by the various countries where the inland transportation is taking place. In Europe the CMR Convention governs over the road cross-border shipments. Each country and/or region has its own set of governing rules and liability risks.

Summary of international laws.

Shippers and consignees should be aware of the occurrences that limit or eliminate a carrier's liability and the limited amounts recoverable if the loss is attributed to something other than the listed occurrences. It is also important to know that it is the duty of the claimant to prove the carrier is responsible for the loss. Legal liability claims are often met with resistance by carriers and can take months to settle.

MARINE CARGO INSURANCE

The most common method used to protect the value of your goods from physical damage, theft, or general average is the purchase of marine cargo insurance. Policies can be purchased in the insurance market from niche providers, large brokers, local agents, websites, and freight forwarders.

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Policy risks and liability.

Marine insurance is considered a contract of utmost good faith. If an insured does not disclose all material facts of a risk, the insurance company can void coverage.

Marine cargo insurance policies: All-risk and free of particular average.

There are two standard types of marine cargo insurance:

1. **All-Risk:** This type of policy covers full or partial losses to the items shipped that are caused by external forces while in transit. They cover almost every type of loss except for those that are specifically excluded.
2. **Free of particular average (FPA):** This coverage is often referred to as "Total Loss Coverage" or "Named Peril Coverage." It will only cover losses specified in the policy.

While most shippers will secure an all-risk cargo policy, there may be certain commodities or risks that the underwriter is not willing to provide all-risk coverage for, so FPA coverage is an alternative. Examples include non-containerised cargo, used commodities, scrap commodities, and commodities that are exceptionally prone to damage or theft.

CLAUSES

The following three components are key in every policy and should be carefully worded to suit your risk:

1. **Geographic Scope:** The regions, countries, states, or territories where the policy will insure your goods. This clause should be as broad as possible. For example: "From ports and or places in the world to ports and or places in the world."
2. **Valuation Clause:** Valuation of a given shipment defines the maximum amount an insurance company will pay for a loss. Most valuation clauses include the commercial invoice value and any prepaid charges associated with the shipment, such as freight, customs clearance, or duty. This clause can be modified to include other charges or profit margin — if requested and approved by underwriters.
3. **Policy Limits:** The policy limit is the maximum amount an underwriter will pay for a loss or occurrence on any one vessel, aircraft, or conveyance, or in any one place at any one time. The insurance company will not be liable for more than this limit regardless of the insured value as defined by the valuation clause. Shippers with multiple shipments must ensure those shipments do not accumulate at a port, container freight station, or airport and not transit on a single vessel, airplane, train, or truck if the total sum of those shipments exceeds the policy limit.

EXCLUSIONS

All-risk cargo insurance exclusions fall into the following categories:

Exclusions where coverage can be added by endorsement:

- ☐ Warehouse storage coverage
- ☐ Domestic inland transit coverage
- ☐ War risk coverage
- ☐ Strikes, riots, and civil commotion (SR&CC) coverage
- ☐ Concealed damage coverage
- ☐ Contingency coverage

Exclusions that cannot be covered, even by endorsement:

- Delay, loss of market
- Inherent vice
- Improper packaging by shipper
- Consequential loss
- Employee dishonesty
- Restricted countries or blocked persons

SUMMARY

When shipping goods globally, recognise that international law concerning damage to cargo is tilted in the carrier's favor in order to promote trade between nations. The following points should be kept in mind when evaluating coverage for shipments:

- All carriers limit their liability.
- Not all risks or losses are covered by carrier liability.
- All-risk marine insurance will cover cargo loss from third party handling or negligence.
- Review the policy terms and verify insurance risks and business needs are covered by the policy.

While insurance is readily available in the marketplace to accept the risk, it is the responsibility of the shipper or consignee to ensure the coverage purchased best fits their unique exposure. This can be accomplished by engaging an insurance intermediary with an active role, experience, or specific training in international logistics and transportation insurance.

END NOTES

1. Comité Maritime International. York-Antwerp Rules 1994. http://www.comitemaritime.org/Uploads/YAR%2094%20english.pdf
2. International Civil Aviation Organization. Convention for the unification of certain rules for international carriage by air. http://www.icao.int/meetings/wrdss2012/Documents/9740.pdf
3. U.S. Government Printing Office. The Carriage of Goods by Sea Act, Title 46, §30701. http://www.gpo.gov/fdsys/granule/USCODE-2011-title46/USCODE-2011-title46-subtitleIII-chap307-sec30701/content-detail.html
4. U.S. Government Printing Office. Liability of carriers under receipts and bills of lading. www.gpo.gov/fdsys/pkg/USCODE-2009-title49/pdf/USCODE-2009-title49-subtitleIV-partB-chap147-sec14706.pdf.

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