

# INSURANCE DAMAGE CLAIMS

When your cargo is damaged, it is important to substantiate your claim immediately. Knowing the general process of making a claim for damage is essential if you hope to prevail. Lack of knowledge may jeopardize your insurance coverage. Below is a brief summary to follow in the event of a damage claim. But keep in mind, if you do not have insurance coverage – you must still do these steps in order to protect your claim directly against the carrier.

## **OWNERSHIP OF DAMAGED CARGO**

Insurance companies, in only the most extreme cases, do not assume title to the damaged or lost goods. They are generally not a party to the contract of carriage. 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 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.**

## **“ONUS OF GOOD FAITH”**

If you have damage, you must exercise due care in preventing more damage to the cargo. You do not have the right to abandon cargo. In other words, assureds must continue to 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**

You may 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**

### **FIRST, SUBSTANTIATE THE CLAIM**

#### **1. EXAMINE EXTERNAL CONDITION OF PACKAGES**

On 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. Also, you should refuse a carrier if he/she suggests you sign for damaged packages "subject to inspection". 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".

### **4. TAKE PICTURES**

Have a digital camera ready to document the apparent exterior damage and any damage to the contents – including the dunnage.

## **DOCUMENT THE CLAIM**

### **CONTACT YOUR FORWARDER OR BROKER 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.

### **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.

*Sample letter to carrier(s) concerning notice of loss*

Date:

To: we recommend that a letter be sent to all parties involved, the trucker, steamship line, airline, etc.

**LOSS DAMAGE NOTIFICATION**

Bill of Lading  
BOL date  
House Bill of Lading  
Number of packages/container number  
Supplier  
Consignee  
Vessel/Airline

The cargo referenced above has sustained apparent damage. Please consider this our formal intent to file a claim against you for this cargo. Please mark your records accordingly. Further documentation will be forthcoming.

Kind Regards:

Your Name  
Your Title  
Your Company, address, phone and email.

Follow up with a letter indicating the amount of the claim.

Copies of both should be forwarded immediately to your insurance agent.