

Understanding Liability, Insurance and Claims

Cargo loss or damage is everyone's nightmare and has become a taboo subject to discuss between a freight forwarder and their customer. Let's face it, we want to be your freight forwarder and discussing loss or damage is not a popular subject to bring up when we're trying to obtain your business. However, DSV knows that loss and damage is a fact of international shipping and although it occurs to less than 1 percent of the shipments we handle, DSV believes it makes good business sense to educate our customers about our liabilities, what they can do to protect themselves against loss and damage and how to properly handle claims if an exception occurs.

The supply chain: Each supply chain is different. An account's economic requirements may cause an even greater variance in the transportation solutions provided. For instance, your cargo may originate at a third party supplier, who hands your shipment off to a trucker who delivers it to a warehouse where it is either consolidated or handed off to another trucker to bring it to a gateway where your cargo is consolidated and then trucked to a railhead, pier or airport where it may be handed off to another trucker before it leaves the country for international transport. Once the cargo arrives at the country of import, the process begins again in reverse until it is delivered to your final customer. Now to complicate matters, imagine each country that your cargo travels through has security interests that may select your shipment for a custom's inspection.



One advantage in using DSV is that we have our own operation in over 60 countries. This means DSV has its own offices and personnel including DSV warehouses and DSV trucks in many countries. We have an IT network to track your shipments and maintain the integrity of your cargo. But remember, no matter how much someone promises you that your cargo will arrive without exception, "it" happens.

Limited Liabilities: Carriers, forwarders, brokers, warehousemen, truckers and logistic providers have limited liabilities. Don't let anyone tell you otherwise.

- **Ocean Freight:** A carrier's liability for cargo to and from the United States is limited under the Carriage of Goods by Sea Act or COGSA. COGSA states that if liability is proven to be that of the carrier, the liability will be limited to \$500 per package or customary freight unit. Where COGSA does not apply, (Cargo not loading or discharging at a US port), The Hague/Visby Convention will apply, limiting a carrier's liability to two Special Drawing Rights (SDR) per kilo. The SDR is a fluctuating international currency unit. It can be determined at the International Monetary Fund (IMF) website at www.imf.org . As a point of reference on September 1, 2010, 1 SDR was equal to 1.514 USD.
- **Air Freight:** As an air freight forwarder, DSV's liability is 19 SDR per kilo.
- **Freight Forwarder or Customs House Broker:** If DSV is not issuing a House Air Waybill or a House Ocean Bill of Lading, we are acting in the capacity of a freight forwarder. In these instances, our liability is limited to \$50 per shipment. These terms and conditions are established by the National Customs Broker and Forwarder's Association of America (NCBFAA).
- **US Property Broker:** As a property broker arranging US inland transportation, our liability is limited to 50 cents per pound, subject to a minimum of \$50.00.

In all instances, a carrier or service provider's liability may be limited to only a fraction of your shipment's actual value. Complete Terms and Conditions for DSV Air & Sea Inc. can be found on our website www.dsv.com/us under the category "Services"

Carrier's Defenses: In addition to limiting liabilities, a carrier by law is permitted certain defenses known as the 17 Hague Defenses. Neither carrier nor the vessel shall be held responsible for loss or damage resulting from:

1. Act of neglect, or default of the master, mariner, pilot or the servants of the carrier in the navigation or in the management of the ship.
2. Fire, unless caused by the actual fault of the carrier.
3. Perils, dangers and accidents of the sea or other navigable waters.
4. Acts of God.
5. Acts of war.
6. Acts of public enemies.
7. Arrest or restraint of princes, rulers, or people or seizure under legal process.
8. Quarantine restrictions.
9. Act or omission of the shipper or owner of the goods, his agent or representative.
10. Strikes, lockouts, stoppage or restraint of labor from whatever cause.
11. Riots or civil commotions.
12. Saving or attempting to save life or property at sea.
13. Inherent vice, defect or quality of the goods.
14. Insufficiency of packaging.
15. Insufficiency or inadequacy of marks.
16. Latent defects not discoverable by due diligence.
17. Any other cause arising without the actual fault and privity of the carrier, their agents and servants.

Protection against losses: So how does a cargo owner protect themselves and their cargo against physical and financial loss?

