

**INSURANCE & LIABILITY
ASPECTS OF INTERNATIONAL MULTI
MODAL SHIPMENTS: AN OVERVIEW**

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I. INTERNATIONAL TRANSIT RISK CONSIDERATIONS

- **MARKET & PRICE RISK**
- **SECURITY – CARRIERS, WAREHOUSES, TERMINALS**
- **COUNTERPARTY RISKS (NON-PAYMENT, NON-PERFORMANCE, INSOLVENCY, INVALID DOCUMENTATION, TAXATION ISSUES, ADEQUATE INSURANCE COVER)**
- **GENERAL CREDIT RISKS**
- **GEOPOLITICAL RISKS (PIRACY, TERRORISM)**
- **COMPLIANCE WITH LAWS / SANCTIONS REGULATIONS – INCLUDING OTI BONDS**
- **LIABILITIES TO THIRD PARTY SHIPPERS**
- **LIMITATIONS OF LIABILITY OF THE RESPECTIVE CARRIAGE PROVIDERS; DUE TO INTERNATIONAL CONVENTIONS, BOL TERMS &, TERMS OF CARRIAGE & TARIFFS INCORPORATED IN THE BOL TERMS**

I. INTERNATIONAL TRANSIT RISK CONSIDERATIONS

- THE TERMS OF SALE, CARRIAGE ARRANGEMENTS & PARTIES INVOLVED DETERMINE THE CONTRACTS REQUIRED BETWEEN THE PARTIES, WHO ASSUMES LIABILITY. THE TYPE OF INSURANCE REQUIRED & WHO MUST PROVIDE IT
- INTERNATIONAL CONVENTIONS, BOL TERMS AND TERMS OF CARRIAGE INCORPORATED THEREIN, RULES, TARIFFS, RAIL CIRCULARS & CONTRACTUAL OBLIGATIONS BETWEEN PARTIES DEFINE WHO IS LIABLE
- **ENFORCEMENT** OF COVERAGE CONDITIONS, CHOICE-OF-LAW & JURISDICTION PROVISIONS IN MARINE & OTHER INSURANCE POLICIES DETERMINE INSURED & UNINSURED LIABILITY RISKS

II. COMPONENTS OF THE RISK, LIABILITY & INSURANCE EVALUATION

- **RISK ANALYSIS & QUANTIFICATION OF LIKELY RISK**
- **EVALUATION OF AVAILABLE LIMITATION OF RISKS, CONTRACTUAL LIMITATION, PURCHASING AND/OR CONFIRMING INSURANCE BY OTHER PARTIES**
- **DETERMINING TYPE OF INSURANCE & LIMITS NEEDED**
- **UNDERSTANDING THE PERTINENT REGULATORY AUTHORITIES**
- **UNDERSTANDING RULES & REQUIRED OPERATING PROCEDURE – BY CONTRACT, INCOTERMS, BOL LANGUAGE, TERMS OF CARRIAGE, INSURANCE LANGUAGE, RAIL CIRCULARS ETC.,**
- **ACCURATE MANAGEMENT OF TIMELY DELIVERY OF CARGO AT THE RIGHT COST**
- **MONITORING ALL THE ABOVE & ADAPT AS REQUIRED**
- **REPORTING, DECLARATION & FILING REQUIREMENTS – AS REQUIRED BY CUSTOMS, CONTRACT, INSURANCE**

IT IS CRITICAL TO CLEARLY DEFINE THE ROLES, OBJECTIVES, RESPONSIBILITIES & LIABILITIES OF THE PARTIES

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

THE ROLES WE ARE DEALING WITH INCLUDE

- **SHIPPER**
- **INTERMODAL EQUIPMENT PROVIDER – Containers & Chassis**
- **FREIGHT FORWARDER -- Ocean, Ground, Consolidation, Transloading, Break Bulk Assembly & Distribution**
- **NVOCC – Ocean Carriage**
- **CUSTOM HOUSE BROKER – Ocean & Air**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

THE ROLES WE ARE DEALING WITH INCLUDE (CONT.,)

- **DRAY CARRIAGE – Motor Carriage to/from Local Ports & Rail Yards**
- **FREIGHT BROKER – Arranging Domestic U.S. Motor Carriage Only**
- **MOTOR CARRIER**
- **RAIL CARRIER**
- **INTERMODAL MARKETING COMPANY**
- **WAREHOUSE – MARINE TERMINAL OPERATORS*****

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

WE DEFINE SHIPPER – AS “ANY PERSON WHO—
(A) IS THE SHIPPER, CONSIGNOR, OR CONSIGNEE OF A HOUSEHOLD GOODS SHIPMENT;
(B) IS IDENTIFIED AS THE SHIPPER, CONSIGNOR, OR CONSIGNEE ON THE FACE OF THE BILL OF LADING;
(C) OWNS THE GOODS BEING TRANSPORTED; AND
(D) PAYS HIS OR HER OWN TARIFF TRANSPORTATION CHARGES” 49 U.S.C. § 13102 – Definitions (13)

FEDERAL BILL OF LADING ACT 49 U.S.C § 80101:

- **"consignee" means the person named in a bill of lading as the person to whom the goods are to be delivered.**
- **"consignor" means the person named in a bill of lading as the person from whom the goods have been received for shipment.**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH.

