TIA CARGO CLAIMS FRAMEWORK

Develop and Implement an Effective Cargo Claims Program

Transportation Intermediaries Association
TIA understands this document to be a working draft, which may be updated from time to time. TIA is interested in any and all constructive feedback and advice, which could improve this Framework. Please send an email to Chris Burroughs at burroughs@tianet.org, and he will inform the committee of your remarks.
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Preamble

The Transportation Intermediaries Association (TIA) is the premier professional and educational organization of the $162 billion third-party logistics industry. As one of the nation's preeminent users of the motor carrier industry, the TIA values those relationships with motor carriers and shippers and has created this Cargo Claims Framework ("Framework") as a value for its members. The Framework was developed over months of extensive discussions at the direction of the TIA Board of Directors.

The Cargo Claims Framework Committee began with an excellent group of industry leading experts, and since 2014 has continued its work reviewing and combining real-life experiences with significant events in the industry to build the useful and current Framework we have today. As practices and regulations continue to change, the Framework will endeavor to adapt.

TIA is fortunate that its Cargo Claims Committee has been comprised of the leading authorities and voices on the subject in the nation. Its recent Committee includes a broad and diversified range of subject-matter experts with firms and individuals who are authorities in freight broker operation, motor carrier operation, carrier assessment, professional risk management, several transportation attorneys, and insurance industry experts who specialize in insuring freight brokers.
I. **The Framework’s Purpose Is:**

The purpose of this Framework is to assist TIA members in developing and implementing their own individual cargo claims policies and procedures. The ideas, information, and areas suggested for review contained in this Framework represent merely one set of tools, among many others, to where TIA members may turn as sources of information regarding cargo claims. It is the Committee’s hope that the information in this Framework may direct TIA members to other resources that may help TIA members reduce some exposure to risk of loss, liability, and/or potential fraud when dealing with cargo claims.

II. **The Framework’s Purpose Is Not:**

The Framework is not designed, not intended, and not recommended to be a checklist or any type of industry “standard,” nor a characterization or summary of industry standards, nor a collection of “minimum” standards to handle cargo claims. In fact, not a single company or individual on the Committee performs, recommends performing, intends to perform, or can even justify the application of most or all the tasks and/or areas suggested for possible review as outlined in this Framework. Most of the areas suggested for possible review in this Framework are specific to certain scenarios, which may present themselves from time to time during cargo claims review.

Nothing in this Framework is intended to be nor should be used as legal advice or as a substitute for legal advice which each member should obtain from qualified counsel familiar with the member’s business and laws applicable to it. The Framework is not intended to define any legal standard on handling cargo claims, and it should not be used or relied upon by anyone for any such purposes. This Framework is understood by the TIA to be a “working draft” and an evolving document and framework.

III. **What Is A Cargo Claim?**

A freight or cargo claim is a legal demand by a shipper, consignee, or owner of the product to a carrier for financial reimbursement for a loss or damage to a shipment. Freight claims are also known as shipping claims, cargo claims, transportation claims, or loss and damage claims.

The intention of a freight claim is for the carrier to make the shipper or consignee “whole” – that is to say, their position is as good as it would have been if the carrier had carried out their tasks according to the Bill of Lading. For this reason, claimants are generally expected to file a claim to recover their costs including profits for sold goods.

Claimants are also expected to take reasonable measures to mitigate the loss. For example, if the damaged product has retained some value, the carrier would only be required to pay for the difference between the original value and the damaged value. The claimant would then be free to salvage the damaged product by selling it at a reduced cost.

A. **Where can I obtain a claim form?**

In the event that a loss or damage claim needs to be filed, some shippers and/or carriers may prefer that their own forms be used for this purpose. In the event that no other form is available, you may use this TIA-provided basic boilerplate form (Attachment 1), or you may design and provide your own if you do not already have one available.
**B. When and with whom should claims be filed?**

A claim is typically filed by the shipper, receiver, or owner of the goods and sent to the home office of the motor carrier which usually would be the delivering carrier or the carrier causing the loss. It’s not uncommon for the shipper or claimant to file a claim against the broker because the broker is the party who chose the carrier, and the shipper may not have knowledge of the carrier and their location. But keep in mind that a broker assumes no responsibility for the shipment and does not “touch the freight.” Brokers may (and often do) assist shippers/customers in filing claims with the motor carrier on the shipper’s behalf.

Claims must be filed in writing with either the originating or delivering carrier -- or with the carrier where the damage occurred. As soon as the damage or loss is discovered, all possible liable parties involved in the transportation of the goods should be notified. This will prevent any possibility that the claim could be declined for failure to give timely notice.

Claims should be filed as soon as the loss is discovered and up to nine months after delivery of the cargo. If the cargo in question is not delivered (hijacked, for example), the time limit is up to nine months after a reasonable time for delivery. The nine-month time limit applies unless the cargo is ‘exempt’ or if there was a different time limit established in a contract between the parties.

**C. What are the required documents?**

Federal regulations are the best source of information regarding which documents are necessary to support a cargo claim. 49 CFR 370 lists the necessary elements.

A claim is a **written demand that identifies the shipment for a specific amount of money**.

**Written Demand** - This can be a claim form or an invoice.

**Documents that Identify** - any one of these is considered to be acceptable for identification of order:

- Original Bill of Lading
- Proof of Delivery
- Freight Bill

**Specific amount of money** - claimant has to prove the financial loss. Documents should include:

- Original Invoice
- Replacement Invoice, if applicable
- Repair Bills
  - Parts
  - Labor

**Supporting Documents** - these documents are not considered CLAIMS, but may help to prove the carrier is liable:

- Notation on POD—highest form of evidence of condition and count at time of delivery
- Inspection report—either by third party, insurance company, or consignee self-report
• Pictures
• Pick-up tallies
• Loading diagrams
• Videos of loading or unloading

Keep in mind that the customer/claimant has the same obligation to produce proper documentation as the broker/claimant in the event that the broker is filing against a carrier.

Additional documentation not listed in 49 CFR 370 is necessary before filing against a carrier (or the carrier’s insurance company). The first is an Assignment of Rights. This document allows the broker to stand in the place of the legal owner of the goods. Sample Assignments are included in the Attachments. The claim should also be supported with a copy of the check paid to the customer/claimant proving that the broker has paid the claim or an assignment allowing the broker to proceed with the claim and pay collected proceeds to the shipper less cost of collection.
IV. Practical Guide To Freight Damage Claims

In the world of freight brokerage, the broker is liable for freight loss and damages if the broker agrees by contract to be bound, or if broker is negligent AND that negligence is the proximate cause of the loss. Even though many brokers do not accept the liability by contract, they “accept” the liability as an accommodation to their shipper customers. It’s hard to say “no” to the shipper when it’s made clear that the broker will have to accept the risk of cargo loss in order to get or keep the business.

Broker can assume legal liability by contract with a shipper. The good news is that insurance can be purchased to cover cargo loss and damage risks. Also, a broker could be legally liable, for example, if it was negligent in transmitting instructions to the carrier or just plain made a mistake which caused the loss. Errors and Omissions Insurance can be purchased to cover those risks.

If Broker makes the business decision to “manage” a claim:

> There are commercial investigation companies that will perform all or any part of an investigation. When hiring, get a clear written commitment stating what they are going to do, in what time frame, and for how much money. A private investigation company is not your insurance company’s investigation company. Make clear that your investigating company is not authorized to disclose any of its findings without your express written authorization. The insurance investigators will want to know everything you have learned, and your confidential information should not be “given” away unless you get some information you want in return from the insurance investigators.

A. Factual Investigation

Now for the investigation. Don’t wait. The longer you wait, the more difficult it will be to learn important facts which may have an important bearing in bringing about resolution of the claim. The investigation should include:

- Date/time/place of loss/get photos of damages, freight, trailers, equipment, etc. and note time and date ASAP. (There’s no such thing as too many photos.)
- A detailed description of the damaged freight including dimensions, weight, packaging, and the loss total. Partial? Mitigation possible?
- Did weather contribute to loss? How?
- Identify witnesses: names/addresses/phone/fax numbers/titles? Call and interview witnesses ASAP. Until and unless a lawsuit is filed, you are not prohibited from talking to witnesses. Take careful notes or, better yet, record the conversation. It is wise to tell them you are recording the conversation because you want to remember what they said and it is easier to just listen to them rather than writing while listening. Make the interview a non-threatening, fact-finding conversation.
- Collect all shipping documents including bills of lading.
- Get copies of police reports, if any.
- Find out if shipper and/or carrier reported the loss to their insurance carriers. Find out the name(s) of all the insurance companies who may have covered the loss. Get the names and addresses and phone/fax number of insurance company’s adjusters. Talk to them and find out if the insurance company will pay the claim.
• The Shipper: the most common defense raised by carriers to freight damage is “shipper fault.” In order to deal with that issue, get a detailed description of: packaging...did they follow their standard procedures? How can they prove that they followed their standard procedures? Are their packaging procedures documented? How do they know the procedures were followed for this shipment? Documents and witnesses must make it clear that freight was in good condition when loaded. A “clean” bill of lading provides some proof of good condition, but it provides a rebuttable presumption only. Who at shipper facility can testify or will provide a written statement to the facts? (Get a written statement from him/her as soon as possible).

• The Carrier: get a description of loading procedures. Who did it? When? How? Date? Did shipper see carrier leave shipper’s facilities? Get shipper’s version of loading AND driver’s version of loading. Lumpers? Were they involved? Get names/addresses/phone numbers and talk to them. Try to get signed written statements if they know important facts. Try to get a recorded conversation if you can. (See Paragraph 4 above.)

• Interview driver ASAP. Get a full description of loss: how, when, why, time, date of loss, factual cause of loss/amount/description of loss. Photos of damage? Names/addresses/phone/fax numbers of witnesses? Ask the driver about his experience generally and experience with this type of freight specifically. Ask if he has maintained his driver logs, where they are kept, and who has possession of them.

• Ask where (address) the damaged (and undamaged) freight is being held. Who has possession? Shipper should tell Carrier (in writing) what to do with it including where and how to store it. What are the storage charges and what is the storage accrual rate? Are there towing charges? If so, how much?

• Did Carrier make the delivery? Date? Time? Place? Weather? Did the Consignee reject? Get a clear statement from consignee in writing explaining the reason for rejection. Is it noted on the bill of lading? Were the reasons for rejection (such as temperature requirements) known to carrier, broker, and shipper in advance? If delivery was not made, where is the freight?

• Who at the consignee can testify as to the condition of the freight upon arrival (name/addresses/phone/fax numbers)? Get recorded or written statements as soon as possible. Is the freight in original condition/placement at time of delivery or has it been moved? If it was moved, why, when, and where, and how was it moved? Who authorized the move? What storage charges, if any, are accruing?

• What is the amount of damages? Most courts allow the invoice price of sale from shipper to consignee, which includes the lost profits of the shipper. If the freight was not sold at the time of loss, then shipper’s invoice costs plus reasonable overhead is usually allowed. Collect all documents establishing proof of damages from shipper. This may include cost of re-delivery and mitigation costs.

• Mitigation/Salvage is required of all parties by law. Usually shipper will know salvage people in its industry. That’s usually the best place to start. See if they will help...it’s their freight and they should better know how to dispose of it. It’s in everyone’s best interest to cooperate in getting the damaged freight salvaged because it reduces the total amount of loss at issue. If possible, get competing bids for salvage.

• If the facts indicate carrier liability and the carrier refuses to pay, take it to small claims court. Unless you have a contract that states otherwise, the fact that the carrier does not have insurance or has insurance
that does not cover the loss does not mean that the carrier is NOT liable. (See TIA model Broker/Carrier contract insurance clause in Sections 3.C and 3.D on pages 3 and 4.)

- File the claim with the motor carrier promptly. Some courts take the position that failure to file a claim with the motor carrier within nine months will bar any further claims against the motor carrier! Similarly, if you are going to start suit against the carrier you have two years from date of denial of the claim to file. (This assumes there is no contractual agreement between the parties, which provides for different time frames.) NOTE: Intermodal claims procedures will be subject to the terms and conditions of railroad circulars. The terms and conditions must be followed or the claim may be barred.

- Liability Issues: Review carefully what the contracts between the Parties say regarding liability. Contracts which should be carefully reviewed are: Broker/Carrier; Broker/Shipper; all insurance policies; all Bills of Lading; all other shipping documents such as rate/load confirmations, etc. Even if there is no other “written” contract, the contract that comes into being is the actual conduct of the parties as evidenced in phone calls, emails, faxes, letters, etc., all known as “the course of dealing.” In the event of an unresolved dispute, a judge or arbitrator may determine the “course of dealing” intent of the parties with a resulting obligations and liability. After completing your thorough factual investigation, talk to a qualified transportation attorney for analysis of the liability issues.

