

TRANSPORTATION CLUB OF MINNEAPOLIS
AND ST. PAUL

ANATOMY OF A FREIGHT CLAIM

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FREIGHT CLAIMS IN ONE EASY LESSON, OR, DO WE REALLY HAVE TO DO THIS?

In the world of freight brokerage, the broker is liable for freight loss and damages IF: Broker agrees by contract to be bound; or if broker is negligent, AND that negligence is the proximate cause of the loss. Even though many brokers do not accept the liability by contract, they “accept” the liability as an accommodation to their shipper customers. It’s hard to say “no” to the shipper, when it’s made clear that the broker will have to accept the risk of cargo loss in order to get, or keep the business. Shippers too may be liable for faulty packaging, and/or faulty loading. The most common defense to a cargo claim made by carriers is “shipper fault”.

1. Broker can assume legal liability by contract with a shipper. The good news is that insurance can be purchased to cover cargo loss and damage risks. Also a broker could be legally liable, for example if it was negligent in transmitting instructions to carrier or just plain made a mistake which caused the loss. Errors and Omissions Insurance can be purchased to cover those risks. Smart shippers too may have Errors and Omissions Insurance to cover mistakes made in the packaging and/or loading process.

2. If broker makes the business decision to "manage" a claim, or a shipper needs to prove it properly packaged and loaded a trailer :

a. There are commercial investigation companies that will perform all or any part of an investigation. When hiring, get a clear written commitment stating what they are going to do, in what time frame and for how much money. A private investigating company is not your insurance companies investigating company. Make clear that your investigating company is not authorized to disclose any of its findings without your express written authorization. The insurance investigators will want to know everything you have learned and your confidential information should not be “given” away unless you get some information you want in return from the insurance investigators.

3. Now for the Investigation. **Don’t wait. The longer you wait the more difficult it will be to learn important facts which may have an important bearing in bringing about resolution of the claim.** The Investigation should include:

a. Date/time/place of loss/ **get photos of damages**, freight, trailers equipment etc. and note time and date. asap.(see par n below)(There’s no such thing as too many photos.)

b. A detailed description of the damaged freight including, dimensions, weight, packaging and the loss total? Partial? mitigation possible?

c. Did weather contribute to loss? how?

d. Identify witnesses: names/addresses/ ph/fax numbers/ titles?

Call and interview witnesses asap. Until and unless a lawsuit is filed, you are not prohibited from talking to witnesses. Take careful notes or better yet record the conversation .It is wise to tell them you are recording the conversation because

you want to remember what they said and it easier to just listen to them rather than writing while listening .**Make the interview a non threatening fact finding conversation.**

e. Collect all shipping documents including bills of lading.
f. Get copies of police reports, if any.
g. Find out if shipper and/ or carrier reported the loss to their insurance carriers. Find out the name(s) of all the insurance companies who may have covered the loss.. Get the names and addresses and ph/fax number of insurance companies' adjusters.

h. From the Shipper: Get a detailed description of: Packaging...did they follow their standard procedures? How can they prove that they followed their standard procedures? Are their packaging procedures documented ? How do they know the procedures were followed for this shipment? Documents and witnesses must make it clear that freight was in good condition when loaded. A "clean" bill of lading provides some proof of good condition, but it provides a rebuttable presumption only. Who at shipper facility can testify or will provide a written statement to the facts? (Get a written statement from him/her as soon as possible).

i. The Carrier: Get a description of loading procedures; Who did it ? when? how? date? Did shipper see carrier leave shippers facilities? Get shippers version of loading AND drivers version of loading .Lumpers? Were they involved? Get names/addresses/ phone numbers and talk to them. Try to get signed written statements if they know important facts.(Try to get a recorded conversation if you can. See par f above).

j. Interview driver asap. Get a full description of loss/ how, when, why, time, date of loss, factual cause of loss/ amount/description of loss. Photos of damage? names/ addresses/ phone/fax numbers of witnesses? Ask the driver about his experience generally and experience with this type of freight specifically? Ask if he has maintained his driver logs, where they are kept, and who has possession of them.

k. Ask where (address) the damaged (and undamaged) freight is being held. Who has possession? Shipper should tell Carrier (in writing) what to do with it including where to store it. What are the storage charges and what is the storage accrual rate?

l. Did Carrier make the delivery? Date? time ? Place? Weather? Did the Consignee reject? Get a clear statement from consignee in writing explaining the reason for rejection. Is it noted on the bill of lading? Were the reasons for rejection known to carrier, broker, shipper in advance? (Such as temperature requirements..) If delivery was not made, where is the freight?

m. Who at the consignee can testify as to the condition of the freight upon arrival? name/ addresses/ phone/fax numbers?. Get recorded or written statements as soon as possible. Is the freight in original condition/placement at time of delivery or has it been moved? If it was moved, why, when and where and how was it moved? Who authorized the move? What storage charges if any, are accruing?

n. What is the amount of damages? Most courts allow the invoice price of sale from

shipper to consignee which includes the lost profits of the shipper. If the freight was not sold at the time of loss, then shippers invoice costs plus reasonable overhead is usually allowed. Collect all documents establishing proof of damages from shipper. This may include cost of re-delivery and mitigation costs.

o. Mitigation. Mitigation is required by law of all parties. It is the primary responsibility of the owner of the freight. Usually shipper will know salvage people in its industry. That's usually the best place to start. See if they will help...its' their freight and they should better know how to dispose of it. It's in everyone's best interest to cooperate in getting the damaged freight salvaged because it reduces the total amount of loss at issue. If possible get competing bids for salvage.

p. If the motor carrier refuses to pay, where liability is clear, and insurance company refuses to pay....take it court. Consult with an experienced transportation attorney.

q. File the claim with the motor carrier promptly. Some courts take the position that failure to file a claim with the motor carrier within 9 months will bar any further claims against the motor carrier! (This assumes there is no contractual agreement between the parties which provides for a different time frame.)

r. Liability Issues: Review carefully what the contracts between the Parties say regarding liability. Contracts which should be carefully reviewed are: broker/carrier; broker/shipper; shipper /carrier, all insurance policies; all bills of lading; all other shipping documents such as rate/load confirmations etc. After completing your factual investigation, talk to a qualified transportation attorney for analysis of the liability issues.

s. If you decide to pay: (i) a shipper for a freight damage claim, make sure you get a release and assignment of the claim in exchange for the payment,(ii) a carrier make sure you get a release and assignment of the claim in exchange for the payment. The release(s) should include a co-operation clause that requires the shipper (or carrier) to provide all documentation they have as well as make witnesses available at your request. Get statements (signed) from witnesses. Memories grow fuzzy with time.

t. When asserting claims against carriers or other parties for freight damage, be careful to claim as assignee of shipper, only if you are sure the damage was not the fault of the shipper. Carriers or other parties responsible for damage can “offset” or assert defenses against the shipper (and you as assignee) which could potentially bar your claim. If you assert your claim for breach of contract/indemnification under a broker/carrier agreement, they will have less opportunity to assert the those defenses.

u. Not all claims are alike. Different types of products will require different investigation questions. The above list is intended only as an example of the many factual issues that must be investigated. Liability issues may ultimately be determined by which party has the done the best factual investigation. Seek guidance from a qualified transportation attorney.

v. A freight claims investigation checklist prepared in advance can be a great aid to managing claims. Remember, the key to successfully resolving cargo claims is early and comprehensive factual investigation.

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