

## Trucking Loss, Damage, or Delay Claims – #3

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Truckers are liable for cargo loss, damage and delay as virtual insurers of the goods, without regard to fault or negligence, subject to only to the limited exceptions presented in the last issue of this article.

When drivers accept shipments for transportation by the carriers they are employed by, they are generally confirming that the goods were received in “apparent good order.” This suggests that if the cargo is not delivered in the same condition as it was received from the shipper, the carrier is likely to be liable for any loss or damage which may have occurred. This article will address the following questions:

- ◆ Did the damage occur as the result of the transportation services provided?
- ◆ Was the shipment damaged when it arrived at destination or after it arrived at the destination or, maybe even before it was loaded on the truck?
- ◆ What if the shipment has a characteristic that causes it to self-destruct en route?
- ◆ What if the goods were not packaged properly?
- ◆ What if the shipment is delayed? Can the carrier be held liable for losses caused by a delay?

Before we get into these issues, this may be the appropriate time to lay down certain basics to the subject of claims.

- 1) **Released liability** – Carriers are usually liable for the full value of the goods they transport with some exceptions such as high value commodities, documents, coin, money, jewelry, currency, electronic goods, articles of extraordinary value, etc. If the bill of lading contains an entry in the released value/liability section, the carrier’s liability can be released at a value acceptable to the shipper and the carrier. As an example, the carrier might choose to release the value of a shipment of machined parts to \$1.25 per pound per article or some other reasonable value. If this is entered on the bill of lading, it is the maximum amount a carrier would be liable for.
- 2) **No carrier liability** – No carrier is liable for any loss or damage to a shipment or for any delay caused by Act of God (a natural cause over which the carrier had no control), the public enemy (a riot or the like), the authority of law (the act of a law enforcement agency), or the act or default of the shipper (defective packaging, defective handling by the shipper or consignee, or an inherent vice of the goods) unless caused by the negligence of the carrier.
- 3) **Shipper/Consignee Cargo Insurance** – When the shipper or consignee has insured the shipment under their own policy, the carrier has the right to use the coverage under that policy to cover any loss or damage to the shipment. Should the carrier take advantage of

shipper/consignee cargo insurance the provider of that coverage may collect the applicable insurance premium from the carrier.

- 4) **Delay claims** – Claims for losses caused by delay must be supported by the required delivery date noted on the face of the bill of lading. When a specific delivery date is not noted, the carrier is only responsible for unreasonable delay. This is a foggy term at best and will be defined in many different ways based on the terms and conditions of carriage. These are extremely difficult claims for a shipper/consignee to collect on.
- ◆ *Did the damage occur as the result of the transportation services provided?* If the loss or damage occurred as a result of the transportation services provided, with few exceptions, the carrier will be liable for the loss. If the driver accepts the shipment “in apparent good order” and delivers it in a damaged condition, there is not much more to say. This would suggest the damage occurred while it was being transported by the carrier. However, if the driver picked up the cargo and did not see/count/inspect the cargo because the trailer doors were closed and sealed at the time he/she picked it up, it would be considered a Shipper Load and Count (SLC) shipment and the carrier would not be liable for loss or damage unless the carrier was otherwise negligent such as the trailer rolled over or some other similar carrier caused catastrophe. Likewise, if the shipment is on a flat bed trailer or the trailer doors are unlocked or unsealed but has been loaded in such a manner that inspection or count of the load is impractical the carrier will not be liable for loss or damage except for cases of carrier negligence.
  - ◆ *Was the shipment damaged when it arrived at destination or after it arrived at the destination or, maybe even before it was loaded on the truck?* When the packaging does not show any signs of damage, yet the shipment arrives in the damaged condition, it suggests that the shipment might have been damaged before it was packaged or after it was unpackaged. This condition is commonly referred to as concealed damage. The claims regulations do not address the issue of concealed damage. In theory, there remains the same 270 days to file a loss or damage claim that exists for any other claim. Most carriers limit concealed loss and damage claims to submitting them within ten days of delivery. That is not to say the carrier will necessarily pay a concealed loss or damage claim submitted within ten days but they will investigate the claim.
  - ◆ *What if the shipment has a characteristic that causes it to self-destruct en route?* There are numerous goods that cannot withstand the stresses of the transportation system. For this provision to apply, the carrier must show that it used reasonable care and diligence considering the nature of the shipment. Examples of goods subject to inherent vices might be livestock, decay of fruit, the evaporation of liquids, or the bursting of containers due to fermentation.
  - ◆ *What if the goods were not packaged properly?* When a shipper offers a shipment to a carrier for transportation, it impliedly warrants that the shipment is adequately packaged and protected for transportation. If the carrier accepts a shipment for transportation that it knows is inadequate and it accepts it anyway, then the carrier will be liable for any loss or damage

which may result. If, the carrier does not know if the shipment is adequately protected, any relies on the shipper to know how to adequately package their goods for transportation, and the goods are damaged as a result of defective packaging, then the carrier would not be liable for any resulting loss or damage.

- ◆ *What if the shipment is delayed? Can the carrier be held liable for losses caused by a delay?*  
If the carrier receives notice (usually on the face of the bill of lading) from the shipper that a shipment has a specific delivery date and should that date be missed, there will be a set loss to the consignee then the carrier would be liable for the loss. If the carrier does not receive notice of the liability for delay, then a claim for delay usually would not be paid. A carrier, without specific notice of delivery dates and liability for a specific loss, is only liable for delivery “upon reasonable dispatch.” How “reasonable dispatch” is interpreted will vary depending on what is reasonable under the circumstances of a particular shipment. If the delivery of a shipment clearly exceeds what is reasonable under the circumstances, then the carrier may be liable for the reasonable costs of the delay.