- If you decide to pay a shipper for a freight damage claim, make sure you get a release and assignment of the claim in exchange for and prior to making the payment. The release should include a cooperation clause that requires the shipper to provide all documentation they have as well as make witnesses available at your request. (See Attachments 5, 6, 7 at the end of this booklet.) Get statements (signed/notarized) from witnesses. Memories grow fuzzy with time.

- When asserting claims against carriers or other parties for freight damage, be careful to claim as assignee of shipper only if you are sure the damage was not the fault of the shipper. Carriers or other parties responsible for damage can “offset” or assert defenses against the shipper (and you as assignee), which could potentially bar your claim. If you assert your claim for breach of contract/indemnification under your broker/carrier agreement, they will have less opportunity to assert those defenses. However, the trend in case law recognizes federal preemption statutes which limit cargo claims to Carmack liability (47 USC 14706.) Other contract and tort claims are recognized if they are independent of the cargo claim.

- Not all claims are alike. Different types of products will require different investigation questions. The above list is intended only as an example of the many factual issues that must be investigated. Liability issues will ultimately be determined by which party has the done the most thorough factual investigation.

 Liability for freight loss and damage may ultimately be determined by applicable statutes, applicable case law, and contracts between the parties, bills of lading and course of dealing. Seek guidance from a qualified transportation attorney.

B. Exceptions to liability

- Act of God: An act of God is an occurrence that happens without the intervention of man. Flash floods, electrical storms, and tornadoes are samples of an act of God. However, if there is a warning of such an occurrence and the carrier could have taken precautions to protect the freight, they cannot use this as an exception and avoid liability.
• **Act or Default of Shipper:** The act or default of the shipper refers to improper packaging, loading, blocking, and bracing. A carrier’s acceptance of improperly packaged, loaded, blocked, or braced freight will preclude the carrier from raising this exception, however, if the defect was obvious at the time of pick-up, the driver should have refused it.

• **Inherent Nature of Goods (Inherent Vice):** The natural shrinkage or deterioration of a product is something that a carrier cannot control. However, if the carrier’s own negligence leads to speeding up that natural process, the carrier will be held liable. If a shipper ships a load of perishable goods that must be refrigerated and the carrier’s equipment breaks down, the carrier would be liable as a result of his negligence.

• **Public Enemy:** The public enemy is defined as military forces of a nation at war with the government. It does not include hijackers, criminals, or rioters.

• **Public Authority:** Public authority refers to the intervention of a lawful authority. The government can confiscate such items as contaminated goods or contraband articles, and the carrier’s goods can be taken under legal process.

See section on “Legal Defenses” for more information.

**C. Determination of Exempt and Non-Exempt**

Generally speaking, all companies that arrange or offer to arrange for the transportation of property by motor carrier for compensation need to be registered. There are some longstanding exceptions. The first is **intrastate commerce.** The laws surrounding the need for brokers to be federally licensed relate to interstate commerce. In its most basic form, interstate commerce is when goods move through more than one state during transit. A truck shipment from Chicago to New York would be interstate commerce. Intrastate commerce, on the other hand, is when the transportation is entirely within a state. A truck move from a manufacturer in San Diego to a store in San Francisco would be intrastate commerce. Those engaged strictly in intrastate commerce do not need to become licensed as a broker. It is important to realize that if freight crosses a federal border, it is interstate commerce. Thus a truck move from San Diego to San Francisco of freight that was previously imported from Mexico would be interstate commerce. This is true even if the party arranging the in-state movement of the cargo did not also arrange for it to be transported into the United States. The fact that the freight itself came from Mexico makes the shipment interstate commerce and creates a need for a federal license.

The second exemption involves **air freight.** Since the deregulation of the airline industry in the US, those entities that arrange for ancillary truck movements have not been subject to federal licensing requirements. This exemption is quite narrow, however. In order to qualify, an exempt truck shipment must have had a prior or subsequent movement on an actual aircraft. The only exception is if the freight was scheduled to move by aircraft but then moved entirely by truck due to a flight cancellation resulting from either bad weather or a mechanical failure of the aircraft. In the past, some companies have attempted to brand themselves as domestic air freight forwarders. They would issue an air waybill but arrange for the cargo to move entirely by truck. Because the cargo never moved by aircraft nor was it ever intended to do so, the exemption would not apply and a federal license would be required.

The third exemption applies to **federal designated commercial zones.** These are areas around various U.S. cities wherein the movement of cargo does not need to be performed by federally licensed entities. Around major U.S. cities, these areas are very narrowly defined. Taking New York City as an example, the federal commercial zone includes the city itself and a handful of other municipalities around JFK and Newark airports as well as several port and rail facilities in New York and Northern New Jersey. Any shipment not moving wholly within a commercial zone will fall outside of the exemption. While these zones can benefit truckers that strictly dray cargo between these facilities, most companies arranging for truck moves...
from a port will find that the zones are too geographically small to encompass much of the transportation for which they arrange.

Certain commodities are also considered exempt. Arranging for the transportation of exempt commodities by truck does not require a federal license as a transportation broker or surface freight forwarder. To find a list of exempt commodities, you should review the Federal Motor Carrier Safety Administration's administrative ruling number 119. Exempt commodities tend to be produce and agricultural type products but the list must be reviewed closely as there are fine distinctions. Eggs in the shell are exempt, for instance, while hard-boiled eggs are not. Frozen fish is exempt, but canned fish is not. The bottom line is that unless you are involved in arranging for the transportation of a very limited number of specific commodities that happen to be exempt, you will quickly find yourself moving non-exempt cargo and thus be subject to the licensing requirements.

MAP-21 adds three new exceptions to the licensing requirements: one each for OTIs (Ocean Transportation Intermediaries), Customs Brokers, and Indirect Air Carriers. On closer inspection, however, the language in the law is less than clear.

For OTIs, the exception to the requirement to be registered and bonded applies to NVOCCs or ocean forwarders “when arranging for inland transportation as part of an international through movement involving ocean transportation between the United States and a foreign port.” There is considerable disagreement as to what this actually means. Some believe that only cargo moving under a through door master bill of lading would meet the exception.

Similarly, MAP-21 creates an exception for customs brokers, “only to the extent that the customs broker is engaging in a movement under a customs bond or in a transaction involving customs business...” While the in-bond portion of this language seems rather concise, the concept of a “transaction involving customs business” is less so. Customs and Border Protection has ruled in the past that arranging for the transport of cargo by truck does not constitute customs business. This focuses attention on the meaning of the word “transaction” in the language. If the transaction were defined broadly enough to encompass the customs entry, then the exception would likely apply. If not, then a transportation broker or surface freight forwarder registration and bond would be required.

Finally, MAP-21 exempts “an indirect air carrier holding a Standard Security Program approved by the Transportation Security Administration, only to the extent that the indirect air carrier is engaging in the activities as an air carrier.”

To summarize, the language in MAP-21 granting exceptions is somewhat unclear in its scope. The FMCSA themselves do not appear ready to take a firm position on the matter. Even if and when they do, while the agency can control their own enforcement actions, it will likely be difficult, if not impossible, to prevent private party actions against unlicensed entities where the ambiguity in the laws language will come into question. Finally, even if the ambiguity in the exceptions did not exist, most companies likely become involved in shipments that are significantly removed from the international transportation or customs transaction. Pick and pack, post-entry warehousing, and subsequent transportation and returns come to mind. In these cases, registration would be required, anyway.

Given the lack of clarity, we believe that most companies that arrange for transportation by truck should immediately register for authority with the FMCSA. Doing so could prevent private-party claims as well as regulatory actions while also defining your role in the transaction. Transportation brokers are arrangers and do not, by regulation, assume liability for the property being transported. This distinction can be helpful when cargo claims occur.
D. High-Value Load Management and Special Load Management

It is imperative to know the value of any load you handle. You need to verify that both you and the carrier you use have enough insurance to cover the value of the product should any loss occur. Most truckers carry a limit of $100,000 in cargo insurance but can usually increase the limit for a specified move with an insurance policy rider.

If a customer offers you a load whose value is greater than $100,000, make sure that:

- You have no exclusions in your policy that would exclude the product and that you can purchase a rider to increase the limit to cover the load value.
- Your carrier has no exclusions in his policy that would exclude the product and can and will get an insurance rider to cover the cost of the product. Do not trust any certificate the carrier sends you; call the insurance agent directly to verify that the coverage has been bound.
- Your carrier, if they hold common authority, has no tariffs that could limit liability.

It might make sense for your customer to add the product to their “Property in Transit” insurance and limit both you and your carrier’s liability. Property insurance pays no matter how the damage was caused while cargo insurance will only pay if the carrier is liable. For example, if product is lost because a trailer was struck by a tornado, property insurance would pay while cargo insurance would not.

Brokers who may provide services for oversize, overweight, permitted loads requiring specialized transportation must acknowledge the additional risks that could result in claims. For example, specialized transportation may involve trucks, barges, special railcars, riggers, surveyors, pilot cars, railcar crews, etc. Brokers must ensure that they account for liability risk protection with every entity participating for their customer’s move. Failure to assess these risks could be catastrophic. Example: do you ensure that the arranger of pilot cars has validated that they carry proper and adequate insurance in the event of an accident?
V. Common Questions And Answers

A. Should the customer pay the freight bill when there is a cargo claim?

Payment of freight charges should not be ignored or delayed because of a loss or damage claim. The charges may be paid in full and, typically, the amount of freight charges pertaining to the lost or damaged freight is included in the freight claim. A carrier may hold payment of the claim until the freight charges have been paid. Typically, freight charges are set off against the claim amount. The reason for this is because payment of freight bills and payment of cargo claims are two entirely different but related subjects.

With Less-than-Truckload (LTL) shipments, the broker should advise the consignee to pay the freight invoice and recover the freight amount as part of the claim. The broker should advise the consignee to receive the freight, document the loss or damage on the delivery receipt, and then either the consignee or broker can call the carrier to make an inspection. The consignee can include either the full freight charge amount for a total loss or a proportional freight charge amount for a partial loss or damage as part of the formal claim filed with the carrier. If you allow the customer to refuse the entire shipment, control of the material is lost, and there can be multiple extenuating circumstances that can arise which can complicate the claim like further loss or damage to the product, potential for argument over proving where the loss or damage actually occurred, and the potential for accumulation of additional warehousing/handling charges that the carrier can legally assess. Additionally, the shipper may want to recover any damaged product in order to keep it off the freight “after market,” and this could be problematical if you don’t control the freight.

When the shipments are full truckload quantities involved in a claim, there are two possible approaches in order to keep the freight off “after-market.”

- **Partial Loss**: if only a portion of the shipment is lost or damaged and the consignee decides to receive the undamaged material, follow the process described above for LTL shipments. Remember that truckload carriers likely do not have a local terminal and the shipper may not want to run up additional transportation/storage/handling charges to return the damaged freight.

- **Full Loss**: if the consignee rejects the total load, then the answer is NO -- do not have the shipper pay the freight invoice. The owner of the material will not want to pay the freight invoice if delivery was not accomplished. The broker should call the owner of the material (determined by the sale/FOB terms) to get a disposition order for the material. The broker or the owner can then file a claim with the carrier for the material loss. In every event, the broker should check any contract that may be governing the terms of the shipment and abide by any terms set up for claims processing.

B. Should a broker pay a carrier or deduct for the claim?

While it is true that freight payments and freight claims are separate issues, it is unfortunate that many carriers simply do not process claims in a legal manner. Oftentimes, brokers are left holding the bag when it comes to claim payments to their customers.

Although history shows otherwise, there is currently no law or regulation governing offsets. The ICCTA (ICC Termination Act) repealed the anti-discrimination statute that forbid offsetting claims against freight charges so deducting claims is not illegal. There is a Supreme Court case (**U.S. v. Munsey Trust Co.,** 332 U.S. 234, 239 (1947)) that simply says a creditor has the right “to apply the unappropriated funds of his debtor, in his hands, in extinguishment of the debts due to him.” While Carmack focuses on carrier liability, it remains silent on unpaid freight charges so they aren’t encompassed by Carmack’s statutory mandate. However, some carriers may have tariff provisions to prohibit claim deductions, which could become binding if they are properly incorporated by reference through the contract of carriage. If the carrier has properly and legally declined
the claim and an offset has been taken against their freight charges, the carrier could file suit to recover their freight charges and also receive substantial penalties.

To protect yourself, it’s a good idea to incorporate language into your carrier contract to give you the right to deduct claims from freight payments. The language can be as simple as “The BROKER is authorized to deduct freight claims from CARRIERS’ invoices.” Some brokerages will hold all carrier payments until the claim is satisfied, while others will only deduct or hold the carrier’s cargo insurance deductible.