WE DEFINE INTERMODAL EQUIPMENT PROVIDER – AS A PARTY THAT INTERCHANGES IME WITH A MOTOR CARRIER PURSUANT TO A WRITTEN INTERCHANGE AGREEMENT OR HAS A CONTRACTUAL RESPONSIBILITY FOR THE MAINTENANCE OF THE EQUIPMENT. THE EQUIPMENT CONSISTS OF CONTAINERS AND CHASSIS USED IN DOMESTIC ROAD TRANSIT OF CARGO & IN INTERNATIONAL OCEAN CARGO TRANSIT.

FEDERAL REGISTER CITATION 73 FR 76793

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

A FREIGHT FORWARDER IS DEFINED UNDER U.S. STATUTE AS -- A PARTY " HOLDING ITSELF OUT TO PROVIDE TRANSPORTATION OF PROPERTY FOR COMPENSATION AND IN THE ORDINARY COURSE OF ITS BUSINESS (A) ASSEMBLES AND CONSOLIDATES OR PROVIDES FOR ASSEMBLING AND CONSOLIDATING AND PERFORMS OR PROVIDES FOR BREAK-BULK AND DISTRIBUTION OPERATIONS OF THE SHIPMENTS; (B) ASSUMES RESPONSIBILITY FOR THE TRANSPORTATION FROM THE PLACE OF RECEIPT TO THE PLACE OF DESTINATION; AND (C) USES FOR ANY PART OF THE TRANSPORTATION A CARRIER SUBJECT TO JURISDICTION UNDER THIS SUBTITLE." 49 U.S.C. § 13102, Definitions (8)

A FREIGHT FORWARDER MAY MANAGE TRANSIT OF CARGO FROM ORIGIN TO POINT OF CONSUMPTION

A PARTY MEETING THIS DEFINITION IS DEFINED LIABLE AS A CARRIER FOR DOMESTIC U.S. CARRIAGE. "a freight forwarder is both the receiving and delivering carrier." 49 U.S.C. § 14706, (a)(1) & (2): Chicago, Milwaukee, St. Paul and Pacific R. Co. v. Acme Fast Freight, Inc., 336 U.S. 465, 69 S.Ct. 692, 93 L.Ed. 817 (1949). "the freight forwarder shall be deemed Both the receiving and delivering transportation company".

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

THE TERM “OCEAN FREIGHT FORWARDER” MEANS SERVICES OF ANY KIND RELATING TO THE CARRIAGE, CONSOLIDATION, STORAGE, HANDLING, PACKING OR DISTRIBUTION OF THE GOODS AS WELL AS ANCILLARY AND ADVISORY SERVICES IN CONNECTION THEREWITH, INCLUDING BUT NOT LIMITED TO CUSTOMS AND FISCAL MATTERS, DECLARING THE GOODS FOR OFFICIAL PURPOSES, PROCURING INSURANCE OF THE GOODS AND COLLECTING OR PROCURING PAYMENT OR DOCUMENTS RELATING TO THE GOODS.

***IATA MODEL RULES FOR FREIGHT FORWARDING SERVICES
Also defined under 46 USC § 40102,***

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

THE TERM NVOC “NON-VESSEL-OPERATING COMMON CARRIER” MEANS “A COMMON CARRIER THAT

— (A) DOES NOT OPERATE THE VESSELS BY WHICH THE OCEAN TRANSPORTATION IS PROVIDED; AND

— (B) IS A SHIPPER IN ITS RELATIONSHIP WITH AN OCEAN COMMON CARRIER.” 46 U.S. CODE § 40102 – DEFINITIONS (16).

- **IT’S BUSINESS MODEL IS TO BOOK SPACE WITH OCEAN CARRIERS AND SELL THAT SPACE TO SHIPPERS.**
- **CONSOLIDATES LCL (LESS THAN CONTAINER LOAD) SHIPMENTS**
- **ISSUES A HOUSE BILL OF LADING.**
- **MANAGES OVERSEAS DISTRIBUTION OF CONTAINERS/CARGO.**
- **TENDS TO BE THE LARGEST TRADE MAKER FOR CONTAINER SHIPMENTS.**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

CUSTOM HOUSE BROKER BUSINESS CONCERNS MANAGEMENT OF:

- ENTRY AND ADMISSIBILITY OF MERCHANDISE**
- CLASSIFICATION AND VALUATION OF MERCHANDISE**
- PAYMENT OF DUTIES, TAXES, OR OTHER CHARGES ASSESSED OR COLLECTED BY THE CUSTOMS SERVICE UPON MERCHANDISE BY REASON OF ITS IMPORTATION, OR THE REFUND, REBATE, OR DRAWBACK THEREOF.**
- PREPARATION & TRANSMISSION OF DOCUMENTS INVOICES, BILLS, TO BE FILED WITH THE CUSTOMS SERVICE**

