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Pursuing And Responding To A Claim Involving An International Ocean/Intermodal Carrier

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This article is not intended to be all inclusive but will at least give you an idea as to where to start when you have an international ocean cargo claim. This article will also discuss some of the responses that are appropriate for the ocean carrier.

If you are shipping goods to or from the United States, chances are your cargo is being shipped under the Carriage of Goods by Sea Act. There are some other statutes such as the Rotterdam Rules and Hague Rules that might be asserted regarding a loss. For purposes of this article, I will be discussing items primarily governed by the Carriage of Goods by Sea Act. 46 U.S.C.A. § 301701 note (2006). Within the footnote, you can also see it referred to as 46 U.S.C.A. § 1301 et al which was the old numbering for the statute. It is also important to note that many shipments travel by ship and by motor carrier with a contract of carriage incorporating the Carriage of Goods by Sea Act.

If you ship things to another country and your shipment suffers a loss or damage, it is important to give notice for a cargo loss and/or damage claim within 3 days. The failure to do so alters the legal burden of proof between the shipper/cargo interest and the ocean carrier under the Carriage of Goods by Sea Act.

Once your client has suffered a loss, you should notify your insurance company if in fact you have insurance and give notice to the ocean carrier. Insurance can be purchased directly by shippers or through ocean freight forwarders as part of an open cargo insurance policy.

If you have damage or loss of cargo, you should contact a marine surveyor and if you have insurance, your insurance policy and/or certificate of insurance will list a contact person and/or surveyor in the other country. If the loss was suffered in the United States, your insurer can give you the name of a surveyor. If at some point there could be an issue as to whether or not there is insurance coverage, then the shipper might want to get its own surveyor after informing the insurance company.

Hopefully your client will have insurance and your insurance company will pay the claim. There are different limitations of liability under bills of lading that are issued by the steamship company unless your client pays a higher freight rate. It is usually cheaper to just buy the insurance rather than declare a higher value on the bill of lading.

When you submit the claim to the insurer, you should include the bill of lading, delivery receipts, dock receipts, invoices, customs documents, packing lists, and any insurance certificates. You could send these documents to the ocean carrier if you do not have cargo insurance.

The ocean carrier will also want to appoint a surveyor. Chances are, the ocean carrier has a representative in the particular port through its Steamship Association, often referred to as a P&I Club. A joint survey, that is one with the cargo interest and the carrier, can assist in resolving the matter.

If you are making a claim against an ocean carrier, you should be aware that under the Carriage of Goods by Sea Act, you only have 1 year in which to file suit from the date of delivery or when the cargo should have been delivered. The Florida statute of limitations is considerably longer for a breach of contract on a written agreement or negligence claim.

If you are the ocean carrier, you do want to assert your limitations of liability, whether they are against the shipper or its insurance company. Under the \$500.00 per package limitation, sometimes a large vehicle can reduce the carrier's liability to only \$500.00. Also, sometimes a pallet could be considered a package. See *Channa Imports, Inc., vs. Hybur, Ltd.*, 368 Fed. Appx. 32 (11th Cir. 2010). Carriers might even try to assert that the container or trailer is a package. The Carriage of Goods by Sea Act also contains many other defenses such as damage caused by improper packing and losses not the fault of the carrier.

An extension of time can be granted by the ocean carrier to extend the time limit for filing a lawsuit. This should be obtained in writing. The advantage of an extension of time is that all of the parties will have an opportunity to try to resolve the matter before incurring legal expenses. If you are trying to get an extension of time, you must make sure that you get the extension from the right parties. This could be the owner of the ship, the actual ocean carrier, and sometimes a Non-Vessel Operating Common Carrier, who also issues a bill of lading.

Very often the stevedoring company and the motor carrier will be covered under the limitations of liability in a bill of lading. This is found in what is called a Himalaya clause.

Another thing to be wary of on these international shipments is that even if part of the transportation happens on land, meaning that more than one type of carrier is used (ocean plus a trucking or rail company) and if the Carriage of Goods by Sea Act is incorporated into the bill of lading, then the \$500.00 per package limitation and the one year statute of limitations can apply throughout the time of the shipment. See *Kawasaki Kisen Kaisha Ltd. v. Regal Beloit Corp.* 130 S. Ct. 2443 (U.S. 2010) for a further discussion of this issue.

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The practitioner should be aware that domestic shipments have bills of lading that incorporate the Carriage of Goods by Sea Act and its limitations. An example could be a shipment from Ft. Lauderdale to San Juan, Puerto Rico.

This article should alert you to at least some of the issues and the process that you need to be aware of in the handling and defense of an international ocean claim.

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