

THE BASICS OF CARGO INSURANCE

The current policy is designed for the frequent shipper. It automatically covers approved merchandise that assureds are obliged to insure under terms of sale. This eliminates the need for the importer or exporter to negotiate terms, conditions, rates, and limits for each shipment insured. Under an open cargo policy, goods can be insured "ALL-RISK", Free of Particular Average (FPA) or With Average (WA). These coverage variations are explained below.

"ALL-RISK" COVERAGE

The broadest form of coverage is "ALL-RISK". An "ALL-RISK" policy insures approved general merchandise in the event of physical loss or damage from any external cause. This includes new, packaged goods without unusual susceptibility to loss from breakage, pilferage, or the nature of the goods themselves. "ALL-RISK" policies do not cover all losses possible in the course of an international shipment.

Typical exclusions in an "ALL-RISK" Policy are:

1. 1. Improper packing
2. 2. Abandonment of cargo
3. 3. Rejection of goods by customs
4. 4. Failure to pay or collect accounts
5. 5. Inherent vice (infestation or loss due to the nature of product itself)
6. 6. Employee conversion or dishonesty
7. 7. Losses due to delay or loss of market
8. 8. Losses in excess of policy limits
9. 9. Losses at port city more than 15 days after discharge of cargo
10. 10. Losses inland more than 30 days after discharge of cargo
11. 11. Losses in South America more than 60 days after discharge of cargo
12. 12. Barge shipments
13. 13. Goods subject to an on-deck bill of lading
14. 14. Losses caused by temperature or pressure (air shipments)
15. 15. Failure to notify air carrier of preliminary loss in timely fashion:
 - a. Obvious damage – 7 days
 - b. Hidden damage – 14 days
 - c. Non-delivery – 120 days
16. 16. Used goods

FREE OF PARTICULAR AVERAGE (FPA) COVERAGE, AMERICAN CLAUSE

FPA is limited coverage that usually applies to used merchandise, waste materials and goods shipped subject to an on-deck bill of lading. It covers partial and total losses due to FPA perils. FPA perils include the sinking, stranding, burning or collision of the vessels or catastrophic perils on shore such as earthquake, derailment, collapse of dock, fire, etc.

Policy Written for FPA Conditions Loss Caused By or Resulting From:	Partial Loss Coverage	Total Loss Coverage
1. Heavy weather, lightning, barratry of the Master or Mariners, assailing thieves except:	Not Covered	Covered
While on deck, if a direct result of stranding, sinking, burning, fire or collision	Covered	Covered
While under deck, if the vessel strands or is burnt during the insured voyage or if loss or damage can reasonably be attributable to fire or collision	Covered	Covered
2. Fire or explosion	Covered	Covered
3. Vessel or craft being stranded, sunk or burnt	Covered	Covered
4. Collision or upset to an air or land conveyance	Covered	Covered
5. Collision or contact of a water borne conveyance with any external object (ice included) other than water	Covered	Covered

WITH AVERAGE (WA) COVERAGE

With average coverage extends FPA coverage to include the peril of heavy weather. Frequently, FPA and WA can be extended to include theft, pilferage and non-delivery.

COMPARISON OF CARGO COVERAGES

Loss Caused By or Resulting From:	FPA	With Average	All Risks
Stranding	YES	YES	YES
Sinking	YES	YES	YES
Burning	YES	YES	YES
Collision	YES	YES	YES
Faults or errors in the management of the vessel	YES	YES	YES
Bursting of boilers	YES	YES	YES
Latent defects in hull or machinery	YES	YES	YES
Explosion	YES	YES	YES
Jettison	YES	YES	YES
Heavy weather*	NO*	YES	YES
Seawater as a result of heavy weather*	NO*	YES	YES
Freshwater	NO	NO	YES
Improper stowage by the carrier	NO	NO	YES
Hook damage, mud and grease	NO	NO	YES
Theft of an entire shipping package	NO	NO	YES
Non-Delivery of an entire shipping package	NO	NO	YES
Pilferage	NO	NO	YES
Leakage	NO	NO	YES
Breakage	NO	NO	YES

* Refers to partial losses. Total loss of cargo from these perils would be covered.

Although above perils are indicated as covered under "All Risks", depending upon commodity, certain exclusions may apply. Please refer to policy for exact coverages.

WAREHOUSE-TO-WAREHOUSE PROTECTION

Most cargo insurance protects goods in transit from the time they leave the shipper's warehouse until they reach the consignee's warehouse, as long as they are not taken out of the normal course of transit by the insured. However, there are circumstances when:

1. The terms of purchase or sale determine when insurance is in effect.
2. Insurance may not go into effect until the goods are placed on the conveyance.
3. Insurance may cease when the goods are discharged from the conveyance or when the conveyance arrives at the port.