19 U.S.C. § 1641 (a) (2).

THE CUSTOM HOUSE BROKER FACILITATES IMPORT & EXPORT SHIPMENTS & DELIVERY OF GOODS ACROSS GEOGRAPHICAL BORDERS FROM ONE COUNTRY TO ANOTHER

ACTS UNDER AUTHORITY FROM THE HOLDER OF THE BOL

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

MARINE TERMINAL OPERATOR MEANS

“A PERSON ... IN THE BUSINESS OF PROVIDING WHARFAGE, DOCK, WAREHOUSE, OR OTHER TERMINAL FACILITIES IN CONNECTION WITH A COMMON CARRIER, OR IN CONNECTION WITH A COMMON CARRIER AND A WATER CARRIER ...”. 46 USC § 40102,

PROVIDES FACILITIES FOR STORAGE, CONSOLIDATION AND PACKING AT A PORT FACILITY RELATIONAL TO INCOMING OR OUTGOING CARGO. IT MAY ALSO ARRANGE LOCAL DRAYAGE. THIS DRAYAGE ARRANGEMENT BY A TERMINAL OPERATOR MAY CREATE ADDITIONAL LIABILITY CONCERNS. IT MUST BE PROPERLY AUTHORIZED AND QUALIFIED.

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

"WAREHOUSE" OPERATOR MEANS A PERSON ENGAGED IN THE BUSINESS OF STORING GOODS FOR HIRE. U.C.C. ARTICLE 7.102 (13)

“(A) A WAREHOUSE IS LIABLE FOR DAMAGES FOR LOSS OF OR INJURY TO THE GOODS CAUSED BY ITS FAILURE TO EXERCISE CARE WITH REGARD TO THE GOODS THAT A REASONABLY CAREFUL PERSON WOULD EXERCISE UNDER SIMILAR CIRCUMSTANCES. HOWEVER, UNLESS OTHERWISE AGREED, THE WAREHOUSE IS NOT LIABLE FOR DAMAGES THAT COULD NOT HAVE BEEN AVOIDED BY THE EXERCISE OF THAT CARE.

(B) DAMAGES MAY BE LIMITED BY A TERM IN THE WAREHOUSE RECEIPT OR STORAGE AGREEMENT LIMITING THE AMOUNT OF LIABILITY IN CASE OF LOSS OR DAMAGE BEYOND WHICH THE WAREHOUSE IS NOT LIABLE. SUCH A LIMITATION IS NOT EFFECTIVE WITH RESPECT TO THE WAREHOUSE'S LIABILITY FOR CONVERSION TO ITS OWN USE.” U.C.C. ARTICLE 7.204

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

A MOTOR CARRIER IS DEFINED BY LAW AS “A PERSON PROVIDING COMMERCIAL MOTOR VEHICLE TRANSPORTATION FOR COMPENSATION.” THEY “SHALL PROVIDE SAFE AND ADEQUATE SERVICE [i.e., such as would give rise to an accident causing third party bodily injury and property damages], EQUIPMENT [i.e., such as an 18 wheeler - truck, trailer and the like], AND FACILITIES, [i.e., warehouses, yards and terminals]” .

CARRIERS TYPICALLY EXERCISE EXCLUSIVE CONTROL OF THE EQUIPMENT, CARGO AND THE DRIVER.

**49 U.S.C. § 13102, Definitions (3) & (14),
49 C.F.R. §371.2 (a) & 49 U.S.C. §14101 (a)**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

A “DRAY” CARRIER IS TYPICALLY A CARRIER ENGAGED IN “LOCAL” TRANSPORT TO AND FROM A PORT, INTERMODAL TERMINAL OR RAIL YARD. WITH BOTH THE TRIP ORIGIN AND DESTINATION IN THE SAME URBAN AREA. (*Wikipedia, Investopedia, Dictionary.com, Dictionary of International Trade, Merriam-Webster*)

DRAY CARRIERS MAY LIMIT THEIR LIABILITY FOR THIRD PARTY DAMAGES & CARGO LIABILITY UNDER TARIFF LIMITATIONS & TERMS OF CARRIAGE INCORPORATED IN THEIR BOOKING AND OTHER ENGAGEMENT DOCUMENTS.

MAY EXERCISE EXCLUSIVE CONTROL OF THE EQUIPMENT, CARGO AND THE DRIVER.

