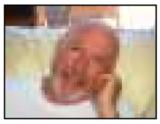
TRANSPORTED GOODS...... WHO HAS THE RISK COVERED?

TruckSure



By Trevor Toohill

Professional transport companies shift thousands of products between customers around New Zealand every day. All businesses have some dependence on transported products but there is still considerable confusion as to who is responsible if those products are damaged or lost in transit. Is it the sender, the intended recipient or the transport company?

The Carriage of Goods Act 1979 is the law which governs liability when products are damaged or lost in transit. Most commonly goods are carried at 'Limited Carriers Risk'. The Act establishes a no-fault regime and limits the liability of the carrier to $1,500 for each unit of lost or damaged product.

UNIT OF GOODS DEFINED

a) In relation to bulk cargo it is the unit of bulk, weight, or measurement upon which the freight for that type of cargo is normally calculated.

b) Where the goods are in are container, on a pallet, or in a package, then the unit of goods will be that container, pallet, or package inclusive.

c) Where goods are divided into units in a manner not referred to above then the unit means the unit as unitised (described). E.g. baggage means item of baggage.

The Supreme Court decision in Ports of Auckland Limited v Southpac Trucks Limited (October 2009) shows how the Carriage of Goods Act regime works. Southpac, a trucking company, purchased a new truck from Australia. The truck was in the process of being transported to Southpac by Ports of Auckland when it was damaged by a POAL employee. The repair costs were over $60,000 and Southpac sued POAL to recover those costs. POAL accepted that it caused the damage to Southpac's truck but argued that its liability was limited to $1,500 under the Carriage of Goods Act. The Supreme Court agreed and POAL's liability was limited to $1,500.

At first glance this decision seems grossly unfair: POAL caused $60,000 worth of damage but was only liable to pay $1,500. However, it makes more sense when the policy behind the legislation is understood. Before the Act was passed, it was often difficult (and therefore expensive) to determine who was legally liable when products were damaged in transit. In contrast, the Carriage of Goods Act provides certainty and that enables businesses to organise appropriate insurance before transporting their products.

HISTORY OF THE CARRIAGE OF GOODS ACT

The Carriage of Goods Act applies to the movement of goods by any means within New Zealand. Historically, the carrier was effectively the insurer of the goods being carried. Over time, carriers attempted to limit their liability by contract. Legislation since the nineteenth century has regulated the liability of carriers; restricting the ability of carriers to contract out of their liability, whilst also capping the amount of their liability.

The Carriage of Goods Act 1979 is consistent with this history. The default position is that carriers are liable for the loss or damage to goods while they are being transported regardless of cause in most cases, with the amount of the liability limited to $1,500 for each unit of goods lost or damaged. The risk of any loss over that amount remains with the owner of the goods.

The Act provides various options for adjusting the risk between the carrier and the owner of the goods being carried, including shifting the risk to the owner. The protection for the owners of goods under the Act is that the terms on which the owner is responsible for any loss or damage must be set out in a written contract signed by the owner.

CONTRACTUAL TERMS OF CARRIAGE

The party who has the contract with a carrier will generally be the sender/owner of the goods being carried and terms must be agreed and signed off at the time of consignment.

The Act defines four types of contract each determining responsibility for loss or damage to goods and the extent of that responsibility.

a) At 'Owners Risk' where the carrier will not be liable for loss or damage at all. Most commonly used for furniture and office removals and excluded goods under the act.

b) At 'Limited Carriers Risk' where the carriers liability is limited to the current limit of $1500 per unit of goods. (This is the default contract where there are no declared terms specified). 90% of goods are carried in NZ under these terms.

c) At 'Declared Value' where the carrier will be liable for an agreed amount up to that specified in the contract. Predominantly used for containerised goods.

d) At 'Declared Terms' where the carrier will be liable under agreed terms and conditions in accordance with the contract specifications. Any extraordinary features of the goods or the route may dictate the terms of this contract.

The example shown above in Southpac vs. POAC was most evidently settled in terms of Limited Carriers Risk. I can only assume that the vehicle being shipped from Australia had Marine Transit Insurance cover to the wharf only (FOB), not warehouse to warehouse, and thereby invoking the default contract once unloaded from the boat.

It is vital that clients of transport companies are constantly reminded that they should have their own transit insurance policy to cover their goods if the 'unit of goods' that is being shipped is greater in value than the $1500 limited by the Act or is an item excluded by the Act.

The final points you should consider and question your broker about are the extensions available through some insurers for increased costs of cleanup, salvage, and removal of debris and consequential loss.