In addition, insurance is not in effect if the goods do not travel via common carrier, i.e., they are picked up or delivered by the shipper or consignee. If you have any questions on a specific shipment, please call our office.

THE NEED FOR CARGO INSURANCE

Avoid the Uncertainty of Recovery from Carriers

Importers and exporters are exposed to countless financial risks when they don't insure their international shipments. Trying to recover losses from carriers is difficult and time consuming. The best way to protect their financial interest is with "All Risks" insurance coverage. "All Risks" insurance relieves them of their financial exposure from physical loss or damage to their goods while in transit, since carriers have limited liability.

Air Shipments

US\$9.07 per pound
(CSU) US\$20.00 per kilo

Ocean Shipments

US\$500 per Customary Shipping Unit

Vessel Owner's Limited Liability

The **Hague/COGSA Act** was developed to protect vessel owners against legal liability to shippers for circumstances out of their control. It was conceived during the post World War I era when vessel owners had little jurisdiction over their ships once they left port. COGSA, the Carriage of Goods by Sea Act, limits vessel owner's liabilities to US\$500 per shipping unit. It also relieves all their liability to shippers in 17 situations known as the Hague/COGSA Defenses. This means shippers have no legal recourse against vessel owners when their goods are lost or damaged by these 17 causes.

The 17 Hague/COGSA Defenses

Neither the carrier nor the ship shall be responsible for loss or damage arising or resulting from:

1. 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. 2. Fire, unless caused by the actual fault or privity of the carrier
3. 3. Perils, danger, and accidents of the sea or of other navigable waters
4. 4. Act of God
5. 5. Act of war
6. 6. Act of public enemies
7. 7. Arrest or restraint of princes, rulers, or people or seizure under legal process
8. 8. Quarantine restrictions
9. 9. Act or omission of the shipper or owner of the goods, his agent or representative
10. 10. Strikers, lockouts, stoppage or restraint of labor from whatever cause, whether partial or general: Provided that nothing herein contained shall be construed to relieve a carrier from responsibility for the carrier's own acts
11. 11. Riots and civil commotions
12. 12. Saving or attempting to save life or property at sea
13. 13. Wastage in bulk or weight or any other loss or damage arising from inherent defect, quality, or vice of the goods
14. 14. Insufficiency of packaging
15. 15. Insufficiency or inadequacy of marks
16. 16. Latent defects not discoverable by due diligence
17. 17. Any other cause arising without the actual fault and privity of the carrier 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

Air Carriers' Limited Liability

The Warsaw Convention was developed to protect air carriers against liabilities to shippers. Unless subject to Montreal Protocol No. 4, air carriers' liabilities are limited to US\$9.07 per pound for international shipments and \$0.50 per pound for domestic shipments. To recover the actual value of their lost or damaged goods, shippers decide many times to declare value with air carriers. Even when the value is declared with the airline, there are provisions which can still make recovering losses from air carriers difficult and time consuming.

“All Risks” Insurance vs. Declared Value

“All Risks” Insurance

“All Risks” insurance protects the shipper against physical loss or damage to their cargo from external causes, subject to policy terms and conditions. It is not necessary to prove the carrier's liability.

Declared Value

Declaring value to a carrier is not the same as providing insurance protection for merchandise in transit. If there is a claim against a carrier, the shipper has to prove the merchandise was damaged and prove the carrier caused the damage. This makes recovering losses very difficult.

What this Means to your Clients

If merchandise is damaged in transit and the carrier did not cause the damage, the shipper would not be able to recover the loss. “All Risks” insurance provides protection without having to prove carrier liability.

CLAIMS

The most common problem with marine cargo insurance claims is that few claimants know what to do in the event of a claim. This lack of knowledge is what often creates havoc in documenting and processing claims. This section details the guidelines and procedures to follow in the event of a claim.

OWNERSHIP OF DAMAGED CARGO

Most assureds have the impression that the title to all damaged goods is automatically transferred to the insurance company and that the assured will have no further interest in the cargo. This is not the case and any claimant who acts in accordance with such belief may find himself jeopardizing the very rights he/she may be trying to protect. The most important thing to remember is that the cargo belongs to the assured and the assured alone is the one who has sustained the loss.

Contrary to popular belief, the insurance company has no legal title to the goods and is not a party to the contract of carriage within the terms of the bill of lading. The insurance company can only pursue the claim against carriers after proving the loss has been paid under the policy. The assured must protect the insurance company's right to subrogate.

The fact is that the cargo remains the property of the assured, and under limited circumstances will an insurance company agree to take title to or sell it.