**49 U.S.C. § 13102, Definitions (3) & (14),
49 C.F.R. §371.2 (a) & 49 U.S.C. §14101 (a)**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

A “RAIL” CARRIER MEANS ANY FORM OF NONHIGHWAY GROUND TRANSPORTATION THAT RUNS ON RAILS OR ELECTROMAGNETIC GUIDEWAYS 49 U.S. Code § 20102 - Definitions

**RAIL CARRIAGE IS SUBJECT TO DETAILED RULES & CIRCULARS THAT GOVERN RESPONSIBILITY & LIABILITY AMONG THE PARTIES, INCLUDING LIMITATION OF RAIL LIABILITY PER RAIL CAR, FOR LOSS PROXIMATELY CAUSED BY THE RAILROAD.
49 U.S. Code § 11706 (c) (3)**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

AN “INTERMODAL MARKETING COMPANY” (IMC) PURCHASES RAIL AND TRUCK (DRAY) TRANSPORTATION SERVICES, UTILIZES EQUIPMENT FROM VARIOUS SOURCES, AND PROVIDES OTHER LOGISTICS MANAGEMENT SERVICES UNDER A SINGLE FREIGHT BILL FROM A GIVEN POINT OF ORIGIN TO THE ULTIMATE SHIPPER. AN IMC PROVIDES ACCESS TO THE RAILS TO THIRD PARTIES WHO MAY NOT OTHERWISE HAVE ACCESS & TYPICALLY LIMITS LIABILITY UNDER TERMS OF CARRIAGE & AGREEMENTS:

:

- **SHIP-TRUCK-RAIL**
- **TRUCK-RAIL- SHIP**
- **RAIL-TRUCK- SHIP**
- **SHIP-RAIL-TRUCK**
- **COMBINATIONS THEREOF**

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH

FREIGHT BROKER -- “THE TERM “BROKER” MEANS A PERSON, OTHER THAN A MOTOR CARRIER OR AN EMPLOYEE OR AGENT OF A MOTOR CARRIER..., THAT SELLS, OFFERS FOR SALE, NEGOTIATES FOR, OR HOLDS ITSELF OUT ... AS SELLING, PROVIDING, OR ARRANGING FOR, TRANSPORTATION BY MOTOR CARRIER FOR COMPENSATION.” 49 U.S.C. § 13102 (2).

IN CONTRAST,

“MOTOR CARRIERS, OR PERSONS WHO ARE EMPLOYEES OR BONA FIDE AGENTS OF CARRIERS, ARE NOT BROKERS WITHIN THE MEANING OF THIS SECTION WHEN THEY ARRANGE OR OFFER TO ARRANGE THE TRANSPORTATION OF SHIPMENTS WHICH THEY ARE AUTHORIZED TO TRANSPORT AND WHICH THEY HAVE ACCEPTED AND LEGALLY BOUND THEMSELVES TO TRANSPORT.”

49 C.F.R. §371.2(a).

THIS DEFINITION EMPHASIZES THAT FOR PURPOSES OF LIABILITY A CARRIER IS NOT A BROKER EVEN WHEN IT ACTS LIKE ONE – I.E., TO “ARRANGE OR OFFER TO ARRANGE THE TRANSPORTATION...” (SUCH A CARRIER HOWEVER, MUST BE REGISTERED AS A BROKER & PROVIDE PERTINENT SECURITY UNDER MAP-21) AND THAT BROKER & MOTOR CARRIER ROLES ARE DISTINCTIVELY DIFFERENT.

III. UNDERSTAND THE ROLES & LIABILITIES OF THE PARTIES YOU ARE DEALING WITH **COMMON SOURCES OF PROBLEMS**

WHEN ROLES AND LEGAL OBLIGATIONS OF THE PARTIES ARE INACCURATELY CONTRACTED, PROBLEMS INEVITABLY RESULT, SUCH AS:

- THE OTHER PARTY'S INSURANCE IS NOT DESIGNED TO PROVIDE COVERAGE FOR AN INACCURATE AND UNINSURED ROLE ASSUMED UNDER CONTRACT**
- HENCE – NEITHER YOU OR THE OTHER PARTY IS FINANCIALLY PREPARED TO LIQUIDATE ASSUMED CONTRACTUAL OBLIGATIONS**

IV. INSURANCE INTERNATIONAL TRANSIT

A. LOCAL ADMITTED COVERAGE & A DIFFERENCE IN CONDITIONS POLICY

-- FOR A NON-U.S. LOCAL SALES OFFICE OR BUSINESS OPERATION AT POINT OF ORIGIN, TO INSURE A MINIMUM U.S.\$ LIABILITY LIMIT; E.G., INSURANCE PERTAINING TO GENERAL LIABILITY, REAL PROPERTY, PERSONAL PROPERTY, CRIME/DISHONESTY, OWNED, HIRED & NON-OWNED AUTOMOBILE LIABILITY

B. SHIPPERS INTEREST POLICY – FOR SHIPPERS, FREIGHT FORWARDERS/NVOCCs

C. WAREHOUSE AND/OR MARINE TERMINAL LIABILITY INSURANCE AT POINT OF ORIGIN AND DESTINATION – FOR SHIPPERS, FREIGHT FORWARDERS/ NVOCCS & TERMINAL OPERATORS

IV. INSURANCE INTERNATIONAL TRANSIT

- D. CARGO LEGAL LIABILITY & NVOCC LIABILITY INSURANCE –
FOR FREIGHT FORWARDERS, NVOCCs FOR CARGO LOSS OR
DAMAGE & FOR DAMAGE INCURRED BY THIRD PARTIES
CAUSED BY THEIR CARGO, & FOR COVERAGE GAPS
CREATED BY INTERNATIONAL CONVENTIONS, TERMS OF
CARRIAGE & CONTRACTUAL LIABILITY LIMITATIONS**