C. What should be done with damaged goods?

- All damaged merchandise should be retained in the original packaging and in the same condition it was when the loss or damage was discovered until inspected by the carrier/insurance company, or until inspection is waived.

- Consignees have a duty to accept damaged goods unless the shipment is practically worthless. Claimants have a duty under Carmack to mitigate damages. They can accomplish this by either salvaging the undamaged portion of the shipment, repairing the damaged goods, or selling product at a discount. If the claimant waives its rights of salvage, the carrier may then attempt to resell or salvage the damaged freight.

- Certain products, such as food (or trademarked products, cannot be resold or salvaged (see 21 USC 342 (c)(4)). Also, goods that require a license to resell (tobacco, alcohol, etc.) and products with potential health hazards (medications, hazardous materials, etc.) cannot be resold or salvaged.

- Find out if the undamaged portion of the shipment can be sold.

- Find out if the damaged product can be repaired.

- In the case of damage caused by an accident, carrier’s insurance company will send out an adjuster to inspect the equipment and, in some cases, a separate adjuster to inspect the cargo. In most cases, by the time this process is complete, a replacement shipment will be ordered, and the carrier will become the beneficial owner of the freight. If this happens, the carrier and/or its insurance company have the right to salvage the damaged product. Keep in mind the products referenced above that cannot be salvaged or resold.

D. What should be done with salvaged goods?

The party in possession of the damaged and/or refused freight is responsible for retaining it along with the packaging in which it was shipped until the investigation of the claim has been completed. If or when the carrier and/or their insurance company accepts full liability and pays the claim in full, the carrier and/or their insurance company are entitled to take possession of the damaged and/or refused freight within a reasonable time period following acceptance of liability and payment of the claim. The party in possession of the goods must contact the carrier and/or their insurance company and request removal of the goods from their premises, and should allow a reasonable amount of time for the carrier and/or their insurance company to comply.

E. What happens if the claim is declined?

When a claim is declined and the claimant feels the claim should have been approved and paid, the claimant would normally send a rebuttal letter explaining why they feel the claim should have been paid. Sometimes there is more clarification
provided by the claimant, or perhaps there is new information to prove the validity of the claim. If the claim remains unpaid, the claimant has two years to file suit to recover its loss. (See Attachment 2 for example cargo claims declination letter.)

F. What is the proper follow-up on a claim?

The follow-up on a claim depends if your company is acting like a claimant and filing against a carrier, or acting like the carrier and resolving the claim from a claimant. As a broker, you need to know how to work both sides.

The regulation is the same no matter the position, but the actions or reactions may be different depending on where your company is standing with the claim.

49 CFR 370.9(a) is the regulation concerning claim acknowledgement, investigation, and resolution.

Claims must be acknowledged in 30 days.

- **Claimant:** NOTE the date your claim is sent to the carrier and insurance company. If you have not received an acknowledgment in 30 days, contact them to make sure they have received it.

- **Carrier:** Set up a tickler file or place a note in Outlook to remind you to acknowledge the claim. A good idea is to send your acknowledgement several days before the 30 days expire so that your claimant has it in hand prior to the expiration. Another idea is to acknowledge the claim the same time you ask for more documentation.

Claims must be settled in 120 days OR

- **Claimant:** Make sure you contact the claim receiver prior to the 120 days to find out why the claim hasn't been resolved.

- **Carrier:** Prompt claims handling is a good customer service tool.

If the claim can't be settled within 120 days, then the carrier must notify the claimant in writing every 60 days with the status of the claim.

- **Claimant:** There is no portion of the regulation that states the claim must be settled in 120 days. The carrier can spin out the 60-day updates forever. Now might be the time to contact an attorney.

- **Carrier:** If you aren't going to pay it, then decline it.

The claimant has two years plus one day to file suit after receiving the written declination from the carrier.

- **Claimant:** The clock starts ticking with the date of the letter.

- **Claim Receiver:** Keep your files for two years plus a couple of days.

Claim rebuttals are not covered in the regulation and do not stop or restart the two-year-plus-one-day clock. If your company is acting as the claimant, look at the reason for declination and see if it is as simple as supplying documentation. If your company is acting as the carrier, keep in mind there is no obligation to keep corresponding with the claimant if your answer is “Declined.”
G. What can be done if a load is stolen?

When most people think about cargo claims, they usually involve shortages or damages. But what about cargo claims resulting from stolen cargo? This is a problem that is growing more each year. It not only hurts our industry, but it increases the cost of goods for consumers. (See also “Stolen Freight,” page 33 in this booklet.) In 2014, TIA created a booklet called ‘Framework to Combat Fraud’ which addresses Cargo Theft. We highly recommend that you obtain a copy and take the time to read and use it as a valuable resource. For your information now, below is a listing of “Post-Theft Contact Information”:

<table>
<thead>
<tr>
<th>Contact Information</th>
<th>Phone Number</th>
<th>Email Address</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ansonia Credit Data</td>
<td>(877) 218-2056</td>
<td><a href="mailto:tsulpizio@ansoniacreditdata.com">tsulpizio@ansoniacreditdata.com</a></td>
</tr>
<tr>
<td>CargoNet</td>
<td>(888) 595-2638</td>
<td><a href="mailto:cargotheft@cargonet.com">cargotheft@cargonet.com</a></td>
</tr>
<tr>
<td>Carrier 411</td>
<td>(321) 286-5171</td>
<td><a href="mailto:support@carrier411.com">support@carrier411.com</a></td>
</tr>
<tr>
<td>Federal Bureau of Investigation</td>
<td><a href="http://www.fbi.gov/contact-us/field">www.fbi.gov/contact-us/field</a></td>
<td></td>
</tr>
<tr>
<td>Industry Load Boards</td>
<td>tia.officialbuyersguide.net/SearchResult.asp?cid=33</td>
<td></td>
</tr>
<tr>
<td>Internet Truckstop</td>
<td><a href="mailto:security@truckstop.com">security@truckstop.com</a></td>
<td></td>
</tr>
<tr>
<td>Registry Monitoring</td>
<td><a href="mailto:n.anderson@registrymonitoring.com">n.anderson@registrymonitoring.com</a></td>
<td></td>
</tr>
<tr>
<td>Report theft to TIA Watchdog</td>
<td><a href="http://www.tiawatchdog.com/wdLogin.php">www.tiawatchdog.com/wdLogin.php</a></td>
<td></td>
</tr>
<tr>
<td>State Law Enforcement Task Forces</td>
<td>See Resources</td>
<td></td>
</tr>
<tr>
<td>Transcore/DAT</td>
<td>(800) 848-2546</td>
<td><a href="mailto:nacustomerservice@transcore.com">nacustomerservice@transcore.com</a></td>
</tr>
<tr>
<td>Transportation Intermediaries Assn.</td>
<td>(703) 299-5700 or <a href="http://www.tianet.org">www.tianet.org</a></td>
<td></td>
</tr>
</tbody>
</table>
VI. Risk Management And Insurance

A. Carrier Selection

According to ATA, 90.5% of all motor carriers operate six or fewer trucks. These small business people truly do make up the backbone of our economy. Without them, many loads simply would not move.

When qualifying a carrier, there are other things to consider: who underwrites the cargo policy? The reality is, some underwriters adhere to a very narrow interpretation of the policy to avoid paying, while others are more lenient and consider all factors. If the underwriter is unfamiliar to you, ask either your insurance agent or email TIA. They will find a member who has experience with the underwriter.

The second factor to consider is if the loss is not covered by insurance, your carrier will probably not have the assets to cover the loss. Since your customer trusted you to find a carrier, your customer may look to you for reimbursement.

The ultimate decision to load or not to load a small carrier rests with your corporate comfort zone.

See the TIA Carrier Selection Framework for further information on establishing a formal carrier selection process.

B. Insurance Deductibles

Using a small to mid-sized carrier with a higher cargo deductible is like extending credit to the carrier. It would be prudent to check the carrier’s financial strength and reputation for paying claims when a high deductible is present. Here is a tip: If you see multiple cancellations of the carrier’s liability insurance on the FMCSA website, that is a very strong indication the carrier is having financial problems and probably cannot pay their deductible. Some shipper contracts forbid brokers from using carriers with high deductibles. The most common deductibles are $1,000 for all losses except refrigeration equipment breakdown losses, which are usually subject to a $2,500 deductible. A small carrier with a higher deductible may not have the financial ability or desire to pay a deductible over $2,500. For a mid-sized carrier, a deductible of $10,000 or more may be difficult.

Liability policies may contain retentions, which are a type of deductible. Mid-sized carriers (50 to 100 trucks) may buy their liability insurance through a risk retention group (commonly abbreviated RRG). Liability retentions may be $25,000 or $50,000 on the low end. Because the liability policies must contain the MCS-90 endorsement, which requires first-dollar payment to the public, brokers need not be concerned with retentions. But a carrier in some financial distress may be unable to pay both a liability retention and a cargo deductible arising out of the same accident.

When implemented properly, deductibles and retentions can be very effective tools to reduce the number and even severity of claims. Larger carriers can save significant amounts of money by implementing deductibles prudently.

C. Understanding Coverage Of Carriers And Common Exclusions

The most important thing to remember about exclusions is that they are the tip of the proverbial iceberg. Insurance policies restrict the coverage they provide in four ways: the definition of covered property, the insuring agreement, endorsements, and exclusions.

Covered Property

Each policy will define what type of property the policy covers and what type of property the policy does not cover. Most policies say that covered property consists of the “lawful goods of others.” The policy then lists the type of property that will
not be covered. Examples are currency, deeds, evidences of debt, bullion, precious metals, jewelry, gemstones, fine art, cell phones, furs and fur garments, watches, cigarettes, liquor, etc. There is no way to provide a comprehensive list because the list varies by insurer and by type of policy. A carrier can buy a cheap policy that covers less property or a slightly more expensive policy that covers more property.

**Insuring Agreement**

There are essentially two types of insuring agreements: named peril and special cause of loss. Named-peril policies are the narrowest because only the perils listed in the policy are covered. If the cause is not listed, there is no coverage. The list of perils can be short or long. Almost all named-peril cargo policies cover loss caused by collision, overturn of the vehicle, fire, and collapse of bridges or culverts. Theft may or may not be on the list. Named-peril policies not only have a short list of covered causes of loss, but they also have exclusions which further restrict coverage. Fortunately, named-peril policies are not very common. The special cause of loss insuring agreement says that every cause of loss, except those listed in the exclusions, is insured. An example of such an insuring agreement is, “Covered causes of loss means an insured’s liability for direct physical loss to cargo except those causes of loss listed in section B, Exclusions.”

**Endorsements**

An endorsement amends the base policy by either expanding coverage or further restricting it. For example, a carrier could pay additional premium and add coverage for liquor or fresh seafood or some other type of property that the base policy lists as not covered. Or an endorsement can add coverage for temperature damage caused by a breakdown of refrigeration equipment. An endorsement can expand coverage by stating that a trailer is cargo when it is a self-contained generator or air compressor, etc., or an endorsement can restrict coverage by adding an exclusion to a special cause of loss policy. It might eliminate coverage for an unattended truck, or remove water damage coverage with a tarpaulin warranty, or remove coverage for a loss if the trailer is not attached to a power unit at the time of a loss. There is even a policy that covers only scheduled drivers. It must be an absolute nightmare to administer. Endorsements can do just about anything to which an underwriter agrees. Outside of a few very common endorsements like refrigeration system breakdown, tarpaulin warranties, and unattended vehicles, there is no way to list all of the possibilities.

**Exclusions**

After all of that, we finally get to the exclusions. Exclusions are peril or cause of loss and damage restrictions, like flood. If the freight is lost or damaged by a flood, the policy will not pay. Other common exclusions mirror the five exceptions to carrier liability that the law provides: Acts of... God, War, Shipper, Government, Inherent Vice. As long as the carrier is free from negligence, the carrier isn’t liable for the loss or damage and the cargo policy is not going to pay. In addition to these five exceptions, there are some exclusions that are virtually universal. They are employee theft (driver or any trucking company employee), consequential loss, delay, improper packaging (very closely related to act of the shipper), and pollution caused by the escape or spilling of the freight, and fines and penalties. Other very common exclusions are spoilage (unless caused by reefer breakdown), contamination, temperature (unless caused by reefer breakdown), rust, breakage of fragile articles unless caused by an accident, and change in texture or appearance (unless caused by reefer breakdown). You will often see that theft is restricted to incidents where there are visible signs of forced entry to the tractor or trailer.

