

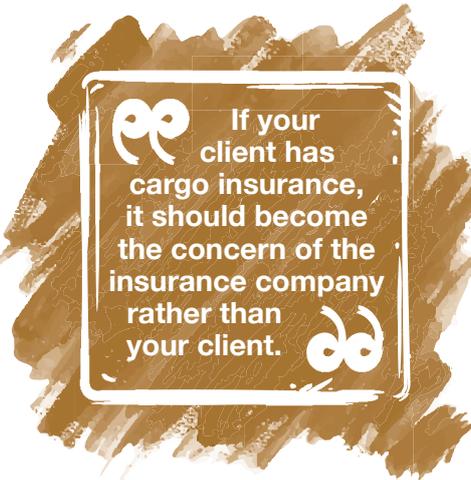
Hurricane Irma & Marine Cargo Insurance

By Daniel W. Raab, Esq.

It is important to have cargo insurance for many reasons including that an act of nature is a defense to an ocean carrier and even an inland carrier paying a claim. The Carriage of Goods by Sea Act has an act of nature defense under 46 U.S.C.A. 1304 (2). This is considered an uncontrollable loss. In other words, if the cargo is shipped and it is damaged by virtue of a hurricane, the ocean carrier could have a defense. The ocean carrier, however, should be able to prove that it took and could have taken the proper precautions to prevent the damages. *Skandia Ins. Co. v. Star Shipping A/S*, 173 F. Supp. 2d 1228 (S.D. Alabama 2001). This should be raised as an affirmative defense in litigation which means the burden of proof is on the ocean carrier to prove the defense. In the case of hurricane Irma, at least in South Florida, there was plenty of advance notice of the hurricane. If your client has cargo insurance, it should become the concern of the insurance company rather than your client. If your client has insurance, the insurer should be notified as soon as possible.

The question then becomes what happens if your client's cargo is damaged in an ocean carrier's terminal? What should be looked into is whether or not the ocean carrier and/or terminal operator took proper precautions to prevent a loss. In the case of Hurricane Irma in South Florida, there was plenty of notice to put the cargo in place to make it safe from any kind of flooding. If there was a problem on the high seas with regard to a hurricane, the issue would be whether or not the captain could take the necessary precautions to avoid the hurricane. Again, a typical marine cargo insurance policy will protect the shipper from these types of situations. The terminal will have defenses through a dock receipt and/or the carrier's bill of lading providing for an act of nature defense. The defense being extended to the terminal through a carrier's bill of lading is called a Himalaya Clause.

This could also impact marine cargo insurance on an inland shipment. For instance, if the cargo is going from a ware-



house near Port of Puerto Plata, Dominican Republic by truck to Port of Puerto Plata then on to Miami and then by truck to Orlando, should the cargo be damaged along the inland part of the shipment, there could also be a defense that there was a storm, an act of nature. The success of the defense would depend upon whether or not it was reasonable to drive through the affected area. It is worth noting that marine cargo policies often cover the inland portion of the trip as they are house to house. Intermodal shipments and Intermodal Bills of Lading are being more common and cover the entire trip. The motor carriers are often covered in a Himalaya Clause.

If possible, a claim for cargo loss or damage should be made in writing within three days to the ocean carrier or the burden of proof can be switched under the Carriage of Goods by Sea Act, 46 U.S.C.A. 1303[6]. Certain bills of lading for motor carriers require that claims be filed within nine months or the claim will be barred per that bill of lading. It is important when handling any cargo claim to read the front and back of the bill of lading.

It is also important to keep track of the statute of limitations for suing an ocean carrier and its agents on a claim. Many bills of lading have a provision of one year from the date of delivery for filing a cargo lawsuit unless you get the appropriate extension of time from the carrier and other parties that might have liability including

the stevedore, inland motor carrier on an intermodal bill of lading, and terminal operator. This is a much shorter statute of limitations than what you might otherwise see for a breach of contract action or even a negligence action in the State of Florida. United States domestic trucking shipment bills of lading may have time limitations for filing a lawsuit and for filing a claim which are also less than four years depending on the motor carrier's bill of lading. Some motor carrier bills of lading can bar the pursuit of an untimely filed claim.

It will be interesting to see what happens with regard to Hurricane Irma litigation. Natural disasters are yet another reason to have marine cargo insurance. It can be purchased directly by the shipper or through Ocean Freight Forwarders, Non-Vessel Operating Common Carriers, and even sometimes carriers.

The Carriage of Goods by Sea Act is actually found as a note to U.S.C.A. 30701 through 30707.

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