- E. ERRORS & OMISSIONS AND FINES & PENALTIES INSURANCE
– FOR SHIPPERS, NVOCC & CUSTOM HOUSE BROKERS
ARISING FROM**
 - HANDLING OF BOOKINGS,**
 - DOCUMENTATION AND CUSTOM DECLARATIONS &
ENTRIES**

IV. INSURANCE INTERNATIONAL TRANSIT

PRINCIPAL PERILS NEEDING COVERAGE FOR OCEAN CARRIAGE

- **PERILS OF THE SEA**
- **STRANDING; SINKING; GROUNDING; COLLISIONS WITH OTHER VESSELS; HEAVY WEATHER; ICE, WATER DAMAGE, CLASH & BREAKAGE**
- **ASSAILING THIEVES**
- **BARRATRY – FRAUD OR NEGLIGENCE OF THE OCEAN CARRIER**
- **FIRE, LIGHTNING AND EARTHQUAKE**
- **ALL OTHER LIKE PERILS**
- **JETTISON & GENERAL AVERAGE – RESULTING FROM INTENTIONAL SACRIFICE OF CARGO WHEN THE SHIP IS ENDANGERED, THROWING OVERBOARD OF THE SHIP'S CARGO, MATERIAL, OR STORES IN TIME OF PERIL, FOR THE COMMON SAFETY OF THE SHIP AND HER CARGO.**

IV. INSURANCE INTERNATIONAL TRANSIT

SHIPPERS INTEREST INSURANCE & ISSUANCE OF SHIPPERS INTEREST COVERAGE CERTIFICATES ARE

- **INTEGRAL TO INTERNATIONAL TRANSIT INSURANCE**
- **ISSUED BY THE FREIGHT FORWARDER TO COVER THE SHIPPER'S CARGO**
- **A LEGAL DOCUMENT – A CONTRACT BETWEEN THE INSURER AND THE INSURED**
- **BINDING UPON BOTH THE INSURER AND THE INSURED**

**THIS INSURANCE CERTIFICATE IS A SIMPLIFIED INSURANCE POLICY – TYPICALLY A TWO SIDED DOCUMENT BUT WITH THE SAME LEGAL EFFECT AS THE INSURANCE POLICY.
A SAMPLE INSURED VALUATION IS CIF X 110%.**

IV. INSURANCE INTERNATIONAL TRANSIT

SHIPPERS INTEREST INSURANCE & ISSUANCE OF SHIPPERS INTEREST COVERAGE CERTIFICATES (CONT.,)

- **REFLECTS ALL RISK COVERAGE**
 - **DECLARED SHIPMENTS ON CERTIFICATES OF INSURANCE ISSUED ON THE SHIPPERS INTEREST POLICY ARE INSURED AGAINST ALL RISKS OF PHYSICAL LOSS OR DAMAGE FROM ANY EXTERNAL CAUSE.**
 - **INSURED PARTIES CAN BE BUYERS, SELLERS, IMPORTERS, EXPORTERS, MANUFACTURERS, AND BANKS**
 - **CERTIFICATES ARE TYPICALLY ISSUED WITH A MARK-UP BY THE ISSUER**

IV. INSURANCE INTERNATIONAL TRANSIT

PREFERRED INSURANCE COVERAGE

WAREHOUSE-TO-WAREHOUSE COVERAGE

- **1 INSURER AND INSURANCE PROGRAM INCLUDING SHIPPERS INTEREST, CARGO LEGAL LIABILITY, E&O, & DOMESTIC TRANSIT LIABILITIES, COVERING ALL LEGS OF TRANSIT; NON-U.S. ORIGIN TO U.S. DESTINATION**
- **WAR RISKS PERILS & SR&CC MAY BE COVERED**

TYPICAL EXCLUSIONS

- **WAR PERILS, SR&CC – WHEN NOT INSURED BY SPECIFIC DECLARATION**
- **RADIOACTIVE CONTAMINATION EXCLUSION (RACE)**
- **CHEMICAL, BIOLOGICAL, BIOCHEMICAL, AND ELECTRONIC EXCLUSION (CBE)**
- **DELAY AND INHERENT VICE**

IV. INSURANCE INTERNATIONAL TRANSIT

- *INTERNATIONAL MARINE CARGO INSURANCE IS UNDERWRITTEN BY:***
 - UNDERWRITERS AT LLOYD'S**
 - INSURANCE COMPANIES LOCATED IN LONDON AND THROUGHOUT THE WORLD**
 - U.S. INSURANCE COMPANIES, MOST OF WHICH BELONG TO THE AMERICAN INSTITUTE OF MARINE UNDERWRITERS**
 - SPECIAL FACILITIES**