**Summary**

As one can clearly see, discovering the exclusions is only part of the picture. It does not help to know that the cause of the loss is covered, but the property is not, or that the property is not covered due to an endorsement. It helps to know what the common exclusions are and what property is not commonly covered. Named-peril policies are not very common and becoming more scarce as time goes on. The special-cause-of-loss policies are by far the most prevalent. The free
marketplace is doing a pretty good job of providing broad insurance coverage. But if the carrier decides that a low premium is paramount, that carrier will buy a cheap policy that leaves a great deal uninsured.

So how can a broker or freight forwarder deal with such a complicated set of circumstances? Reading all of the carriers’ cargo policies is both time-consuming (at 50 pages and up each, it would take too much time) and impractical because you’d have to get a certified copy to make sure you have not only the exclusions but all of the endorsements. A better method would be to ask the carriers or their insurance agents to address a short, specific set of questions. Asking the carriers is problematic because it is unlikely they have ever read their policy and they may not have understood it if they did read it. If they want a load, the carrier may tell you what you want to hear even if they don’t know or suspect the policy does not provide coverage. The best answers come from asking the carriers’ insurance agents. But you can’t ask the agent to list every exclusion, restriction, and endorsement. There isn’t enough time and they are not going to write a lengthy response.

Instead laser things down to address the freight your customers ship. Be as specific as you can. For example, if your customer ships refrigerated products, ask about temperature coverage. If your customer ships high value and target freight like expensive athletic shoes or copper or HD TVs – ask about covered property, theft restrictions, and limitations. Some insurers cover consumer electronics, but limit payment to 10% of the limit for theft loss. Ask about radius restrictions. Some carriers that have 48-state authority have 100-mile-radius restrictions on their cargo policies. Any loss more than 100 miles from home is not insured. If your customers ship lumber or steel or machinery, ask about tarpaulin restrictions and damage caused by water. Cargo insurance is not required of carriers (other than Household goods carriers and household goods freight forwarders), so there are no “rules” about things like this.

See Attachment 4 for a sample carrier screening form and letter/permission slip.

**D. Insurance for Brokers**

The overwhelming majority of TIA members are brokers, so the perspective here will be primarily from a broker’s perspective. A broker can be protected very well by a properly written Contingent Cargo insurance policy. Carriers with incidental (the majority of business is transacted as a carrier) broker authority must be more careful. If the intent is to separate the cargo liability of the two operations, the insurance can reflect that.

Freight forwarders are liable for cargo loss and damage claims to the same extent as a motor common carrier. A freight forwarder must buy insurance in much the same manner as a carrier. There are only five defenses plus freedom from negligence available to a freight forwarder. Thus, a freight forwarder will almost always be liable for cargo loss or damage. Conversely, a broker would be liable only for the broker’s negligence or for contractually assumed cargo loss or damage liability. The difference may seem subtle, but it is anything but subtle. Just because the carrier is liable does not mean the broker is liable. If the carrier is liable, then the freight forwarder is liable. A freight forwarder’s policy can and should be based on the forwarder’s legal liability. There are only a few policies written specifically for freight forwarders. They tend to be very broad policies that provide terrific coverage. Make sure you are dealing with an insurance agent who understands freight forwarders and how they differ from brokers.

There are two important perspectives to consider when brokers buy Contingent Cargo insurance. Preserving the best possible relationship with the customer is one. Recognition of the gaps that can exist in the motor carriers’ insurance policies is another. It is important to fill as many of those gaps as possible. These perspectives involve not only buying insurance, but also managing the risk.

Preserving the best possible relationship with the customer requires thorough risk analysis. What could go wrong and what can be done to address those events? Risk management starts with careful carrier selection that will vary according to the customer’s situation. It may be more important to select a carrier with the means, procedures, and equipment to safeguard
the freight. For example, arranging the transportation of expensive, refrigerated wine may require carriers with new equipment that constantly monitors conditions in the trailer. It means managing the transportation to avoid exposures whether they are insured or not. Valuable freight like copper or steaks should not be picked up on a Friday when the destination is less 500 miles from the origin. When that trailer is parked somewhere, it is far more likely to be stolen. Seal integrity is very important for all food, pharmaceutical, and personal care products. Perhaps a larger carrier with a robust driver training program is required. It can help preserve the customer relationship by providing a claims advocate. The Contingent Cargo claim adjuster is working on the freight owner’s behalf as well as the broker’s behalf. The adjuster is trained to mitigate loss, preserve damaged and undamaged freight, and analyze the measure of damages. Often, the Contingent Cargo adjuster can coerce the motor carrier’s adjuster to “get it right.”

Contingent Cargo insurance can also “fill the gaps” in the carriers’ cargo insurance policies by insuring claims that the carriers’ policies exclude. Each broker should review the type of property the broker’s customers ship. Make sure your Contingent Cargo policy is a special cause of loss type of policy and that it is not a following form type of policy. If necessary, negotiate a change endorsement to the Contingent Cargo policy that properly addresses any exposures the standard policy does not cover. If the freight is likely to fall under property that is not covered in the truckers’ policies, then the broker wants to make sure that the freight is covered by the Contingent Cargo policy. Make sure your policy does not exclude perils that could cause significant loss like theft, temperature damage, and water damage. You can tailor your Contingent Cargo policy to your business. If you don’t arrange for the transportation of any refrigerated products, it does not make any sense to buy reefer breakdown coverage. If you don’t arrange for flatbed load transportation, then water damage coverage may not be important. Work with your insurance agent to address the issues that your customers’ freight presents. While there is no such thing as an insurance policy with no exclusions, you should work with your insurance agent to provide coverage that protects your business.

E. Insurance Certificates

The most common type of Certificate of Insurance is called the Acord, which lists the types of insurance (General Liability, Auto Liability, Umbrella policies, workers’ comp and employers liability, cargo), the policy numbers, effective dates, expiration date, and the applicable monetary limits. Usually the entity that receives the certificate is shown on the certificate as the Certificate Holder. The designation as “Certificate Holder” confers no legal rights on the recipient. The certificate provides some evidence that the listed policies, which are identified, have been issued. Note: the disclaimers at the top of the form provide, among other things, that the certificate (1) does not “amend, extend or alter insurance coverage provided by the policies,” (2) is not a contract between the insurance company and the certificate holder, (3) if the certificate holder is to be named an “additional insured,” the policy must be endorsed.

At the bottom of the form, the “Cancellation” box provides that notice of cancellation will be sent according to policy provisions. Most insurance policies will only send notices to named parties who by agreement in the insurance contract are entitled to receive one. If your company is not named, the insurance company has no legal obligation to provide notice of termination.

Assuming you are a freight broker, and a motor carrier you would like to hire furnishes you with such a certificate, what are some of the things you can do as a matter of due diligence in your carrier selection process?

- Since certificates are easily modified/forged, check the Federal Motor Carrier website to see if the name of the insurance company and policy numbers match. If they do not, investigate.
- Call the insurance producer and ask for verification that the policies have, in fact, been issued are in effect, that the dates and policies numbers are correct, and that no notice of cancellation or revocation is pending or has been issued.
• Verify that the insurance producer actually signed the form. If it was not signed, investigate. The form might be a fake. See TIA Framework to Combat Fraud for more information.

• The address and phone number of the insured on the certificate should be the same as shown on the FMCSA website. If not, investigate. Note – Since 2013 cargo insurance is no longer listed on FMCSA website.

• The certificate will not show exclusions. All policies have exclusions. Ask the carrier to send you a copy of the “conditions” and “exclusions.” Check especially for exclusions for: Identity theft, employee dishonesty, fraud, embezzlement, intentional acts, types of freight such as coins, works of art, jewelry, precious metals, high-value freight such as electronics, food products, and high deductibles to name just a few. No two policies are exactly the same and assumptions about common conditions and exclusions are dangerous and may be wrong. Don’t be surprised!

• Certificates that show “Scheduled Auto” should not be accepted unless there is a way to verify/match listed VIN numbers in the policy with the VIN numbers on the vehicles which are on a shipper’s loading dock to pick up freight. Without the matching of VIN numbers, there is no way to know if the truck that picked up the freight is actually covered by the policy.

See Attachment #3 for sample Acord.

F. Uninsurable Loss

Work with the carrier if there is an uninsurable loss, possibly an interest-free repayment agreement.

G. Insurance Terms

• ADDITIONAL INSURED: Entity that has been given the benefit of the insurance provided by a liability type policy via joint agreement between the named insured and the insurance company. Adding an additional insured to the policy will probably reduce the amount of insurance available to the primary policy holder. In some states, an additional insured can file claims unrelated to the business relationship between the named insured and the additional insured. In some policies, adding an additional insured will void some of the insurance. If a broker becomes additional insured on a motor carrier’s policy, they are subject to all exclusions and defenses that the insurance provider can assert against the insured carrier. A shipper should never be an additional insured on anyone else’s cargo insurance because their cargo would be excluded from coverage. Cargo policies say they cover property of others while in transit provided by or arranged by the insured. If the shipper becomes an additional insured, the property is now no longer property of others. Becoming additional insured on a cargo policy gets the shipper nothing of value. Cargo policies cover the trucker or broker for their liability for someone else’s property. Since the shipper isn’t transporting or arranging the transportation of someone else’s property, the insurance is of no value or use to them.

• ANY AUTO: Any auto for which the insured may be held liable.

• AUTO: A land motor vehicle, trailer, or semi-trailer.

• AUTO LIABILITY: Insures the liability arising out of the ownership and use of an auto. Auto liability always excludes all liability arising out of premises and operations. Auto liability always excludes injury to an employee of the insured.

• CERTIFICATE HOLDER: Entity to whom a certificate of insurance has been issued.
CARGO CLAIMS FRAMEWORK

- **ENDORSEMENT:** A document added to an insurance policy by the insurance company, which changes the policy. It may add, remove, or reduce coverage.

- **ERRORS AND OMISSIONS:** Covers non-monetary losses and liabilities, which occur due to the error or omissions from a business operation.

- **EXCLUSION:** Policy language that removes or reduces coverage.

- **GENERAL LIABILITY:** Insures the liability arising out of premises and operations. “Premises” is a business office or terminal. “Operations” extends the insurance off premises such as a salesperson making a call at a customer’s place of business. There are two very important exclusions. General Liability always excludes all liability arising out of the use of an auto. The definition of an auto includes trucks and trailers. General liability always excludes all liability due to an employee’s injury.

- **HIRED AUTO:** Only autos that are leased (less than 30 days), hired, or rented unless owned by an employee.

- **NON-OWNED AUTO:** Autos not owned, leased, hired, or rented that are used in connection with the insured’s business. However, autos leased, hired, or rented from employees are considered non-owned autos but only while used in connection with the business.

- **OWNED AUTO:** Autos owned or leased for more than 30 days.

- **SCHEDULED AUTO:** Only those autos listed on the policy or added by an endorsement issued by the insurance company are insured.

- **WORKERS COMPENSATION:** Insures injuries and illness sustained by employees in the course of their employment. By state laws, Workers Compensation is usually the employee’s sole source of recovery against their employer for work-related injury or illness.

**VII. LEGAL**

**A. Cargo Claims Regulations**

The regulations Title 49 CFR 370.1 - .11 are frequently incorporated by reference into shipping contracts and are often overlooked or ignored.

**B. Carmack Amendment**

The Carmack Amendment is codified at 49 U.S.C. Section 14706 et seq. and 49 U.S.C. 11707. Congress created it to be the sole and exclusive remedy to shippers for loss or damage in interstate transit. Carmack preempts state and common law cargo claims. The Carmack Amendment provides consistency for goods damaged or lost during interstate shipment by a common carrier and certainty as to potential liability and risk for damages. Carmack makes carriers liable for the full actual loss, damage, or injury to transported property and voids any contract limiting the liability. Carmack also preempts federal law increasing a carrier’s liability.
C. Contracts

All TIA Model Contracts deal with cargo claims in some manner. They are designed to specify who is responsible for administering claims and determining liability. In most instances, Carmack will apply to determine liability and damages (49 USC 14706). For perishable exempt commodities, liability and procedures for handling cargo claims may be found in DRC Trading Practices, or Blue Book Transportation Guidelines, and/or NAPTWG Best Practices. You will find these referenced in the Broker/Shipper Transportation Agreement between TIA and the United Fresh Produce Association. In most jurisdictions, cargo claims against carriers based on theories of liability other than Carmack will be preempted. Legal costs and legal fees are not ordinarily recoverable under Carmack, but the parties may contractually agree to be responsible for them under specified conditions. The timing requirement contained in 49 CFR 370.5 is 30 days acknowledgment of receipt of claim by carriers, and in 370.9, 120 days to accept, reject, or make a counter offer. These timing requirements can be contractually modified to suit the needs of the parties.