"ONUS OF GOOD FAITH"

An assured does not have the right to abandon cargo or fail to take any action which could result in averting or minimizing a loss or damage. In other words, assureds must at all times act in the same manner as they would in the event they were uninsured. This is called the "Onus of Good Faith" and it is the basis on which all insurance is governed.

MINIMIZING A KNOWN LOSS

Some assureds will question the right to incur an expense in order to minimize a loss before receiving the insurance company's authority to incur that expense. Provided the expense incurred is reasonable relative to the amount of loss you are trying to avoid, the insurance company will pay for those expenses. This contingency is covered under the "sue and labor" clause of most marine policies.

PROCEDURES

CONTACT OUR OFFICE WHEN IN DOUBT OR WITH ANY QUESTIONS ON HOW TO PROCEED.

Prepare a preliminary claim form and send it to the carrier for signature.

If pilferage or damage has occurred, a survey may be required. As a general rule, amounts under \$500.00 DO NOT require a survey. If the damage is noted, you are to stop unloading or unpacking until a decision has been reached on the need for a survey. Failure to follow these instructions may prejudice any future recovery. DO NOT discard any dunnage or exterior containers as they will be part of any survey.

SUBSTANTIATE THE CLAIM

A vital component of our claims procedures is the substantiating of the claim. The consignee must prove the claim was caused as a result of transit and occurred during the period of insurance coverage. Please follow the steps below to substantiate the claim.

1. EXAMINE EXTERNAL CONDITION OF PACKAGES

Upon delivery, examine the external condition of all packages before signing the delivery receipt. This may seem impossible with today's business pace as it can delay trucks and cargo elevators. The trucking companies may charge you a minimal fee for the delay. However, when you thoroughly examine packages and note damage on delivery receipts, you protect your rights of recovery and minimize your losses.

2. NOTE EXCEPTIONS ON DELIVERY RECEIPT

All steamship companies, airlines, railways, trucking companies and harbor authorities must obtain a signature on a delivery receipt from the person or company taking delivery of cargo. All delivery receipts contain a clause stating the cargo was delivered in apparent good condition unless noted to the contrary.

If your receiving department or cartage company signs a delivery receipt without noting damage, your coverage is at risk. By signing the delivery receipt without noting damage, you have legally acknowledged receiving the goods in "apparent good condition". This destroys your chance to prove the goods were damaged before arriving at your premises and also destroys the chance that your insurance company will successfully recover the loss from the carrier. By signing the delivery receipt without noting damage, you are providing the carrier with a clean receipt.

It is important to note some tactics trucking companies may use to obtain clean receipts from you. They may try to convince you to sign for a visibly damaged package by saying it had been "opened by Customs". Also, they may attempt to convince you a damaged package was signed for from the wharf or last carrier in damaged condition. You should not accept these claims until you have determined the goods are in proper condition. Remember, the consignee is sole judge in deciding how the packages appear and how they should be signed for.

If delivery carriers attempt to prevent you from noting their delivery receipt, you should advise the trucker to hold the merchandise. On future shipments, you should request your insurance company to send a surveyor to inspect the shipment on the trucker's vehicle. Also, you should refuse a carrier if he/she suggests you sign for damaged packages "subject to inspection". This notation does not imply that the package is damaged, and it becomes the responsibility of the consignee to prove when it occurred. Finally, there is another reason not to sign for damaged packages. In the event your loss is not insured, signing for the damaged goods in "apparent good condition" jeopardizes your own rights to recover your loss from the carrier.

3. RECORD NUMBERS OF PACKAGES

When noting delivery receipts, record all case numbers that appear damaged. It is not enough to indicate "Five Cases Damaged" on the receipt. You must record the numbers appearing on each case. For example: "Case #5, #6, #7 and #12 are in damaged condition".

DOCUMENT THE CLAIM

PLACE ALL CARRIERS ON NOTICE

Along with noting delivery receipts, it is vital to place all carriers "on notice" in the event of a claim. Sample letters are included in this manual. The following are time limitations for placing carriers 'On notice' of the nature and extent of the claim:

OCEAN CARRIER: One Year from Date of Delivery.

AIR CARRIER: Pilferage and Obvious Damage - 7 Days
Hidden Damage - 14 Days
Non-Delivery - 120 Days
(*Air Carrier's Tariff may provide different time limits that prevail over a Bill of Lading or Oral Representation.)

DOMESTIC CARRIERS: 7 Days from Date of Delivery

While it is necessary to place the carrier on notice within the given time frame, payment from them should never be accepted without first advising the insurance company. Accepting payment from the carrier without notifying the insurance company prejudices the insurance company's right of subrogation and violates a provision of your policy which may jeopardize the outcome of the claim.