V. INSURANCE FOR DOMESTIC TRANSIT COMPONENTS

**SHIPPERS INTEREST OR BROAD FORM CARGO
POLICIES – FOR SHIPPERS, FREIGHT FORWARDERS & FREIGHT
BROKERS**

**MOTOR TRUCK CARGO INSURANCE– FOR MOTOR
CARRIERS**

**CARGO LEGAL LIABILITY INSURANCE – FOR FREIGHT
FORWARDERS/ NVOCCS & CARRIERS**

**INTERMODAL INTERCHANGE EQUIPMENT DAMAGE & LEGAL
LIABILITY – FOR EQUIPMENT PROVIDERS & MOTOR CARRIERS
-- UIIA CONVENTIONS & INDEMNIFICATION APPLIES FOR
UIIA MEMBERS–I.E., SHIPPERS, INTERMODAL EQUIPMENT
PROVIDERS, CARRIERS, CONTAINER YARDS**

V. INSURANCE FOR DOMESTIC TRANSIT COMPONENTS

**TRUCK LIABILITY/COMMERCIAL AUTO LIABILITY INSURANCE
– FOR MOTOR CARRIERS**

**CONTINGENT AUTO LIABILITY INSURANCE – FOR
FREIGHT FORWARDERS**

**CONTINGENT FREIGHT BROKER (INCLUDING AUTO)
LIABILITY INSURANCE– FOR FREIGHT BROKERS**

**WAREHOUSE OR MARINE TERMINAL LIABILITY
INSURANCE – FOR SHIPPERS, FREIGHT FORWARDERS,
NVOCCs, TERMINALS**

COMMERCIAL GENERAL LIABILITY – FOR ALL OPERATIONS

VI. ADDITIONAL INSURANCE CONSIDERATIONS

- YOU SHOULD DETERMINE THAT YOU HAVE THE RIGHT INSURANCE -- WHETHER HELD BY YOU OR ANOTHER PARTY -- AND DETERMINE THAT IT COVERS YOUR INTERESTS, AND IS NOT EXCLUSIVE TO THE INTERESTS OF THE OTHER PARTY**
- OTI BOND REQUIREMENTS MUST BE ADDRESSED REFLECTIVE OF YOUR OPERATION AS FREIGHT FORWARDER, NVOCC, # OF LOCATIONS & WHETHER YOU HAVE LOCATIONS OUTSIDE THE U.S.**

VI. ADDITIONAL INSURANCE CONSIDERATIONS REGARDING CLAIMS

- SUBMIT ALL CLAIM RELATED DOCUMENTS AS TIMELY AS POSSIBLE**
- COMMUNICATE CLEARLY TO ALL PARTIES AS TO THEIR DEFINED LEGAL OBLIGATIONS: IN PARTICULAR, CARMACK & COGSA OBLIGATIONS FOR LOSS OR DAMAGE, SALVAGE & TIMELY REPORTING BETWEEN SHIPPER & CARRIER**
- RESPOND TO ANY INFORMATION REQUESTS FROM YOUR INSURER**
- IF YOU RECEIVE A RESERVATION OF RIGHTS LETTER FROM YOUR INSURER, RESPOND TO ANY OPEN QUESTIONS OR INFORMATION NEEDS IDENTIFIED.**
- A RESERVATION OF RIGHTS LETTER IS NOT NECESSARILY A DENIAL OF CLAIM. YOU SHOULD PROCEED AS THOUGH YOU ARE COVERED UNTIL SUCH TIME AS YOU RECEIVE A FORMAL DENIAL OF CLAIM**

VII. ABBREVIATED FORMULA FOR EVALUATING INSURANCE COVERAGE

- **THE INSURING CLAUSE MINUS
(PRECONDITIONS OF COVERAGE,
WARRANTIES & EXCLUSIONS) = COVERAGE**

**DO NOT MAKE THE MISTAKE OF READING
THE INSURING CLAUSE, BUT IGNORING THE
CONDITIONS, PRECONDITIONS,
WARRANTIES & EXCLUSIONS.**

VIII. EXAMPLE - ABBREVIATED INTERNATIONAL CONTAINER TRANSIT

**SHIPPER, RAIL, FREIGHT FORWARDER, NVOCC,
CHB, TERMINALWH OPERATOR, DRAYCARRIER,
FREIGHT BROKER & HIGHWAY MOTOR CARRIER:
HONG KONG TO HARTFORD, CONNECTICUT**

<u>STEP IN TRANSIT</u>	<u>NEXT MODE IN CARRIAGE</u>	<u>TRANSIT PARTIES</u>	<u>REQUIRED INSURANCE INCLUDES</u>
HK FACTORY	RAIL SPUR	FF/NVOCC - RR	SHIPPERS INT & CLL
HK TERMINAL	CLEARING	FF/NVOCC/TERM OP	SHIPPER INT & CLL
OCEAN TRANSIT	SHIP	FF/NVOCC--SHIP	SHIPPERS INT & CLL
PORT OF LA, CA	CLEARING	CUST BROKER	E&O, FINES & PENALTIES
PORT OF LA, CA	TRANSLOADER	FF/NVOCC/TERM OP	SHIPPER INT & CLL
PORT OF LA, CA	DRAY CARRIER	FF/DRAY CARRIER	SHIP INT/CLL/CCLL (1)
TERMINAL/CONS	RAMP/ RAIL	FF/RAIL CARRIER	SHIP INT/CLL/CCLL (1)
RAILYARD- CHI	TRUCK	FB/MOT CARR	SHIP INT/CLL/CFBL (1)
STORE - CT	FINAL DESTINATION		