Much litigation arises out of failed deliveries or late deliveries where shippers assert “consequential” damages against brokers and carriers. Consequential or “special” damages are not ordinarily recoverable unless the carrier is advised of the risks and likely economic consequences prior to picking up the freight. This invariably creates fact questions, so brokers are advised to create a clear paper trail evidencing the communications and intentions of the parties concerning this issue.

In today’s market, shippers demand and brokers sometimes accept responsibility for freight damage. While that liability can be contractually accepted, it should always be subject to and limited by the Broker’s insurance limits and policy coverage. If a risk is not covered due to exclusions in the policy, the shipper should be urged to buy a Shipper’s Interest Policy or check to see their goods are covered by their own property insurance. As another alternative, if there are specific exclusions in a cargo policy which are unacceptable, those exclusions might be “bought back” from the underwriter to cover the risk. Assumptions of carrier liability should not be written so as to guarantee payment regardless of the cause of the loss. Broker liability should be triggered only if the carrier is liable.

Two major areas of contract litigation arise out of failure to disclose proper values and failure to properly describe the shipment, along with specific handling requirements such as temperature or special handling and equipment needs. It is highly recommended that the broker develop a checklist to ask the shipper about these issues, which will be extremely helpful in reducing the risk of cargo losses. Dispatchers can provide great value by use of such a checklist.

Many shippers insist that brokers assume all carrier liability, including personal injury and death. If this risk is accepted contractually, it should be limited to the Broker’s insurance limits and coverages. Failure to employ those limitations forces the broker to “bet the company” on the contract. This is not a recommended business practice.

Other contracting issues are dealt with elsewhere in this framework.

D. Bill of Lading Act

Authority: 49 U.S.C. 13301, 13531 and 14706; and 49 CFR 1.73.

Subpart A—Motor Carrier Receipts and Bills

- Source: 55 FR 11198, Mar. 27, 1990, unless otherwise noted. Redesignated at 61 FR 54708, Oct. 21, 1996.
§ 373.101  Motor carrier bills of lading.

Every motor common carrier shall issue a receipt or bill of lading for property tendered for transportation in interstate or foreign commerce containing the following information:

- Names of consignor (shipper) and consignee (receiver).
- Origin and destination points.
- Number of packages.
- Description of freight.
- Weight, volume, or measurement of freight (if applicable to the rating of the freight).

The carrier shall keep a record of this information as prescribed in 49 CFR part 379.

[E. Impact of the Bill of Lading]

According to the United Supreme Court Commercial Metals case (So PacTransp Co. v. Commercial Metals 456 US 336 (1982), if there is no other written contract between shipper and carrier, the bill of lading (BOL) becomes the transportation contract. It will control disposition of cargo damage claims.

Federal regulations require the carrier to “issue” a bill of lading (49 CFR 373.101) but industry practice shows that shippers who create their own bills of lading require that it be “adopted” by the carrier.

Since the passage of the ICC Termination Act at the end of 1995, there is no longer a “Uniform Standard Bill of Lading.” Trade practices show that shippers and carriers are creating their own bills of lading each of which favor the drafter.

Many shippers and carriers are preparing streamlined BOL forms which incorporate more detailed terms and conditions incorporated by reference on their websites. Since the BOL may be the only “contract” between the shipper and carrier, it is crucial that they be drafted carefully. Many shippers use obsolete forms which incorporate terms and conditions from rate bureaus which no longer exist, and many carriers adopt BOLs which incorporate terms and conditions from NMFC or other rate bureaus to which they are not members, thus making the terms and conditions void. Many BOLs adopt terms and conditions on the “reverse” side and there are none. Without some properly incorporated terms and conditions, the parties are left to “he said/ she said” arguments for a court or arbitrator to try to discern. In such instances the “course of dealings” between the parties may play a large role in deciphering the “intent” of the parties.

Some subject matters for BOLs include but are not limited to: released rates; concealed damage rules; credit rules; loss of discount rules; notice requirements; On Hand notice and sale procedures; tariffs; accessorial charges; fuel surcharges; indemnity rules; double payment rules; restricted time lines for filing notice of claims and starting suit or arbitration actions; insurance limits; non-recourse section 7, prepaid and collect terms; and prepayment rules; shipper load and count rules; refrigeration and seal terms; prohibitions against brokering or subcontracting without prior written consent; venue and jurisdiction rules.

In order to reduce risk of theft, the BOL can also be coded so that only a hired carrier will know what information is required to gain access to shipper’s facilities and obtain possession of freight.
The “takeaway” of this information?

The BOL is an important shipping contract and brokers are wise to counsel shipper (and carrier) clients in their use and recommend that they seek assistance from experienced transportation counsel.

F. Legal Defenses

This section assumes that the cargo claim was made in compliance with federal regulations (as to content) and timely made by notice and/or lawsuit.

Not covered by insurance: Often, a carrier will claim that it is not liable for a cargo claim because it was not covered by insurance. While the parties can agree to that, the TIA model Broker/Carrier Agreement provides that the carrier (if it is liable) is not exonerated if for some reason insurance does not cover the loss. That’s why it is important when selecting a carrier to investigate its financial strength so that if a cargo claim is not covered, the carrier has sufficient assets to pay. Many small carriers have only the relative strength of insurance to cover cargo claims, and if there is an uninsured loss, recovery will be difficult or impossible. This defense unless the parties agreed otherwise is not valid.

As stated previously in this booklet, the well-established common law, Bill of Lading defenses to cargo claims are: (1) Act of God, (2) Public enemy, (3) Fault of shipper (most commonly asserted by carriers), (4) Authority of law, (5) Inherent vice/shrinkage.

When a carrier asserts an act of shipper defense, the burden of proof switches to the shipper to prove that it followed an established packing and loading procedure (hopefully written) and that it followed that procedure for the specific load at issue. If the shipper does not have written procedures, it may be able to prove it followed established procedures by affidavit or verbal testimony of those persons directly responsible for the loading and packing.

The authority of law defense will excuse carrier liability only when the intervention of lawful authority is the proximate cause of the loss with any intervening fault of the carrier. (Example: Confiscation of contraband.)

Public Enemy: involves only forces of a nation at war for purposes of excuse carrier liability.

Improper loading: Sometimes carriers will argue that the cargo was improperly loaded by the shipper and therefore the shipper should be liable. Federal regulations impose the responsibility and liability for proper loading on the carrier/driver. (See 49 CFR 392.9 and 393.100-136 and article on case Spence v ESAB Group 2009, U.S. Dist. LEXIS 95348). Even if a shipper is negligent in loading, the carrier may still be held liable if the carrier’s negligence contributed to the loss. This is true for all the defenses. The carrier must prove that it was not negligent. (Missouri Pacific RR v Elmore & Stahl, 377 US 134, 1964.)

Stolen Freight: (Carrier asserts delivery was completed) Liability for freight loss and damage to contents of a “spotted” trailer will depend on whether the receiver has “control” over the trailer. “Control” is a fact issue to be determined on all facts and circumstances. If “control” has not passed to the receiver, the carrier will be liable. (See for example, Merchants Terminal v L&O Transport, 2011 U.S.Dist LEXIS 111252.)

Cargo Loss And Damage Claims Asserted Against Brokers: Brokers can be liable for cargo loss and damage in only two situations: (1) where liability is assumed by contract or, (2) a judge or arbitrator rules that the broker is liable. Brokers have been subjected to cargo loss claims based on theories of violations of Deceptive Trade Practices Acts, negligent misrepresentation, fraud, breach of fiduciary duty, breach of contract, and negligent hiring/selection of the motor carrier to name a few. Claimants in those cases have run into the preemption of 49 USC 14501(c), which provides that “…States may not enact or enforce a law, regulation, or other provision having the force or effect of law related to a price, route or service of any….broker with respect to the transportation of property.” Interpreting this statute, courts have stated that all state law
claims are preempted except those based on breach of contract.

In Ameriswiss Technology v Midway Line of Illinois and C.H. Robinson Worldwide, et al. 888 F Supp 2d 197 (NH 2012), the court went so far as to state that brokers were not only expressly preempted from state law claims under 49 USC 14501(c) but also impliedly preempted from state law claims under the Carmack amendment 49 USC 14706.

Contractual liability is dependent on how well the contract is written. (See section on contracts.)

G. Claims Handling Time Frame/Indemnification

In addition to listing documents required for a claim, 49 CFR 370 also gives specific guidelines on claim investigation, time limits on settlement, and disposition of salvage.

The regulation states that a claim must be acknowledged to the claimant within 30 days of receipt. Tip: If you have not received a settlement check, a declination letter or acknowledgement in 30 days, contact the party you have claimed to verify they have the claim.

Claims must be settled, declined or reason given why they can’t be concluded within 120 days. If unconcluded after 120 days, the claimant must be notified every 30 days with the reason why it can’t be concluded. Tip: Other than notifying the claimant every 30 days, there is no time limit on this. If you think you are getting a run around, have your attorney send them a demand letter.

The regulation states that each claim should be given a unique number and promptly investigated. Tip: Note the date the claim was received.

The investigation has to be based on facts, and not “so-and-so told me.” The claimant has the burden of proof. Tip: Even if the carrier can prove common law defenses, it is the carrier’s burden to prove the carrier was not negligent.

Be wary of contract language that may try to shift the carrier’s Carmack liability over to the broker. This language could be as plain as “In the case of a cargo claim, the broker agrees to accept liability as if it were a carrier in respect to 49 USC 14706, The Carmack Amendment.” Or, the language could be cleverly disguised in an Indemnification Clause that states that “The broker hereby agrees to indemnify the shipper against all claims…” Review all contracts with carriers that may also attempt to add the broker to the liability pool by virtue of an indemnification clause.

Finally, if all else fails and somebody is getting ready to sue, make sure you know where the action will be venued. Different states have different provisions. Make sure you have an attorney who is licensed in that particular state.

H. What Is The Burden Of Proof For A Claim?

Under Carmack, the carrier has strict liability for cargo damage. However, the claimant (shipper or customer) needs to establish three basic elements in order to meet their burden of proof. The claimant must establish that the goods were (a) picked up in good condition (b) delivered in damaged condition and (c) resulted in a specific amount of damage. (Case law available upon request.) Note that this applies only in federal Carmack cases (over $10,000, not an exempted commodity, etc). Contract claims under state laws, statutes, and case law may greatly vary.

Once a claimant is able to prove the elements delineated above, carriers have the burden shifted and have limited defenses against cargo claims. Carrier must show it was not negligent and that one of the following caused the claim: Act of God, default of shipper, inherent nature of the product, public enemy, or public authority.
The above paragraphs address Burden of Proof. But what happens when a shipment has been received and signed for with no exceptions noted? The carrier received a ‘Clean Delivery Receipt’ but the customer files a claim. What happens if both parties (receiver and carrier) have lost the proof of delivery and the customer files a claim? In these cases, the burden of proof is on the claimant to establish the cargo was tendered to the carrier in good condition at origin and arrived at destination short or damaged. The Bill of Lading would be the evidence of the quantity and condition received by the carrier upon pickup. If there was a ‘clean delivery receipt’ or lost delivery receipt upon delivery, the claimant should submit written statements from employees at the consignee’s facility from people with firsthand knowledge of the shipment to prove the existence of a shortage or damage. The more information the claimant submits, the higher the chance of payment by the carrier. The carrier has the right to request as much information as it deems reasonably necessary in order to accept responsibility of the claim amount.

I. Attorney Fees

Attorney’s fees are not provided under the Carmack Amendment, however they are also not prohibited. In order to recover fees, parties must explicitly request fees under contract. An example:

**Attorneys’ Fees.** The prevailing party shall have the right to collect from the other party its reasonable costs and necessary disbursements and attorneys’ fees incurred in enforcing this Agreement.

Without such provision, courts will deny a request for fees.

J. Releases On Claim After Broker Paid Claimant

An **Assignment of Rights** allows one party (assignor) transfer money owed to another party (assignee). As a broker, you can pay the claim amount to your customer and obtain an assignment of rights from them. At this point, you can show that you are the party injured as a result of the carrier’s actions, and be able to pursue resolution through legal means. In the case where the claimant contractually withholds a broker’s freight charges to offset a claim, an Assignment of Rights may also be obtained. Attached are two examples of an Assignment of Rights, one that can be used with direct payment, and one that can be used when the claim amount has been offset from the broker’s freight charges. Keep in mind that if you have a large claim and pay your customer out of pocket, you may forfeit your ability to file the claim and collect payment from your insurance company. (See attachments 6 and 7 for sample forms.)
VIII. Common Claim Causes

- **Accident Loads**: Unfortunately, trucks have accidents. When a truck has an accident carrying your load, you must first notify your customer of the accident and then contact the carrier’s insurance agent. Chances are that the carrier has already notified their insurance agent, but it doesn’t hurt for you to contact the agent as well. You’ll need to find out the adjuster’s name and phone number. Put as much information as you can in the load notes.