- **Prevention:** There are many ways to prevent and deter loss or damage to cargo. Being savvy with knowing your risks and taking steps to minimize them is a good place to start. Here are some ways to do this.
 - **Reliable contractors:** Although carriers have limited liabilities, the bills of lading are not worth anything if the carrier does not have the insurance coverage to back it up. Request a carrier's proof of insurance. Also contractors with comprehensive worldwide networks have additional security measures and procedures to keep cargo safe and intact. DSV has proper liability insurance coverage. Contact your DSV representative for a copy of our insurance certificate.
 - **Prepare shipments for export:** It is the responsibility of the shipper to ensure that their cargo is prepared for the vigor of international transport. There are too many variables to list and each customer's product is different but sometimes common sense is enough to prevent loss or damage. i.e. Use rigid corrugated packaging, use polystyrene foam inner packaging or other foam or paper packaging products to prevent breakage; do not over stack pallets; use airbags or proper blocking and bracing for full containers and, if you're the importer, ensure you provide written instruction to your supplier to properly pack, mark and label cargo.

If you have a name brand or high value cargo subject to pilferage, do not advertise your product on the exterior packing. Use non-descript exterior packaging so not to draw any undue attention to your shipment. Additionally, make sure that all cartons are properly marked and labeled to ensure that all cartons are identified if they are separated. Remember a port's security procedure may require cartons to be open and inspected which may separate palletized cartons. It is not sufficient to only label the pallet; each carton should be labeled with a shipping and a destination address.

- Know your contract terms: Make sure your Incoterms or shipping terms are agreed to in writing prior to transporting your cargo. Knowing your terms will dictate who is responsible for what and can save a headache in the long term.
- Inspection of Cargo: It is a consignee's responsibility to make a visual inspection of cargo upon receipt to determine if there are any visible signs of loss, damage or tampering. Making the proper notation on cargo receipts and getting a signature from the delivering carrier is essential to protect your interests and to make claim under an insurance policy. Have a digital camera available in the cargo receiving area or if packing a container, take photos of the loading or unloading process. As they say, "a picture's worth a thousand words".
- Insurance: Talk to your insurance company to see if they have the proper coverage for transporting or storing your cargo. Many times people are unaware as to whether their policies cover transportation and if so, whether deductibles apply. If cargo losses are not covered or available under your existing policy, speak to your DSV representative and they can offer you a variety of insuring options. However, this also ties into knowing your contract terms, as it may not be your responsibility to procure insurance.
- Issue written instructions: In all cases, make sure you convey your intentions, instructions and understandings in writing. Requests for insurance must be in writing. There is nothing worse than getting into a "he said – she said" situation because all instructions were verbal.
- Insurance: This topic warrants its own bullet point as insuring terms can be confusing and misleading. An educated customer will know the risks and benefits of insurance and also understand that there are responsibilities and steps that must be followed to ensure a policy pays for loss or damage. Customers should be aware of the different insuring terms available and make a risk analysis to make sure the most cost effective terms are procured.
 - All Risk Coverage: This is the broadest coverage you can request but the term is also misleading. All Risk does not entitle you to uncontested payment. See below Exceptions and Exclusions on when insurance may not pay a claim. The terms and conditions of all risk coverage are referred to as the Institute Cargo Clause (ICC) A, a copy of which is available upon request.
 - Exceptions and Exclusions: Cargo interest must be aware that any of the following situations may constitute a denial of a claim. Following are exceptions and exclusions which may apply and provided as a reason not to pay a claim.
 - Improper packing.
 - Abandonment of cargo.
 - Rejection of goods by customs.

- Failure to pay collect accounts.
- Inherent vice (loss due to the nature of the cargo, i.e. steel will rust, fruit will spoil, etc).
- Employee conversion or dishonesty.
- Cargo requiring an On-Deck Bill of Lading.
- Failure to place carrier on notice for loss or damage in a timely manner. In general:
 - Ocean Freight – Receipts must indicate damage or exception. And a written claim should follow within three days.
 - Air Freight:
 - Visual Damage – Receipts must indicate damage or exception (i.e. crushed boxes, rips, bent corners, etc), and a written claim must follow in 7 days.
 - Concealed Damage – 14 Days from date of delivery. Again receipts should indicate any indication (i.e. bent corners, dents, etc), and preliminary notice must be presented in 14 days.
 - Non-Delivery – Within 120 days of ETA of cargo.
- Free of Particular Average (FPA): FPA insurance is best for articles that are prohibited under All Risk coverage, such as Used Goods or cargo requiring On-Deck Storage. FPA perils that would be covered for total loss and in most cases partial loss include:
 - Heavy weather, lighting, etc.
 - Fire or explosion.
 - Vessel or craft being stranded or sunk or burnt.
 - Collision of vessel, aircraft or prior or subsequent land carriage.