(1) SHIPPERS INTEREST CARGO INSURANCE, CARGO LEGAL LIABILITY & CONTINGENT LIABILITY

FF = FREIGHT FORWARDER; FB = FREIGHT BROKER

IX. GENERAL CONSIDERATIONS DOMESTIC TRANSIT RISKS

- **FOR SHIPPERS: IT IS SECURITY OF YARDS, TERMINALS & CARRIERS**
- **FOR SHIPPERS & TRANSIT SERVICE PROVIDERS: IT IS LIABILITIES ARISING FROM CARRIAGE, CARRIAGE CONVENTIONS IN THROUGH BILLS OF LADING, BOL TERMS, TARIFFS, TERMS OF CARRIAGE & CONTRACTS**
- **FOR ALL PARTIES: IT MAY BE BAD REGULATION & MISGUIDED COURT DECISIONS**

PROTECTIVE CONTRACTS ARE NEEDED WITH ALL CARRIERS – TO GOVERN THE RELATIONSHIP, PROVIDE DEFENSE & INDEMNITY FOR THIRD PARTY LIABILITY ARISING FROM CARRIAGE, AND TO COVER THE FULL COMMERCIAL VALUE OF THE LOAD

X. REGULATORY & LEGAL CONSIDERATIONS **DOMESTIC TRANSIT COMPONENT**

COERCION OF COMMERCIAL MOTOR TRUCK DRIVERS

49 U.S. C. § 31136 (A) (5)

- **GIVES THE FMCSA AUTHORITY TO TAKE ENFORCEMENT ACTION AGAINST SHIPPERS, RECEIVERS AND TRANSPORTATION INTERMEDIARIES (INCLUDING THEIR AGENTS OR REPRESENTATIVES).**
- **A PARTY MAY BE FOUND TO “COMMIT COERCION IF IT FAILS TO HEED A DRIVER'S OBJECTION THAT THE REQUEST WOULD REQUIRE HIM/HER TO BREAK THE RULES.”**
- **IT COULD BE ARGUED THAT SUCH PARTIES ARE ACCOUNTABLE FOR THE ACTIONS OF DRIVERS IN CERTAIN CIRCUMSTANCES WHERE IT IS HELD THAT THE COERCION RULE IS VIOLATED.**
- **A PARTY IN VIOLATION COULD BE HELD LIABLE FOR THIRD PARTY PERSONAL INJURY DAMAGES AS A MOTOR CARRIER – A LIABILITY THEY ARE OFTEN NOT PREPARED TO ASSUME OR TO INSURE.**

XI. LITIGATION WATCH: COURT DECISIONS MAY ADVERSELY AFFECT YOUR BUSINESS OUTLOOK

MISGUIDED JUDICIAL RULINGS ERODING FEDERAL PREEMPTION

Owens vs. William A. Anthony, Fleet Global Services, Inc. and C.H. Robinson Worldwide, Inc.

-- THIS MATTER REFLECTS ADVERSE RULINGS AGAINST A MOTION TO DISMISS & A MOTION FOR SUMMARY JUDGMENT ON PREEMPTION OF A PARTY IDENTIFIED AS A FREIGHT BROKER

-- THE RULINGS CITE PRECEDENT DECISIONS AGAINST AIR CARRIERS PREDICATED ON “ADA” AVIATION REGULATION EXCLUSIVE TO AIR CARRIERS – NOT ON POINT TO THE PURPORTED ROLE OF THE DEFENDANT (AS FREIGHT BROKER)

XI. LITIGATION WATCH: COURT DECISIONS MAY ADVERSELY AFFECT YOUR BUSINESS OUTLOOK

MISGUIDED JUDICIAL RULINGS ERODING FEDERAL PREEMPTION

Morales v. Redco Transport Ltd., NO. 5:14-cv129, 2015 (S.D. Tex. 2015),

-- THIS REFLECTS AN ADVERSE RULING AGAINST A MOTION TO DISMISS ON PREEMPTION, IT IS IN CONFLICT WITH TWO PRECEDENT RULINGS FAVORABLE TO PREEMPTION OF A BROKER IN TEXAS FEDERAL COURTS.

-- THE COURT CITES OWENS AS A SUPPORTIVE PRECEDENT RULING

&

-- CITES TWO PRECEDENT RULINGS AGAINST TOWING COMPANIES (I.E., MOTOR CARRIERS) – NOT ON POINT TO THE PURPORTED ROLE OF THE DEFENDANT (AS FREIGHT BROKER).