- **Concealed Loss and Damage**: Conceived shortages and damages are the biggest claims headache and the most controversial to handle. When loss or damage is discovered after delivery and reported after the driver leaves, it is considered “concealed.” With “normal” claims, the claimant has the burden of proving good condition at origin and a damaged or short condition at destination to establish that a loss has occurred which most usually happens with a notated proof of delivery. However, in the case of concealed loss and damage, the claimant has a clear delivery receipt they must overcome. The burden of proof rests with the claimant to establish that the loss or damage occurred while in the possession of the carrier and in no way could have occurred at the shipper or receiver facilities.

Customers should report concealed loss and damage as soon as possible. For many years, shippers, consignees, and carriers have subscribed to the NMFC’s (National Motor Freight Classification) “15 Day Rule.” This is neither common law nor a federally mandated rule, but more of a shortcut to resolve the problem. Simply stated, the shipper, consignee, and carrier jointly share the cost of the claim, provided the loss is reported to THE CARRIER (and that is a very important point) within 15 days of the delivery. The theory is that the product had exposure at the shipper’s dock, consignee’s dock, and carrier’s trailer, so each party “owns” a piece of the claim. If damage or shortage is discovered after 15 days, it is the claimant’s burden to prove that the loss could have ONLY been caused by carrier negligence. Case law provides that a consignee has a “reasonable” amount of time to discover concealed damage. What is “reasonable”? It depends on facts and circumstances of the case. The carrier is not under any obligation to make a voluntary settlement, however, without presentation of proof.

If a customer contacts you with concealed loss or damage, you must contact the delivering carrier on the load right away so they can request an inspection, if necessary. Make sure your notification to the carrier can be verified, meaning, if you make a phone call, follow the call with a fax or email outlining the details of your call and get a fax confirmation or email receipt. Remember that while brokers cannot be held legally responsible for cargo claims, any error on your part acting as the go-between your customer and carrier may be considered negligence for which you may be held liable.

- **Damage at Delivery**: If there are damages to the load, the carrier would have to establish that it was one of the exceptions to liability – such as an act of default of the shipper – that caused the damages, and that they were not negligent. For instance, if the product sustains forklift damage, the carrier cannot be held liable, but if the load was properly loaded and braced and the driver took a turn too fast or hit a curb and tipped the product, the carrier would be held liable for the damage. If a driver calls from the consignee to report that there was product damaged at delivery, do NOT tell the driver that you will “handle” it. Simply contact your customer to report the damage and then make a record in the load notes. Most consignees will refuse the product to the driver. If the driver asks you if he should accept the damaged product, tell the driver that he needs to contact his dispatcher. If the driver removes the damaged product from the consignee, in some cases, he may be admitting liability for the damage and can be charged for the damaged product, so it is the dispatcher’s duty to make that decision.

- **Refused Shipment**: While consignees have a duty to accept partially damaged goods unless the shipment is deemed “practically worthless,” current practices show that consignees have refused
shipments if a seal wasn’t applied correctly, if there was a “possibility” of contamination (not that there was actual contamination), or if the load was simply late (see FDA regulations 21 USC 342(a)(4)). Each case must be judged on its own merit, but a wrongful rejection of a load by the consignee may subject that consignee to liability for any damages that result from the wrongful rejection. Time is of the essence concerning a refused shipment. Your customer needs to be notified immediately, and you must stay on top of the situation so it is resolved quickly and correctly. If the carrier is not at fault, demurrage or redelivery charges may apply. If your customer tries to wash their hands of the situation, you need to have the carrier send an “On-hand” notice to the owner of the freight. This basically tells the freight owner where the product is located and gives them a time frame for disposition of the product or the carrier can sell the product to recoup his transportation and/or storage charges.

- **Shipper’s Load and Count/Lack of Seal Integrity**: A shipper’s load and count movement means that the shipper has taken on the responsibility to count and load the freight. The carrier drops the equipment or the driver may remain while the equipment is loaded, but the driver does not oversee the counting and loading process. A seal is placed on the load to protect the count. A record of the seal is recorded on the bill of lading, seal log, or both. If the original seal is intact at time of delivery and has not been tampered, the carrier will not be held responsible for any shortages. However, if the seal has been removed, replaced, or tampered, the carrier will be held liable for any shortages despite the fact the driver was not present at loading. The driver should never remove a seal without first having the seal inspected -- AND NOTATED INTACT -- by the receiver.

- **Shortage at Delivery**: If a driver calls from the consignee to report that his load is short, contact your customer to report the shortage and make notation in the load notes. If the shortage is large, contact the shipper immediately to see if the missing product was cut from the order, left on the dock, or not shipped. Once again, make load notes.

- **Load Held Hostage**: Nothing makes blood boil faster than a carrier telling a broker/customer that it will not deliver freight in its possession until some outrageous demands are met. Most commonly, the carrier is demanding payment for shipments preceding the one currently in progress, although the range of “reasons” for withholding delivery are extremely wide-ranging. In most situations, the broker will try to protect its customer by negotiating a solution that will satisfy the carrier so the shipment can be delivered. Assuming delivery can be negotiated, the broker can then take legal action for costs, expenses, and damages resulting from the breach of contract. If delivery cannot be negotiated, the broker can take legal action to obtain possession of the shipment (known as an action in replevin), and/or action for “conversion” for the value of the freight for breach of contract.

In many cases, excited calls are made to police officials reporting the theft. However, in most instances, the carrier has obtained the shipment legally. When that happens and the carrier refuses delivery, the carrier has “converted” the shipment. Conversion is another term for civil theft. Police departments, including the FBI, typically are dealing with more serious crimes and do not have the interest/resources in processing freight-related issues. Courts have defined “Conversion” as:

> “Any distinct act of dominion wrongfully exerted over one’s property in denial of his right, or inconsistent with it, is a conversion. While therefore it is a conversion where one takes the plaintiff’s property and sells or otherwise disposes of it, it is equally a conversion if he takes it for a temporary purpose only, if in disregard of the plaintiff’s right...The word “conversion” by a long course of practice has acquired a technical meaning. It means detaining goods so as to deprive the person entitled to the possession of his dominion over them....conversion is any distinct act of dominion wrongfully exerted over another’s personal property in denial of or inconsistent with his rights”
Conversion may be proved by demand and refusal of possession but evidence of this is not necessary if there is other evidence of actual conversion.”

“In short, the substance of the tort is wrongful dominion over the property of another.”

The elements of conversion are (1) plaintiff’s ownership or right to possession of the property at the time of the conversion; (2) defendant’s conversion by a wrongful act or disposition of plaintiff’s property rights; and (3) damages. *Matsuda v Wada* 101 F Sup 2nd 1315 (US Dist Ct Hawai, 1999). (Refusal to deliver bill of lading to a sailboat.)

In the case *Car Transportation v Spot Distributors* 805 SW 2d 632 (Ark. 1991), the carrier claimed as a defense that it had a lien under the Uniform Commercial Code (UCC) Sec 7-307(1) for the transportation of the freight. The UCC provides for a carrier lien as follows: “A carrier has a lien on the goods covered by a bill of lading for charges subsequent to the date of its receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law.” The court took a dim view of the carrier’s argument by stating “...If a lien defense is available to the motor carrier, it can only be asserted against currently transported goods for current freight charges that remain unpaid.” Further and most importantly, “...A sudden assertion of a lien against the goods, midway enroute, to resolve a dispute between the motor carrier and another party cannot justify converting property which has been purchased by the buyers.” Another case supporting this position is *Progressive Timberlands v R&R Heavy Haulers and Burwell* 622 NW2d 533 (MI App 2000).

If a carrier is refusing delivery because of an alleged prior debt, you may be able to tell the carrier to keep the freight and pay you its value for “conversion.”

- **Load Shifting:** If product damage is the result of load shifting during transportation, oftentimes a carrier will try to use the defense of “Act of Shipper” to escape claim liability. This defense can only be used if the driver was not allowed on the dock during loading, the load was sealed by the shipper, and there is no evidence of carrier negligence. If the driver was allowed on the dock but chose to stay in his truck, he did so at his peril because 49 CFR 392.9 (b) (2) states that the driver MUST “inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle...” (Copy of this regulation can be found on Attachment 8.) Case law is even more stringent. *Thomson v C, M & St P Ry Co, 271 NW 927* states “If the carrier does accept [improperly loaded] goods, it may not thereafter allege that any injury which they sustained in the course of transportation was due to such insufficient loading.”

- **Special Damages:** Special damages are damages that are the result of a breach in the contract of carriage which are not ordinarily foreseeable at the time of shipment. Special damages include plant shutdown expenses, loss of profits, labor, rental fees, etc. Unless a carrier has entered into a contract or agreement, has been notified in advance of the special conditions/requirements, and knowingly accepts the shipment with the specified conditions, a carrier will not be held liable for special damages. The courts require that actual notice of the potential for special damages – indicating what would occur as the result of a breach in the contract of carriage – be given to the carrier prior to their handling of the shipment so the carrier then has the right to refuse the shipment. For instance, if your customer tells you that a manufacturing line will be shut down and you will be held responsible for any charges incurred if the load is not delivered by a specific date and time, you MUST advise the dispatcher and driver, and add this information to the load confirmation so the carrier knows IN ADVANCE of the special conditions of the load and has the opportunity to refuse the load. If you do not pass along this
information, you can be held liable for any special damages for which you were made aware prior to pick up, but did not pass along to the carrier. If your customer tells you that the seal can only be removed by the consignee or the load will be rejected, you MUST tell the carrier this information as well as enter the information onto the load confirmation prior to the carrier’s signing, or you will be held liable for the load refusal and may incur charges from both your customer and carrier. (See TIA model Broker-Shipper and Broker-Carrier contracts.)

IX. DEFINITIONS

- **Bill of Lading** - A shipping document that has a threefold purpose: (a) a contract of carriage, (b) documentary evidence of title (ownership), (c) receipt for the goods. The carrier is responsible to create a bill of lading but it’s become common place for the shipper to create it. Also known as BOL or B/L.

- **Claim** - A legal demand for the payment of money arising from the breach of the “contract of carriage.” For interstate shipments, there is a federal statute known as the Carmack Amendment that governs most loss and damage claims against motor carriers and freight forwarders.

- **Claim Acknowledgment** - A written acknowledgment that the motor carrier has received the cargo claim. Although brokers assume no responsibility for cargo claims (unless they’ve agreed to be responsible contractually), brokers often assist customers in filing claims with the motor carrier on the shipper’s behalf. The motor carrier is required to acknowledge receipt of the cargo claim in writing or electronically to the claimant within 30 days after the date of its receipt. The carrier shall assign a successive claim number and note the number on all claim documents. If more information is required, the carrier shall indicate the type of information necessary to investigate and process the claim.

- **Claimant** - The party filing a claim or suit. Generally, the claimant must be owner of goods (i.e. the party having title or legal rights to the goods as expressed by the FOB terms).

- **Exempt vs. Non-exempt Commodities** - An exempt for-hire motor carrier transports exempt (unregulated) property owned by others for compensation. The exempt commodities usually include unprocessed or unmanufactured good, fruits and vegetables, and other items of little or no value. For a listing of exempt and non-exempt commodities please refer to Administrative Ruling 119 of the Department of Transportation.

- **Insurance Deductible** - The portion of a covered loss that is not paid by the insurance company. All cargo policies contain deductibles. Typically, the deductibles are dollar amounts such as $1,000 or $2,500 or $5,000. Larger carriers may have larger deductibles like $10,000 or $25,000 or larger. In rare instances the deductible may be a percentage of the loss. Liability policies may contain retentions, which are a type of deductible. Mid-sized carriers (50 to 100 trucks) may buy their liability insurance through a risk retention group (commonly abbreviated RRG). Liability retentions may be $25,000 or $50,000 on the low end. But a carrier in some financial distress may be unable to pay both a liability retention and a cargo deductible arising out of the same accident. When implemented properly, deductibles and retentions can be very effective tools to reduce the number and even severity of claims. Carriers can save significant amounts of money by implementing deductibles prudently.

- **Insurance Exclusions** - An insurance policy provision referring to hazards, perils, or circumstances not covered by the policy. All cargo policies contain exclusions. Typical exclusions are nuclear hazard, delay,
flood, and employee dishonesty. It is possible to pay an additional premium to remove an exclusion (thus restoring coverage).