FPA terms are available Without Average or With Average (WA). When insured FPA with average the coverage will be extended to total loss due to theft, pilferage and non-delivery.

Another primary benefit of purchasing any insurance, i.e. All Risk, FPA, with or without average, is that you will also be protected from the additional costs that may be incurred by a cargo interest due to General Average. The insurance would cover all costs for General Average and post the necessary bonds for release of your cargo if it were salvageable.

General Average occurs when extraordinary losses are incurred by the master of the vessel or aircraft. In a General Average situation, all cargo interests have to pay the master for the loss of the vessel or aircraft. So in addition to losing your cargo, you would be responsible to pay additional expenses to the ship's master or aircraft owner. This is kind of like adding salt to the wound!

So even in the case of All-Risk insurance which may not actually cover "all risks" there are considerable scenarios covered that can save a cargo owner hundreds of thousands of dollars. The following chart is a comparison of insurance coverage

Loss Caused By or Resulting From:	FPA	With Average	All Risks
Stranding	YES	YES	YES
Sinking	YES	YES	YES
Burning	YES	YES	YES
Collision	YES	YES	YES
Faults or errors in the management of the vessel	YES	YES	YES

Loss Caused By or Resulting From:	FPA	With Average	All Risks
Bursting of boilers	YES	YES	YES
Latent defects in hull or machinery	YES	YES	YES
Explosion	YES	YES	YES
Jettison	YES	YES	YES
Heavy weather*	* NO	YES	YES
Seawater as a result of heavy weather*	* NO	YES	YES
Freshwater	NO	NO	YES
Improper stowage by the carrier	NO	NO	YES
Hook damage, mud and grease	NO	NO	YES
Theft of an entire shipping package	NO	YES	YES
Non-Delivery of an entire shipping package	NO	YES	YES
Pilferage	NO	YES	YES
Leakage	NO	NO	YES
Breakage	NO	NO	YES

** Refers to partial losses. Total loss of cargo from these perils would be covered.*

Although the above perils are indicated as covered under “All Risks”, depending upon commodity, see exclusions under all risk coverage which may apply. And remember, even if insured for All Risk the shipper and consignee have responsibilities to properly pack the cargo and to make notation of damage upon cargo receipt.

And finally review and discuss any restrictions or deductibles that may apply for certain commodities. These are usually referenced on your insurance quote and certificate. Restricted commodities include but are not limited to Household Goods, Alcoholic Beverages, Glassware, Perishables, etc.

DSV Air & Sea offers various insuring options through our own Insurance Division, DSV Insurance. Please submit a written request to your local DSV representative for a no obligation quote.

Protecting your interests – So whether you decide to insure your shipment or not; it is important to understand the risks and recognize your obligations and responsibilities to minimize loss and or damage to your shipment. This document provides suggestions of steps to take to protect your interests. It is only an overview of the more universal observations of loss prevention and risk management.

Consult your Risk Manager or Shipping Manager for more tailored ideas of proper handling of your cargo. Create a Standard Operating Procedure (SOP) that you can distribute to your staff outlining proper actions to take for packing, shipping or receiving cargo. Review your supply chain and identify the weaknesses of when and where loss or damage has occurred. Consider even the most obvious and mundane items. For instance if you are shipping perishable items, check the holiday calendar at origin and destination to ensure your shipment will be delivered without delay of a national holiday. Create checklists that are customized to your product and operation. If your shipment is oversized and valuable, engage a surveyor to provide you with suggestions on proper blocking, bracing or crating of cargo.



Evaluating risk and taking steps to prevent or deter loss or damage is one of the most prudent ways to maintain customer satisfaction.