XI. LITIGATION WATCH: COURT DECISIONS MAY ADVERSELY AFFECT YOUR BUSINESS OUTLOOK

MISGUIDED JUDICIAL RULINGS ERODING FEDERAL PREEMPTION

ICCTA PREEMPTION 49 U.S.C. §14501(C)(1) STIPULATES THAT “A STATE...MAY NOT ENACT OR ENFORCE A LAW, REGULATION, OR OTHER PROVISION HAVING THE FORCE AND EFFECT OF LAW RELATED TO A PRICE, ROUTE, OR SERVICE OF ANY MOTOR CARRIER (OTHER THAN A CARRIER AFFILIATED WITH A DIRECT AIR CARRIER COVERED BY SECTION [49 U.S.C.] 41713 (B) (4)) [THE ADA SUCCESSOR AVIATION STATUTE] OR ANY MOTOR PRIVATE CARRIER, BROKER, OR FREIGHT FORWARDER WITH RESPECT TO THE TRANSPORTATION OF PROPERTY.” 49 U.S.C. §14501(C)(1).

THE STATUTES MAKE CLEAR THAT AVIATION AND GROUND TRANSPORT PARTIES ARE SUBJECT TO SEPARATE & DISTINCT REGIMENS OF LAW AND SUBJECT TO SEPARATE & DISTINCT TREATMENT.

XI. LITIGATION WATCH: COURT DECISIONS MAY ADVERSELY AFFECT YOUR BUSINESS OUTLOOK

MISGUIDED JUDICIAL RULINGS ERODING FEDERAL PREEMPTION

- THE SUPREME COURT HAS DETERMINED: “. . . (1) THAT STATE ENFORCEMENT ACTIONS HAVING A CONNECTION WITH, OR REFERENCE TO CARRIER RATES, ROUTES, OR SERVICES ARE PREEMPTED; (2) THAT SUCH PREEMPTION MAY OCCUR EVEN IF A STATE LAW’S EFFECT ON RATES, ROUTES, OR SERVICES IS ONLY INDIRECT; (3) THAT, IN RESPECT TO PREEMPTION, IT MAKES NO DIFFERENCE WHETHER A STATE LAW IS CONSISTENT OR INCONSISTENT WITH FEDERAL REGULATION;...” ROWE V. N.H. MOTOR TRANSP. ASS’N., 552 U.S. 370, 370-71 (2008)
- CHATELAINE, INC. V. TWIN MODAL, INC. 737 F.SUPP.2D 638 (2010), CITES HUNTINGTON OPERATING CORP V. SYBONNEY EXPRESS, INC., NO. H-08-781, 200 9 (S.D. TEX. AUG. 3 2009), IN DETERMINING “THAT 49 U.S.C. § 14501 BROADLY PREEMPTS STATE LAW CLAIMS REGULATING INTERSTATE TRANSPORTATION OF GOODS, AND CHATELAINE’S STATE LAW CLAIMS OTHER THAN BREACH OF CONTRACT AGAINST TWIN MODAL ARE PREEMPTED UNDER THE INTERSTATE COMMERCE ACT.”

XI. LITIGATION WATCH: COURT DECISIONS MAY ADVERSELY AFFECT YOUR BUSINESS OUTLOOK

**MISGUIDED RULINGS ERODE EXPRESS
CONGRESSIONAL INTENT, INCREASE LIABILITY FOR
CARRIERS, FREIGHT FORWARDERS AND BROKERS –
INCREASE COST TO THE ENTIRE CHAIN OF CARRIAGE &
CONSUMER -- AND COULD POTENTIALLY ERASE THE
ROLE OF FREIGHT BROKER AND FREIGHT FORWARDER**

**IF YOU ARE ONE OF THE BOOKENDS IN THE LOGISTICS CHAIN – AN
ORIGINATING SHIPPER/MANUFACTURER –OR A CONSUMER – A
DISRUPTION IN THE SUPPLY CHAIN HAS A BIG IMPACT ON YOU!. IF YOU
ARE A SHIPPER IT IMPEDES YOUR ABILITY TO DISTRIBUTE YOUR
PRODUCTS. IF YOU ARE A CONSUMER, IT IMPEDES YOUR ABILITY
TO PURCHASE!**

IT CAN INCREASE COSTS DRAMATICALLY FOR BOTH!

XII. IN SUMMARY

- IDENTIFY LEGAL, SECURITY & CONTRACTUAL RISKS & CONFIRM THEY ARE INSURED
- IDENTIFY ALL PARTIES IN THE TRANSIT CHAIN AND UNDERSTAND THEIR LEGALLY DEFINED ROLES
- CONTRACT IN ACCORDANCE WITH THE LEGALLY DEFINED ROLE OF THE PARTIES
- OBTAIN EVIDENCE OF RESPONSIVE INSURANCE FROM THE PARTIES TO WHOM YOU TENDER FREIGHT
- PROVIDE **ALL** REQUIRED INFORMATION TO YOUR INSURER EXPEDIENTLY IN THE EVENT OF A CLAIM
- CONSIDER THE EFFECT OF REGULATORY & JUDICIAL DEVELOPMENTS

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THANK YOU!