- **Loss Due to Delay** - Any claimed loss due to a delivery delay. If the broker employs the current TIA Broker-Carrier contract, then per Section 1H, the CARRIER shall defend, indemnify and hold BROKER and its shipper customer harmless from any claims, actions or damages, arising out of its performance under this Agreement, including cargo loss and damage, theft, delay, damage to property, and personal injury or death. If this provision is not in your broker-carrier contract then look to the ‘Consequential Damages’ section of your agreement which may protect the broker and carrier for loss due to delay.

- **Loss of Sale** - Any loss claimed due to a lost sale(s) due to carrier loss, damage or delay. If the broker employs the current TIA Broker-Carrier contract, then per Section 3.C.iv, except as provided in Par 1.E above, neither Party shall be liable to the other for consequential damages without prior written notification of the risk of loss and its approximate financial amount, and agreement to assume such responsibility in writing. If broker or carrier has assumed this liability in writing, then it would be incumbent upon the broker or carrier to obtain additional insurance to cover the possible loss.

- **Original Invoice** - A copy of the original sales document evidencing the points of purchase, such as quantity, price, weight etc.

- **Overage, Shortage, or Damage - OS&D**
  - **Overage** – The number of pieces or units is greater than what is shown on the Bill of Lading.
  - **Shortage** – The number of pieces or units is less than what is shown on the Bill of Lading.
  - **Damage** – Freight that is crushed, wet, has thermal abuse, or is damaged in any way which lessens its value.

- **Proof of delivery/POD** - A document signed at time of delivery proving the date and time the shipment was delivered. A POD should also indicate the condition of the cargo upon delivery and notations should be made to indicate any shortage or damage. The receiver (consignee) is given a copy and the carrier keeps the original POD. (See section entitled “Burden of Proof” for information on “Clean Delivery Receipts.”)

- **Refusal** - The decision of the consignee to refuse acceptance of a delivery. Broker must seek instruction from the shipper or legal owner of the goods as to disposition desired and then provide instructions to the carrier accordingly.

- **Salvage** - Generally defined as the retention or recoverable value of a damaged shipment. Section 4 of the Uniform Straight Bill of Lading provides guidance on carrier’s rights and responsibilities as it pertains to damaged and/or refused goods.

- **Seal Integrity** - When a carrier picks up a load and a seal is applied by an authorized representative of the shipper, the seal number should be recorded on the bill of lading along with the name of the person applying the seal. When the shipment arrives at the consignee, an authorized representative of the consignee should break the seal and the driver should make sure the consignee makes a notation on the delivery receipt showing the seal number, the person breaking the seal, and that the seal was intact upon delivery. This is called ‘seal integrity’ and it’s been an industry practice for decades, but in the last 10 years, it has become increasingly important especially in transporting grocery store merchandise.
Some companies will refuse a load if the seal integrity has been compromised. When a seal is compromised at any point in transit, the era in which we live could make the condition of the cargo considered to be suspect. Applying a trailer seal is one level of protection. But consumer goods have been packaged in such a way as to provide additional layers of security, too. Although a breach of the trailer seal doesn't necessarily mean the product was accessed improperly or maliciously, and it is true the burden of proof is with the claimant to prove a loss, more and more shippers are taking a hard line on seal integrity. When the seal has been compromised, nothing good comes as a result.

- **Shrink-Wrapped Pallets** - Shrink-wrapping (or more accurately "stretch-wrapping") is a packaging technique used in industry to secure items to a pallet. It entails using a roll of thin, stretchable plastic film to apply many layers of holding power for the job. When the shrink or stretch wrap around a pallet has been compromised, there is potential for claims with parcels that may have gone free astray or there can be load shift causing crushing and other damage leading to claims. Note, LTL carriers who receive stretch wrapped pallets will want to sign for receipt of one (1) unit or one (1) pallet rather than one pallet consisting of XX items. Some carriers instruct their drivers to sign, for example: “1 pallet STC (said to contain) XX CTNS.” The carriers will argue that they cannot properly piece count stretch or shrink wrapped pallets and, thus, cannot be accountable for pieces.

- **Shipper Load and Count (SLC) Shipper Load Consignee Unload (SLCU)** - The shipper loads the trailer and verifies the count and tenders the load without giving the carrier the opportunity to verify content. With SL&C loads, the carriers are not liable for losses where the count or contents does not match at time of delivery. SLCU loads are similar to SLC except that the Bill of Lading should indicate SLCU at time of pickup. The exception to this is where the carrier may unload the trailer enroute to setup distribution of individual BOLs. The shipper in these break-bulk situations normally gives the carrier 24 hours within which to identify any discrepancies in the count and to report any damages due to improper loading.

- **Temperature/Thermal Abuse Claims** - Claims can arise when the carrier has offered ‘Protective Service’ against heat or cold temperatures. Temperature indicators, like ‘Coldmark’ or ‘Warmmark’, provided by ShockWatch or similar vendors, often attend these shipments. Shipment refusals and/or hidden damage claims can arise when these monitor devices give indication of temperature abuse during transit.
## X. ATTACHMENTS
### A. ATTACHMENT 1

**Standard Form for Presentation of Loss and Damage Claims**

- **(Claimant's Number)***
- **(Address of claimant)**
- **(Name of Carrier)**
- **(Address of consignee)**
- **(Date)**
- **(PRO Number)**

This claim for $_______ is made against the carrier named above by ________ (Name of Claimant) for _________ (Loss or damage) in connection with the following described shipment(s):

**Description of shipment**

- **Name and address of consignor (shipper)**
- **Shipped from**
  - (City, Town or Station)
  - (Country, Zone or State)
- **Final Destination**
  - (City, Town or Station)
  - (Country, Zone or State)
- **Routed via**
- **Bill of lading issued by**
- **Date of Bill of Lading**
- **Paid Freight Bill (Pro Number)**

**Name and address of Consignee (Whom shipped to)**

If shipment reconsigned enroute, state particulars:

**DETAILED STATEMENT SHOWING HOW AMOUNT CLAIMED IS DETERMINED**

<table>
<thead>
<tr>
<th>(Number and Description of articles, nature and extent of loss or damage, invoice price of articles, amount of claim, etc.)</th>
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</table>

**Total Amount Claimed**

**IN ADDITION TO THE INFORMATION GIVEN ABOVE, THE FOLLOWING DOCUMENTS ARE SUBMITTED IN SUPPORT OF THIS CLAIM**

- ( ) 1. Original bill of lading, if not previously surrendered to carrier.
- ( ) 2. Original paid freight ("expense") bill.
- ( ) 3. Original invoice or certified copy showing claimants cost.
- ( ) 4. Other particulars obtainable in proof of loss or damage claimed.

**Remarks:**

**Printed name of claimant (print clearly)**

**The foregoing statements of facts is hereby certified to as correct.**

**Claimants contact (please number)**

**Signature of claimant**

---

*Claimant should assign to each claim a number, inserting same in the space provided at the upper right hand corner of this form. Reference should be made thereto in all correspondence relating to this claim.

**Claimant will please check (X) before each of the documents mentioned as have been attached, and explain under "Remarks" the absence of any of the documents called for in connection with this claim. When for any reason it is impossible for claimant to produce original bill of lading, or paid freight bill, claimant should immediately notify carrier or carriers against duplicate claim supported by original documents.
B. ATTACHMENT 2 – Cargo Claims Declination Letter

DATE
CUSTOMER ADDRESS
CITY, STATE ZIP CODE

Re: Cargo Rejection

CUSTOMER REFERENCE NUMBER
BROKER NUMBER

Mr. CUSTOMER:

This correspondence is in response to your letter dated DATE. BROKER, does not represent CARRIER COMPANY or their parent company, CARRIER PARENT COMPANY of CITY, STATE; both of whom CUSTOMER should be pursuing instead of BROKER.

BROKER is rejecting CUSTOMER'S claim demand for reasons set forth below:

XII. Conflicting Reports

As indicated in CUSTOMER’S letter, CUSTOMER is in receipt of CARRIER’S refrigeration unit download. The refrigeration unit download appeared to be misdated. However, CARRIER supplemented this download with corresponding Bills of Lading from prior and later loads. The temperature set points in the download were matched with each corresponding Bill of Lading. From this, BROKER is able to verify that CUSTOMER’S set point (-10 degrees) was properly engaged while CUSTOMER’S cargo was in CARRIER’S trailer. More importantly, CARRIER provided CUSTOMER with a report that shows dates, temps, and GPS locations of the truck and trailer. This report is the primary tracker for CARRIER and is a superior record to the refrigeration download.

CUSTOMER chooses to rely solely on its time/temperature recorder (TTR) and indiscriminately dismisses all contradicting reports as submitted by CARRIER through BROKER. BROKER believes that CARRIER has supplied enough evidence to make a colorable argument against a summary determination that CARRIER is liable. Additionally, BROKER is concerned the TTR was malfunctioning, misused by the shipper, or placed improperly.

Based on the reports alone, BROKER has not seen enough convincing evidence from CUSTOMER to conclude this is a truck claim.

XIII. Insufficient Inspection

At time of delivery, the Consignee, CONSIGNEE, purportedly rejected the load based upon the TTR and a limited visual inspection of the product. However, CONSIGNEE apparently performed a physical inspection of one box in the tail of the trailer and made no effort to determine whether the remaining cargo was acceptable. CONSIGNEE's inspection of one box was wholly insufficient. Had CONSIGNEE done a thorough inspection of the product, a portion of the load might have been accepted thereby reducing the liability to the parties. Should CUSTOMER choose to pursue an action in this matter, BROKER will join CONSIGNEE to the action.
Upon rejection, BROKER attempted to return the cargo to the shipper in order to properly investigate. Instead, CUSTOMER told BROKER to dispose of the cargo. Had the product been returned, CUSTOMER or an independent third party could have performed an immediate inspection to determine if the product was truly damaged in transit. CUSTOMER would not accept return of the product to the shipper nor allow a third party opportunity to inspect. CUSTOMER was complicit in the insufficient inspection.

In an effort to preserve the integrity of the load and maintain a chance at proper inspection, BROKER has stored the product at a freezer in Chicago, where it currently remains.

**XIV. Failure to Mitigate**

BROKER requested at the time of rejection that CUSTOMER assist with mitigating loss. CUSTOMER responded with an invoice for the complete cost of the load along with a denial to mitigate because of an existing contract with its customer, PURCHASER. According to CUSTOMER, rejected loads are only to be dumped and cannot be salvaged under its PURCHASER contract. However, CUSTOMER was not clear whether the product could be re-packaged and sold. Regardless, BROKER was not aware of these terms at the time the load was tendered and would not have accepted these terms had BROKER known rejected products could not be salvaged in a secondary market. Furthermore, if the parties purportedly are not authorized to mitigate, CUSTOMER has an elevated duty to inspect to ensure the rejection was proper.

BROKER has placed the product in refrigerated storage. At this time, BROKER again advises that CUSTOMER should take immediate steps to limit damages. Except for the one box CONSIGNEE inspected and the one box BROKER inspected, the product is undisturbed and frozen. CUSTOMER is in the best position of all parties to mitigate damages but instead chooses to abandon the load and present the carrier with a full claim.

**XV. Shipper Fault**

BROKER cannot confirm with absolute certainty that the Shipper of this load, SHIPPER, properly stored and handled your cargo prior to loading CARRIER's trailer. BROKER has not received evidence of the cold chain or if storing protocols had been followed. Should CUSTOMER choose to pursue an action in this matter, BROKER will join SHIPPER and prior parties, including COLD STORAGE, to any action in order to proceed with discovery on the issue.

**XVI. Unreasonable Rejection Policy**

PURCHASER purchased the cargo in question. CUSTOMER stated to BROKER that PURCHASER'S policy is to reject the entire load based upon the TTR recorder and to not allow any salvage because of the private label packaging. PURCHASER'S rejection policy puts CUSTOMER's third party vendors in an untenable position. CUSTOMER entered a one-sided agreement with its customer and is unfairly attempting to pass the risk to its carrier. CUSTOMER cannot hold a third party responsible for tying its own hands with a bad deal. If CUSTOMER insists on pursuing additional action, BROKER will have no choice but to join PURCHASER in the action for its role in the failure to mitigate damages.

**XVII. Carmack Preemption**


**XVIII. No Right to Offset**
CUSTOMER does not have the right to offset this open claim against the four outstanding previously billed freight charges. CUSTOMER benefitted from the prior shipments, and the consignee accepted the loads upon delivery. The previous loads were hauled by other carriers who are not party to this dispute. The Supreme Court does not allow cross-collateralization against innocent third parties. The two debts do not cancel each other out. BROKER demands immediate payment of its outstanding freight charges so that the innocent third parties may be paid.

