

LOADING AND UNLOADING, WHO IS RESPONSIBLE?

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Who loads a cargo carrying vehicle can make the difference in establishing liability for loss or damage to the cargo; for injuries during transport; or during delivery.

Loading or unloading a truck seems like a straight forward and simple process and, in most cases, it is. After all, it happens thousands of times everyday in every corner of the country. From a litigation prospective it has a number of twists and turns that will effect liability issues. Trucking industry safety is largely regulated by the U.S. Department of Transportation but OSHA also has something to say about it. According to those regulations, the trucking company and the driver bear the ultimate responsibility for the safe operations of the truck but those regulations generally do not apply to people that ship or receive freight on trucks (consignors and consignees). OSHA Standards say, "OSHA regulations govern the safety and health of the workers and the responsibilities of employers to ensure their safety at the warehouse, dock, construction sites, and other places truckers go to deliver and pick up loads throughout the country. While OSHA does not regulate self-employed truckers, it does regulate workplaces to which the truckers deliver goods and the workers which receive those goods."

Frequently, the shipper will load the trailer, secure the freight, and apply a seal to the trailer doors. The driver or a representative of the carrier is frequently not present at the time of loading, and many times, even if he/she is, the shipper may not permit drivers on the loading dock. In the trucking industry this is known as a Shipper Load and Count shipment. Usually "Shipper Load and Count" or "SLC" is noted on the face of the bill of lading. If it is not there, it really does not change the facts of the loading process but, if you are the driver, it is wise to put "S LC" on the face of the bill of lading if you, or a representative of your company was not present at the time of loading. The implications of transporting a "SLC" shipment are significant. Trucking companies are usually liable for the full value of the goods they transport (with some exceptions). Liability for loss or damage to goods or injury to workers on a "SLC" shipment are limited to carrier negligence. By contrast, on shipments observed by the driver during loading that are lost or damaged during transportation, the trucking company is liable for the loss or damage with very few exceptions.

Transportation is defined by the federal government as, "The term "transportation" includes -
(A) a motor vehicle, vessel, warehouse, wharf, pier, dock, yard, property, facility, instrumentality, or equipment of any kind related to the movement of passengers or property, or both, regardless of ownership or an agreement concerning use; and
(B) services related to that movement, including arranging for, receipt, delivery, elevation, transfer in transit, refrigeration, icing, ventilation, storage, handling, packing, unpacking, and interchange of passengers and property."

Another major facet of loading liability is when someone gets injured because of shifting or falling freight either while the cargo is in transit or during the unloading process. If the shipper loaded the freight, secured the cargo, and sealed the trailer doors or the trailer was loaded in a

manner that makes inspection of its cargo impracticable, the trucking company generally is not liable for injuries caused by shifting or falling freight. Accidents involving shifting or falling freight frequently include the tractor and trailer rolling over when the load shifts while it is being unloaded. It is not unusual for the weight of the cargo to exceed weight of the tractor-trailer combination. Cargo trailer doors do not qualify as securement devices. Freight must be secured by some other acceptable method. If the cargo vehicle's doors are opened and freight rains down on an unsuspecting driver or cargo handler, it too can be litigation in the making. Liability for injuries of this nature usually apply to the people that loaded the truck/trailer. If a trucking company driver witnesses and/or participates in the loading process, secures the freight for transport and could have made changes to the load to make it safe for movement, then the trucking company and driver could be liable for any shifting or falling freight damages. If the shipper assumes responsibility for the loading process, without the driver or an agent of the carrier observing the process or if they could have offered input on how to properly load the cargo vehicle, then they may be liable for any shifting or falling freight damages.

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