XIX. Other Issues

In your letter dated DATE, you wrote, “the parties acknowledged and agreed,” that the TTR was the determining factor in shipping requirements. BROKER and CUSTOMER never entered into an agreement that a TTR would be a sole point of evidence for a breach of contract nor would BROKER ever be in a position to enter into such an unreasonable policy. BROKER provided spot-dated trucking capacity which must allow other factors to be considered into evidence for any breach of contract and when assigning responsibility to the parties.

Finally, CUSTOMER implied BROKER was negligent in hiring CARRIER of CITY, STATE. CARRIER is a company in good standing within the industry. CARRIER has an active MC and sufficient insurance coverage for this claim. BROKER has worked with CARRIER since 2006 and, in that time, CARRIER has performed in a reliable and businesslike manner.

For the reasons set forth above, BROKER is rejecting your claim.

This letter is written with reservation of all legal rights, remedies and defenses available at law or equity to BROKER.
# C. ATTACHMENT 3

**CERTIFICATE OF LIABILITY INSURANCE**

**DATE:** 2/14/2015

**PRODUCER:**

**Name:** EJ Aumann Company
**Address:** 7155 Market Place Drive
**City:** Eden Prairie
**State:** MN
**Zip:** 55344

**INSURED:**

**Name:** Example Trucking Co.
**Address:** 123 Main Street
**City:** Anywhere, MN
**Zip:** 00000

**INSURERS AFFIRMED COVERAGE:**

**Insurer A:** Name of Insurance Company
**INSURANCE LIMIT:** 00000

**Insurer B:** Name of Insurance Company
**INSURANCE LIMIT:** 00000

**Insurer C:** Name of Insurance Company
**INSURANCE LIMIT:** 00000

**Insurer D:** Name of Insurance Company
**INSURANCE LIMIT:** 00000

**Insurer E:**

**Insurer F:**

**CERTIFICATE NUMBER:** 653812224

**REVISION NUMBER:**

**COVERAGE:**

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**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES** (Attach ACORD 101, Additional Raster Schedule, if more space is required)

**CERTIFICATE HOLDER:**

**Name:** Certificate Holder, Inc.
**Address:** PO Box XXX
**City:** Anytown, USA
**Zip:** 00000

**CANCELLATION:**

**AUTHORIZED REPRESENTATIVE:**

**Signature:**

---

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ACORD 25 (2010/05) The ACORD name and logo are registered marks of ACORD

© TRANSPORTATION INTERMEDIARIES ASSOCIATION ALL RIGHTS RESERVED
Certificates of Insurance

1

The disclaimer is very important because it specifically states that the certificate (and that includes everything typed on it) does NOT amend, extend or alter the coverage afforded by the insurance policies. It would be very cumbersome to verify things like the named insured, policy dates, schedule of autos, etc. Any verbiage that may be typed in the description box does NOT alter the insurance in any way. If any of these are incorrectly reflected on the certificate, that does not obligate the insurer to anything.

2

This second disclaimer is also very important because it makes it very clear that any terms and conditions that may be in a contract the broker has signed with a shipper or carrier do NOT change the insurance policies.

3

The certificate holder is the party to whom the representations in the certificate are made. Brokers should strive to obtain certificates showing the broker's name and address in this box. This is one way to catch fraud before it happens. The broker can examine the certificate searching for errors that indicate fraud may be present. See the TIA's Carrier Selection Framework for more information.

4

This box will almost always contain the limits of the carrier's cargo insurance. The deductible is often, but not always shown. Some certificates will also show refrigeration system breakdown (aka reefer breakdown) coverage in this box. If a carrier has purchased a higher limit for an individual shipment or a series of shipments for one shipper, the higher limit may be in the description box just below. Sometimes physical damage coverage which insures the carrier's equipment against loss by fire, theft, collision, etc. is shown in this box. Sometimes trailer interchange coverage is shown in this box.

5

You will find a variety of entries in the description box. It is a place to put a list of vehicles, or deductibles, or restrictions (like no coverage for unattended vehicles), etc. You may find refrigeration system breakdown coverage shown in this box or you may find deductibles shown in this box. It is also a place where additional insured language can be entered. Caution: Insurers and insurance agents are very, very reluctant to enter additional insured language provided by the certificate holder. If the language is vague or makes implications broader than the policy intent, that language will be rejected. Shippers are notorious for trying to insert language here that is far broader than what the policy intends. Refer back to the disclaimer at the top. The language in the box does not change the policy. But it will get the insurance agent in a great deal of legal trouble. Professional insurance agents will not put in language just because the certificate holder wants it that way.
D. ATTACHMENT 4 – Carrier Screening Form & Permission Slip

Date

Motor Carrier’s Insurance Agent
Street or PO Box
Anytown, USA  00000

Re: Motor Carrier’s Name

Dear Agent:

We want to do business with your client, Motor Carrier’s Name, beginning mm/dd/year. Cargo insurance policies exclude or restrict coverage for certain commodities and contain exclusions for certain perils and circumstances. We want to be certain that a major problem does not occur after a loss and we want to choose carriers whose cargo insurance meets our customers’ needs. We also want to present the opportunity for you to adjust the policy if necessary and avoid any errors.

Please complete the questionnaire that is attached and return it to (your company) via (fax or email or mail) by mm/dd/year.

Sincerely,

Broker

This letter should be accompanied by a permission slip where the trucking company signs a statement authorizing and encouraging the agent to complete the form. The form can be a one sentence authorization like this.

Motor Carrier’s Name hereby authorizes and requests that insurance agency name complete and return the title of screening form to broker’s name.

Signature  Date

ATTACHMENT 4 – Continued
Summary of Exclusions, Limits of Insurance and Special Conditions

Insured: ___________________________ Policy No. ___________________________

______________________________

Covered Property Exclusions:

___ NO EXCLUSIONS

___ Computers
___ TV’s, VCR’s, DVD Players, Stereos, etc.
___ Video Game Hardware
___ Geographical exclusion, please indicate territory:

Other __________________________

Sub Limits of Insurance:

___ NO SUB LIMITS

Commodity: Sub Limit

__________________________

SUB LIMIT BASED ON PERIL INSURED AGAINST

Peril: Limit

__________________________

Vehicle Coverage:

___ Any vehicle
___ All owned vehicles
___ Scheduled vehicles (please attach schedule)
___ Hired vehicles

Special Conditions: NO SPECIAL CONDITIONS

___ Unattended vehicle
___ Property loaded on vehicle Overnight
___ Co-Insurance
___ Stationary Vehicles/unnamed terminals
___ Locked vehicle
___ Vehicle alarm required
___ Unattached trailer
___ Attended trailer
___ Attended vehicle
___ Other

Note: If any of the above special conditions are marked, please specify or attach declarations page & any endorsements for reference.

Changes in policy:

In order to protect the best interests of all parties involved, please notify ____________________________ in writing within 24 hours of any changes to the insured’s cargo policy.

Policy reviewed by:

printed name __________________________ signature __________ date __________

position __________________________ company __________________________
E. ATTACHMENT 5

ASSIGNMENT, RELEASE, AND NOTICE OF ASSIGNMENT

In consideration of, and upon receipt of payment of__________________ ($______) and other good and valuable consideration, from ____________________ (“BROKER”), a property broker registered with the Federal Motor Carrier Safety Administration (FMCSA), MC # _____ to ______________________ (“SHIPPER”) of ____________________________ (STATE/CITY), Shipper does hereby:

A. Assign, transfer and convey to BROKER all of its rights, title and interest as owner of the freight described below including, but not limited to, and all its rights, title and interests as a shipper of a truckload (or partial truckload) of (description of damaged freight)__________________ for freight loss and damages against (name of carrier)______________, a motor carrier registered with the FMCSA, of ____________ (City / State) (“Carrier”) arising out of (describe loss/damage)_____________________________ on or about __________ (date). The claim is evidenced in part, by: (list supporting documents attached) for example, bills of lading, damage report, photos, investigative reports etc., and claim information;

B. Release and forever discharge BROKER, its successors in interest, directors, officers, shareholders, employees, agents, attorneys, and representatives from all claims for sums of money owing, accounts, actions, contracts, agreements, claims, and demands at law
or in equity, known or unknown, which now have arisen or which may hereafter arise by reason of the damage to the freight described above;

C. As a condition of payment, agrees to provide its full cooperation to BROKER including, but not limited to, providing copies of documents relevant to the claim and names, current phone numbers, current addresses of all known witnesses including instructing witnesses to co-operate with BROKER, in order to allow collection of the freight loss and damages from Carrier;

D. Agrees that this Assignment and Release is intended to become effective upon receipt of payment from BROKER of the amount stated above; and

E. Represents that the person signing this Assignment and Release on behalf of SHIPPER and has authority to do so.

(Shipper)__________________________

By:_________________________________

Its: ________________________

IN WITNESS WHEREOF, ______________________________ has appeared before me and being first duly sworn on oath stated that he/she is the _________________ (title) of
(Shipper)_____________________ and has executed this instrument by his/her free act and deed, this ____ day of ________________, 20__.  

Subscribed and sworn to before me this ____ day of ____________, 20__.  

_______________________________  
Notary Public

NOTICE OF ASSIGNMENT

TO: (Carrier)______________

PLEASE TAKE NOTICE that on or about ____________, (shipper) _____________ assigned all of its right, title and interest in the above described claim to BROKER.

(Broker)____________________

By: ________________________________

(SIGN) (PRINT)

Date:______________
F. ATTACHMENT 6

RE: (Broker) Load #___________________

(Broker) Claim # _____________________

(Customer) ref #:_______________________

(Customer/Shipper name) hereby assigns, transfers and conveys to (Broker Name), all of its rights, title and interests (free of any liens or encumbrances of any kind) to recover freight loss and damages from (Carrier name) arising out the carrier’s transportation of the shipment referenced above. (Customer/Shipper name) represents that the person signing this Agreement has authority to do so.

Signature:____________________________________
By:________________

Title:_________________________________________

Date:_________________________________________
To: (Customer/Shipper name)

RE: (Broker) Claim # _______________

(Customer/Shipper) ref #:______________

In complete settlement of your cargo loss and damage claim, upon receipt of the payment of $____________ from (Broker name), (Customer/Shipper name) (a) Releases and forever discharges (Broker name) from all such claims. (b) Assigns, transfers and conveys to, (Broker name) all of its rights, title and interests (free of any liens or encumbrances of any kind) to recover freight loss and damages from ("Carrier name") arising out of the carrier's transportation of the freight. (c) Agrees to fully cooperate with (Broker name) in establishing the loss and damage claim against the carrier. (d) Represents that the person signing this Agreement has authority to do so.

Signature:____________________________________

By:________________

Title:_________________________________________

Sincerely,
**H. ATTACHMENT 8**

Excerpt from 392.9a   49 CFR Ch. III (10-1-11 Edition)

The driver of a truck or truck tractor must -

(2) Inspect the cargo and the devices used to secure the cargo within the first 50 miles after beginning a trip and cause any adjustments to be made to the cargo or load securement devices as necessary, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from the commercial motor vehicle; and

(3) Reexamine the commercial motor vehicle’s cargo and its load securement devices during the course of transportation and make any necessary adjustment to the cargo or load securement devices, including adding more securement devices, to ensure that cargo cannot shift on or within, or fall from, the commercial motor vehicle. Reexamination and any necessary adjustments must be made whenever -

(i) The driver makes a change of his/her duty status; or

(ii) The commercial motor vehicle has been driven for 3 hours; or

(iii) The commercial motor vehicle has been driven for 150 miles, whichever occurs first.

(4) The rules in this paragraph (b) do not apply to the driver of a sealed commercial motor vehicle who has been ordered not to open it to inspect its cargo or to the driver of a
commercial motor vehicle that has been loaded in a manner that makes inspection of its cargo impracticable.
XI. ACKNOWLEDGMENTS

The TIA Cargo Claims Framework was created by TIA members adopting procedures they have developed, learned and found to be useful. The Framework by no means is intended to be an all-encompassing guide or instruction for dealing with Cargo claims, nor is it intended to create an industry standard. TIA makes no representation or warranty as to the effectiveness of any results obtained by utilization of any of the listed procedures. TIA recommends that the Cargo Claims Framework be one set of ideas which may be useful as a starting point when dealing with various cargo claims issues, and that guidance from an experienced transportation attorney be obtained when circumstances require.
The Transportation Intermediaries Association (TIA) is the professional organization of the $167-billion third party logistics industry. TIA is the only organization exclusively representing transportation intermediaries of all disciplines doing business in domestic and international commerce. TIA is the voice of transportation intermediaries to shippers, carriers, government officials and international organizations. TIA is the United States member of the International Federation of Freight Forwarder Associations (FIATA).

TIA conducts an annual convention and trade show; holds an annual marketing conference with leading shippers and carriers; and provides education, research, and services to help our members succeed.


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